

**Protest on the Roads an Analytical Study in The Light of Quran and Sunnah**

**Hafeez Arshad Hashmi**

Doctoral Candidate Islamic Studies, Qurtuba University of Science and Information  
Technology, D I Khan.

**Qammar Aziz**

Doctoral Candidate Islamic Studies, Qurtuba University of Science and Information  
Technology, D I Khan.

**Munir Subhani**

M Phil (Education), Qurtuba University of Science and Information Technology, D I  
Khan.

**Prof Dr. Abdul Wahab**

Department of Islamic Studies, Qurtuba University of Science and Information  
Technology, D I Khan.

**Prof Dr. Fazal Ilahi Khan**

Department of Islamic Studies, Qurtuba University of Science and Information  
Technology, D I Khan.

**Prof Dr. Muhammad Aslam**

Department of Islamic Studies, Qurtuba University of Science and Information  
Technology, D I Khan.

**ABSTRACT**

Any country's progress and stability depends on its attachment with ideology, on its social, financial, political and defensive circumstances. If that state stands on its basic ideology and national aim, is saved from its internal and external chaos, is traveling on its way of financial development, justice prevails in it, a relation of love and trust exists between public and govt. ,and a whole set up for the spiritual and material needs of its inhabitants is there, then that state is built on solid and concrete grounds. There is no threat to its solidarity and wholeness and that state travels on the road of progress and development by being attached to its national goal. If we review our country's circumstances in the light of this standard then conditions seem contrary to this. In fact, we have become victim of financial poverty, political indiscipline, interior and exterior instability and moral disorder after getting detached from country's ideology and national goal. We

have exposed our country's stability to threats by weakening its bases. Everywhere, there are lingual, racial and regional prejudices and war of rights is in progress on these bases. Amidst of this collective sin, hell of bloodshed, disturbance and deteriorative peace has occupied the country. Terrorism has become a matter of routine and has destroyed the peace of whole nation due to poor law and order conditions. Due to poor financial conditions, every child of the country is under the severe burden of debts. Financial development has halted due to unlawfulness and political instability. Nation is divided into different groups. Unity and harmony is absent whereas anti-Islam forces are busy in making their mutual differences prominent and making them quarrel with each other. Decline of moral values has hollowed the basis of society. In fact we too are responsible for bringing the country to this situation and this destruction is the result of our own habits and ignorance. We have become an example of what Quran says...

يُخْرِبُونَ بِيُوتَهُمْ بَايِدِيهِمْ<sup>١</sup>.

They destroyed their homes

#### **Introduction:-**

History is evident that when a nation opts disobedience and rebelliousness and breaks the promises made with Allah and becomes ungrateful to Allah's blessings, then its end comes in the shape of disgrace, destruction and economic crisis. In our view, what basic problems Pakistan is facing now, their real and basic reason is the deviation from that ideology on which Pakistan came into being. Other reasons, for example political indiscipline, Economic crisis and social disturbance are the results of ignorance from this ideology. This uniqueness is only for Pakistan in the Islamic World that it came into being on the name of mere Islam like the state of Medina second. Neither of the country is such whose nationality is based on only and only Islam. Islamic Shariah is based on what thoughtful ground that is the belief of oneness. On this belief, according to the Islamic ideology of Universe, man is not only answerable before his Creator rather he is also responsible before himself, other human beings, animals and nature .By being next and Caliph of Allah, man is bound to those limits in the use of God's assigned duties which are determined by the real Creator of the universe in this regard. That's why Islamic thought of Universe declares man as Caliph and protector in his commodities (including his own self) instead of real Owner and allows to use his honest burden with complete honesty and according to the aims and rules of Sharia. It is the identity of Islamic Sharia that it brings human deeds into its sphere and gives special importance to honest deeds alongside legal and court matters .In these matters when the legal obligations are not even

considered then the nature of Sharia's order changes and those hidden matters which belong to aim and inner thoughts also has an effect on verdicts. Similarly, Sharia has keen eye on those rights which are available to citizens and individuals and forbids their unnecessary use. Likewise Sharia has a keen eye which are available to individuals and citizens and forbids from their excessive use. It is the right of citizens to protest against the Govt. policies, Shari and Legal violations in any civilized country and they cannot be stopped from using this right.

### **Literature Review:-**

Sharia determines limits in this matter like the other ones. But, here, rights are used excessively like they are used in other matters unnecessarily and excessively. Thought of Unnecessary use of right though has remained a part of Islamic Fiqah and Asool e Fiqah and in many matters it was applied practically, however there is a need to bring this Shari concept under a permanent lawful ideology on which initially Imam Shatbi and especially a Syrian scholar of present times Dr. Fatih Ud Dareeni has worked. In court language of recent times, words like " Abuse /Misuse of power and Malafide" are used abundantly which means that concerned person has used his authority with ill intentions or has used his authority wrongly. The word "استعمال مذموم<sup>iii</sup>" has been used in some books of Usool e Fiqah for the excessive use of rights. Ibn e Qayyim ul Joziyah in his book *Al-Tareeq Al Hikmya* has adopted the connotation of "Al Mudarat Fi Al Haqooq"(Damage in Rights) where he explained while debating on the matter of Hazrat Samra Bin Jundub(R.A) that he used to go to his date garden through an Ansari's garden by using his the right excessively. Hazoor (S.A.W) ordered to uproot Hazrat Samra's dates to protect owner of the garden from loss.<sup>iii</sup> This incident and the Nabvi Order in it is considered a ground for the excessive use of rights.<sup>iv</sup> French law experts called it "De la bus Des droits" whereas in English, it is called "The Abuse of rights". In many Arab countries, law experts use the word "تعسف" or "اساءة استعمال الحق" for it because all the aspects of required meaning prominent with great difficulty in the word "تعسف". In literal sense "تعسف" is the name of deviation from right path. In the result of this deviation, sometimes either others face loss, for example when someone use his rightful right to bring damage to other and sometimes damage does not transfer to other, for example, in "Nikah E Tehleel" the aim of person who does Nikah is to facilitate a women who has already taken three divorces from her previous husband so that she may do Nikah with her first husband .Though there is no loss of anyone in it but there is deviation from the social purpose of Nikah in it which is regeneration, love, respect and settlement of family.

### **Concept and philosophy of right in Islamic Sharia:-**

Human rights are blessings of God in Islam. God has created man and has given him the right to live. He was given preference over rest of the creature, awarded him with the power to decide and placed him on the honored place of caliph ship by giving him the rights of selection and authority .So Allah Says in Quran:-

وَأَلْفَدُّ كَرَمًا بَنَىٰ أَدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا<sup>v</sup>

And We rewarded honor to Humans and has given them ride in the forest and River and provided them sacred livelihood and given them preference over many of our creatures.

والذى خلق لكم ما فى الارض جميعا<sup>vi</sup>

He is who has created all the things for you on Earth.

Then Allah linked the human deeds and authorities under the concept of individual and collective freedoms to the concept of answerability and responsibility. As human rights and freedoms are blessings of God so the spirit to adhere and respect them produces naturally in humans. Sharia's given rights are balanced, moderate and are based on justice because their origin is God self who is aware of human needs and capabilities and is freed from those prejudices which brings human to differences. A specialty of Sharia's given rights is that they are not amendable and are not cancelable because only Divine Authority can do abrogation and amendment through revelation which is now not possible. Contrary to this, manmade rules can be confiscated or altered at any time.

### **Meaning of the word Right (حق):-**

In dictionary, the word "Right" has different meanings which revolve around only one explanation which is "prove".

The writer of "القاموس المحيط" has written: Word "حق" is from the attributive names of Allah. It is contrary to the "Wrong" and it applies on The Quran, required deeds, justice, Islam, wealth, present, proved and truth in literal sense.<sup>vii</sup>

Dr.Wahba Zuhaili has called Ustaz Mustafa Zarqa's definition an elaborative one whose words are as:

"الحق هو اختصاص يقرر به الشرع سلطة او تكليف<sup>viii</sup>" (Right is called to that authority through which Shariah determines any authority or responsibility. With regard to authority, its examples are right of ownership(حق ملكيت) and right of bringing up(حق حضانت)

Whereas with regard to responsibility, its example is the payment of debt(ادائى قرض) .

Rights, whether they are of religious nature, for example Allah's right on people, Prayer, Fasting etc or civilian rights like right of ownership or respect and regard related right like right of obey on son of his father or of husband right on wife or general rights like Govt. right on citizens of loyalty or financial rights like "Nafqa" or non financial rights, all are included in this definition.<sup>ix</sup>

**Kinds of Right:-**

Fuqaha has divided the right with different perspectives and has explained all sorts of orders on every kind .Their brief introduction is as under.

**WITH REGARD TO PERSON HAVING RIGHT:-**

With regard to person having rights, there are three types of right.

- 1: Right of Allah
- 2: Right of Man
- 3: Common Right

**Allah's Right:-**

It means the right whose aim is to gain Allah's will, His worship and regard, implementation of religious obligations or to prefer someone's benefit without any specialty .In other words these are the rights of whole community. Examples of Allah's closeness and implementation of religious obligations are prayers, Fasting, Hajj, Zakat, Jihad, Amr Bil Ma'roof wa Nahi Anal Munkir and to call Allah's name before the start of any important task. As an examples of general benefit, preventing from crimes and implementation of punishments can be quoted. Works of social welfare like the building and repairing of canals, roads and Mosques are also examples of Allah's rights.<sup>x</sup> As Allah's rights are important because of their sublimity, common and general benefit, effectiveness and preference so they are linked with Allah<sup>xi</sup>. This connection is not because of its real meanings because Allah is free from getting profit from any commodity. Allah's Right can't be eliminated, neither through forgiveness nor through mutual consensus or through step down. Similarly Allah's right can't be altered.

**RIGHT OF MAN(HAQ UL ABD):-**

Man's rights are determined in Islamic Sharia for the protection of humans. Sometimes these rights are common like protection of body and wealth, setting of law and order, uprooting of crimes, abolishment of cruelty, exploitation of common resources of state etc. Sometimes these rights are

of special nature like owner's right in his ownership, buyer's right in goods and seller's right in the price, right of martyr's family in ransom, lender's right in the attainment of debt, right of returning confiscated property, Woman's right in gaining Nafqa from husband, Mother's right of upbringing her child, Father's right on his posterity and the right to work of every human etc. Here, init, a sentence is considerable and that is "It is also "HAQ UL ABD" to exploit the common resources of a state. In this regard, to block roads or stopping people from their use is also a violation of HAQ UL ABD but HAQOOQ ALLAH are also included in it whose detail is fore coming. The order of Haq Ul Abd is that person having right can withdraw from his right, can forgive the culprit, can release the offender with mutual consent and can free someone from the obligation of right. Inheritance ensues in this right but interference is not allowed in the related punishments. It means that a separate punishment is given on every violation and the right of taking it is available with the victim or his family.<sup>xii</sup>

#### **COMMON RIGHT:-**

It means a right in which right belonging to both man and God are included .Sharia has divided the rights and duties to run system of universe. In this regard, the explanation for this third kind of right is that those matters in which both God's and Man's rights are included regardless of the dominance of anyone's right on each other. These are called common rights. Example of the dominance of Allah's right is the period of divorcee .In this Allah's right is to prevent race from amalgamation and Man's right is the safety of his cast. But Allah's right is dominant in it because the protection of all races is not the issue of anyone rather the betterment of whole Ummah is in it so that society may not disintegrate on account of amalgamation of races. The order about common right where Allah's right dominates is that the rules for Allah's right will implement on it. Example of Man's right is the right of ransom which is available to the family of martyr. In it, Allah's right is to free the society from a heinous crime like murder. Man's right in it is that willing murder is an atrocity on the victim because he was entitled of living and enjoying life which is snatched by the murderer .Moreover it is also a cruelty with the family of martyr because they were deprived from exploiting him. So it is the right of inheritor to quench his revenge by death sentence to murder through court.

#### **Haqooq e Urfia:-**

Haqooq e Urfia means those rights which are conditioned on the basis of habit. It means Sharia has recognized them on the basis of people's action and habit. So their origin is Urf O Ta'mul and

not the Sharia. For example, right of walking on the road, right of taking water and rights of thinking etc<sup>xiii</sup>. Haqooq e Urfia have many types whose detail is as under.

**Easements Rights:** Right of easement is to get required benefit from one's land or it is the name of using someone else's land for the sake of getting benefit from one's own. This condition is faced when it is not possible to get benefit from one's own land without using other's land. Many scholars have defined the following types of rights of easement.

**Haq e Muroor:** The right of passing through other's land to reach one's own. In this perspective is the right to pass on the roads which is available to everyone and none has the right to cancel it. Therefore, to block a public passage by blocking the roads is totally against to right of passage given by islam to everyone.....

**Haq e Ta'alla:** The right constructing other story on first one.

**Haq e Shirb:** Agreed turn or part of water which is determined to saturate gardens or crops.

**Haq e Maseel:** The right of flowing excessive water of home or Field.

**Haq e Jawar:** The right of benefit from neighbor's house.

According to fuqaha E Ahnaf, these rights are Mujarda Rights which means that it is not legal to sale them however their alternate can be accepted in return of reconciliation and withdrawal<sup>xiv</sup>. It is declared legal to accept ransom like this in Shara e Mujalla.

Contrary to this, fuqaha E Shafia, Malkia and Hanabila has the point of view that it is fair to take reward of majority of such rights. Basic reason of difference between Fuqaha is actually the definition of "Baay (Sale, purchase)" and difference in the meanings of wealth.<sup>xv</sup> The Fuqaha who define wealth as an exchange of wealth and has linked the meanings of wealth with wealth only, they have forbidden the "Baay" of these rights because these are not material. The Fuqaha who have included profit with the definition of wealth, they have declared the "Baay" of these rights as legal.

### **RIGHT OF SPECIALITY OR HAQ E ASBAQEAT:**

These rights belong to such things which are not under the ownership of anyone and everyone has the right to gain them. So if anyone occupies any such thing or benefit, that thing or benefit will be rightfully his and no body else will have the right to snatch that from him. Argument in this regard is the following Hadith of Prophet Muhammad (S.A.W)

من سبق الى ما لم يسبقه اليه مسلم فهو له<sup>xvi</sup>

The one who first went towards a thing where none went before, will belong to him.

### **Dictionary Meanings of TA'ASUFF:**

In Islamic Law, term used for the excessive use of rights is TA'ASUFF. Dictionary meanings of TA'ASUFF are "walk disoriently" or "Walk on wrong path". رجل عسوف is called to that person in Arabic who doesn't vow of truth. It also applies on cruelty. It is said:

عسف السلطان يعسف واعتسف و تعسف<sup>xvii</sup>

A king has done cruelty.

عسف بعيره اى اتعبه بالسر او ظلمه<sup>xviii</sup>

He tired his camel by forced him to walk continuously and has done a great cruelty with his camel.

Prophet Muhammad (S.A.W) said:

رجلان لا تنالهما شفاعتى يوم القيامة سلطان ظلوم غشوم عسوف، ورجل غال فى الدين<sup>xix</sup>

Two people in my Ummah are such for whom My Shafa'at won't be available, One is the Cruel and unjust ruler and other is the extremist in the matters of religion.

### **SHARI MEANINGS OF TA'ASUFF:**

Islamic teachings demands complete and real justice. They prefer gratefulness. ADL is used in the meaning of legal justice And Qist is used in the meaning of real justice .Legal justice means the fulfillment of all the steps and requirements in any matter. However the responsibilities of parties involved does not end till the needs of real justice are not taken into account because sometimes it is not enough to fulfill the apparent needs of justice. In this regard, when the adherence of the apparent shape of law could not end on real justice then nature of Shari order changes.

Allah says regarding justice:

لقد ارسلنا رسلنا بالبينات وانزلنا معهم الكتاب و الميزان ليقوم الناس بالقسط<sup>xx</sup>

We sent our prophet by giving them open clues and gave them books and balance so that people remain on justice.(AL HADEED 25:58)

Another place Allah says:

ياايها الذين كونوا قوامين بالقسط شهداء لله ولو على انفسكم او الوالدين والاقربين<sup>xxi</sup>

O Believers! Stay on justice and speak no matter even if you have to face loss for yourself, your parents and relatives.(AL NISSA 135:4)

And Allah says about gratefulness:

واحسنوا ان الله يحب المحسنين<sup>xxii</sup>



And Do rightful deeds, for Allah keeps them friend who performs right deeds.

On an occasion by advising Hazrat Ma'az Bin Jabbal(R.A), Prophet Muhammad (S.A.W) said:

O MA'AAZ! I advise you to fear Allah, speaking truth, fulfilling promise, returning of goods, guarding neighbor's rights, being compassionate with orphan, speaking gently, spreading Salam, performing Good deeds, limiting ambitions, producing a good sense of The Quran, Loving the end, controlling anger and reacting humbly. I forbid you to abuse any Muslim, to refute a truthful person or to attest a liar<sup>xxiii</sup>. Under the teachings of justice, installment and gratitude, Shariah has put limitations on the fulfillment of some legal deeds or on the use of some things in personal ownership. The aim of these limitations is the attainment of the Shari goals and the protection of rights. To not consider these restrictions cause the excessive use of rights.

Imam Shatbi has debated in detail on the purpose of SHARAY(شارع) in all deeds.

SHARAY has made all the ShARI Laws for the betterment of people. Therefore All the deeds will depend on these laws which are the purpose of SHARAY. If an act is genuine and is according to the purpose of Sharia then nothing abnormal produces. But if an act is apparently according to Sharia but the result is against the purpose of Sharia then such an act will not be right and legal because Shari Acts aren't required rather other things which convey meanings are required. By meanings mean those reforms for which the performance of deeds is ordered. Therefore if anyone performs an act other than the defined purposes, he will not be considered on right track<sup>xxiv</sup>.

Following points clarify from the words of Imam Shatbi which relate with the excessive use of rights:

- (1): Rights, Mubah Umooor and all those acts which are legal as per Sharia, they themselves are not the purpose of SHARAY rather they, in fact, are the source and link for the completion of those purposes for which they are declared as legal .
- (2): Only purpose behind giving right to Humans is the fulfillment of purpose and any violation or deviation in this regard will be considered illegal.
- (3): Legal certificate cannot be awarded to an act which is apparently according to Sharia while it has unfair purpose or inspiration.

So an apparent rightful deed cannot be trusted as Shari Legal. This thing comes in the circle of excessive use of right. So an act where intention is to damage other is TA'ASUFF. According to Imam Shatbi, Intention of the act performer should be in accordance with the defined purposes of Sharay(شارع) . If anyone had an intention in Shari orders which was not the real purpose of Sharia,

then he opposed the Sharia and hence his act is wrong. Summary of the debate is that if any damage is done to anyone in the result of the use right or due to sans use of right, then this will be called EXCESSIVE USE of right or TA'ASUFF. Another shape of TA'ASUFF in the use of right is to use right in such a way which is against the known procedure of the usage of right. For example to let the water flow in the basis of a rented house or to put burden on a rented van or animal more than their capacity.

A shape of TA'ASUFF in the use of right is to adopt careless behavior in those deeds whose performance demands a special care like driving, hunting etc. Any mistake in them can cause a threat to human life. This is also a clear example of this that it is not right to call rights as purposes like the opinion of those who back personal freedom. Contrary to this, Islamic Sharia has not called purposes to the rights and concerned acts with them, under which person having right has the unrestricted authority of use rather, according to Shari point of view, rights are like resources and through them expediencies are fulfilled. That is the reason why every right in Sharia is attached with a purpose and deviation from this purpose is TA'ASUFF. If we look this matter neutrally, then it becomes prominent that to block roads, to demonstrate on them, to block a public passage and to create troubles and problems for people also falls in the category of TA'ASUFF E SHARI because basic condition for TA'ASUFF is not to keep the aim of road in focus.

In Sharia's view, aim of roads is to provide right of passage to all without any trouble. To block the roads for the completion of any individual benefit or for the attainment of some Islamic purpose is against the purpose of road therefore this deed is wrong and condemnable by Sharia. Moreover a Hadith of Prophet Muhammad (S.A.W) is:

عن ابي ذر , عن النبي صلى الله عليه وسلم قال: " يصبح على كل سلامى من ابن آدم صدقة تسليمة على من لقي صدقة , وامره بالمعروف صدقة , ونهيه عن المنكر صدقة , وإماطته الاذى عن الطريق صدقة , وبضعته اهله صدقة , قالوا: يا رسول الله , ياتي شهوة وتكون له صدقة , قال: ارايت لو وضعها في غير حقها اكان ياتم<sup>xxv</sup> .

That prophet Muhammad (S.A.W) said: With the morning, SADQA becomes due on every couple of IBN E ADAM. His salutation to visitor is SADQA, To ask for good deeds is SADQA and to stop from evil deeds is also SADQA, His act of removing harmful thing from the road is SADQA his copulation with wife is also SADQA. People questioned.....O Prophet of Allah, by copulation a person satiate his lust, How this act of him can be called a SADQA? RASOOL ALLAH (S.A.W) replied....what do you think that would he be sinful or not? if he fulfills his lust from any other woman rather than his wife.

(As he was called sinful on performing adultery so he would be granted reward on getting sexual pleasure from right person i-e wife)

**DIFFERENCE BETWEEN TRANSGRESSION OF THE RIGHTS AND EXCESSIVE USE OF RIGHTS:**

Sometimes, the excessive use of right and authority and violation of right is mixed whereas these both are different from one another. First is called TA'ASUFF and later is called transgression from right. Difference between them is clarified from following examples:

1:-If someone has built a building or has sown a crop in someone's else land without his permission, he will called tyrant and transgressor. This act of culprit will not be right from start because he has no right of using other's land even if there is benefit of other in this act of him. But if someone, by adhering his limits, has built in his land a wall so high that cause to hinder the passage of air and light of the neighbor and as a result it became difficult for the neighbor to get benefit from his ownership, then this act of owner will be declared as an excessive use of his property. Though owner has done TASRUF by living in the legal boundaries of his right, but this TASURF was called illegal because other person has to face severe damage due to this. An aspect of difference between TA'ASUFF and Transgression is that nobody can be stopped from the use of his right basically. He can be stopped on one condition and that is his intention of damaging others through the use of right. A person will also be stopped who transgresses his right irrespective of the nature of loss. Even a person will be stopped on the basis of transgression of rights of he aims to benefit other by cultivating his land or plant a tree there or construct a building in it<sup>xxvi</sup>. Demonstration on roads falls in the category of TA'ASUFF because where through it material damage occurs to others there they face mental torture and waste of time too which is in absolutely an excessive and illegal use of right and the same is declared as null and void by calling it TA'ASUFF in the terminology of FUQAHA. In transgression, the act itself is illegal, so whether other face loss more or less, transgressor will be responsible. If the neighbor faces loss by the use of owner's own thing, the owner will not be considered MUTA'SIFF until the loss is severe. A person having rights is not completely free in the use of his rights rather the use of right is conditioned with not transferring loss to anyone. Therefore Sharia has forbidden hoarding and has ordered to sale the hoarded goods forcibly and has called the violation against body, wealth and honor as HARAM even if this violation occurs as a result of rightful use of right. Financial right is not only connected to personal expediency rather society's right is also in it .So how a man

spends wealth on his needs, similarly Zakat, Khiraj, Sadqa e Fitr is spent on other good deeds. Therefore it is obligatory for a person not to perform such lavishness in wealth that would prove harmful for society because such an act will consider as an excessive use of right.

### **CAUSES OF EXCESSIVE USE OF RIGHT:**

Different reasons can be there of forbiddance of the excessive use of right .The forbidden laws are everywhere in the Quran And Sunnah and in the opinions of Fuqaha. Some important reasons are as follows:

#### **1:-MAKE AN INTENTION OF CAUSING LOSS:**

If anyone wants to occur loss to anyone with the use of his right and doesn't use right for this expediency which is desired with it, then such a use of right becomes excessive use of it which is HARAM and its stoppage is obligatory. Few shapes of it are as under:

To reconcile mere to cause damage to wife, to write will to cause damage to debtors or relatives, or to divorce his wife of a patient on death bed so that she couldn't claim an inheritance.....all these acts will fall in the category of excessive use of right which are HARAM.

#### **2:-TAKE A VOW OF ILLEGAL PURPOSE:**

When a person Takes a vow of some illegal aim by the use of his right and his aim doesn't coincide with the expediency associated with right, is HARAM.

#### **3:-TO CAUSE MORE DAMAGE FOR LESS PROFIT:**

A person will be stopped from the use of his right if his profit is less as compared to the loss caused to others whether the loss is general or special.

Prophet says:

لا ضرر ولا ضرار<sup>xxvii</sup>

Neither bear the loss nor thrust it onto others.

If a general loss is happening but it is severe than the special loss then person having right will be considered guilty of excessive use of right .But if the loss is minor or there is a fear of loss, then the use of right will not be an excessive one. An example of general loss to society is of hoarding when the things of daily use are hoarded and are sold on increase of demand or rise in prices .Other examples in this regard are the sale of weapons during the time of disorder, selling of arms to robbers, selling of grapes to one who extract wine and the selling of goods on extremely high prices. Example of severe individual loss is to make a window in one's building through which women in the neighborhood could be watch secretly. A common damage is done by demonstrating

on the roads whose loss is more than its benefit. Often public after becoming provoked and unruly cause damage to national and public assets whose remedy is not possible. So to stop such a demonstration by keeping in view the rule of "سد ذرائع" is exactly the purpose of Sharia.

#### **4:-USING RIGHT UNFAIRLY OR UNCONVENTIONALLY:**

If a person uses his right in such a way which is not conventional and it causes damage to other then this will also be excessive use of right. To listen Radio loudly, or to let the water flow in the basis of rented house or putting burden more than the capacity of a rented van or animal are some examples of it. Loss will be recovered in such cases. If a person uses his right in a conventional way but even then loss occurs to someone, then this will not be excessive use of right neither any ransom will be dew. For example, a doctor will not be responsible if operates a patient according to medical rules but the patient dies. Similarly there will be no fine on a person who burns woods in his hearth but the smoke causes problems for neighbors or he listens radio on normal voice or runs a machine, because all these deeds are according to convention. In this regard, actually standard is otherwise on whose basis decision will be taken to see whether the right was used normal or other than normal way. Fine will be paid if right was used other than normal way<sup>xxviii</sup>. However if protest is done in such a way that it cause no troubles for public neither it cause any damage to property, then nobody has any doubt in the reason of protest but alias is evident of it that these irregularities are present in every protest up to their best.

#### **5:-USING RIGHT CARELESSLY OR WRONGLY:**

If a person use his right carelessly and as a result of it a loss is done to someone, then he will be guilty of using right excessively and will be responsible for carelessness .Any such mistake occurred due to not focusing properly. For example, a hunter fired on a shadow from a distance by considering it a prey and later on it reveals that he was human. Sometimes mistake has an association with act. For example hunter fired by taking an aim but a human was shot after the bullet hit the animal and killed him<sup>xxix</sup>.

Above narrated all types are the examples of the use of right wrongly and in them to pay ransom is obligatory for it was necessary for the person who used right to take full care in his intention and act. When he didn't take care then he will be responsible for the consequences so that body and wealth of people may protected.

#### **FUQAHA'S OPINION IN THE LIMITATIONS OF THE USE OF RIGHT:**

Individual ownership, in Islam, is not the unrestricted and special ownership of one person whose concept is found in atheist capitalist societies. According to Islamic Sharia, Individual ownership is a collective responsibility and wealthy person is bound to pay it under Shari aims. Society's right will have a preference over a person's right. So a common expediency will be preferred when a person's expediency collides with society's expediency. Fiqhi rule is:

يتحمل الضرر الخاص لدفع الضرر العام<sup>xxx</sup>

"An individual's loss will be tolerated to remove public loss"

FUQAHA has defined the details according to above narrated rule.<sup>xxx</sup> Their summary is as follows:

According to a Hadith:

لا ضرر ولا ضرار<sup>xxxii</sup> It means that order given in this Hadith is optional. This should not be adhered as it is if there is a fear of loss to the owner. Therefore IMAM ABU HANIFA and other AHNAF are not in favor of restriction on the right of ownership through court order because , in their opinion, the meaning of ownership lies in the freedom of use. So to stop this freedom is equal to abolish the ownership right.

Later Fuqaha of Hanfi sect when saw a weakness in the religious spirit with the change of time and expediency demanded that the freedom of use be restricted through a court order. This has stopped the owner to do such a consumption in his property which proved a loss for the neighbor.

This has been stated in تبيين الحقائق as:

The condition to get benefit from right is that the profit should be in accordance with Shari conditions and this should not be in such a way that effect the right of others because right of benefit doesn't belong to ill deeds<sup>xxxiii</sup>.

ZAILLEE writes on another place: If a person fixes an oven in a building to make bread on permanent basis or runs a grain grinder there, then it is not legal because it causes such a damage to neighbors which unavoidable. Supposition demands that restriction on owner should not be legal because he is consuming in his property but, under the obligation of expediency, استحسان will be act upon by leaving supposition<sup>xxxiv</sup>.

IBN E ABIDEEN writes:

It is only legal to get benefit from a مباح when it causes no damage to anyone. In this regard to sit on a road for the sake of taking rest or to deal some matters while standing on the road are only legal when they cause no problems to passers by<sup>xxxv</sup>.

Demonstration on Roads also states this. If we see in depth that FUQAHA has forbidden any such use in personal use which cause damage to public or neighbors then how can these acts be allowed in official ownership which proved dangerous rather harmful for state and public. Allama Zaili where declare it illegal to cause damage and trouble to public by fixing a grain grinder or oven in personal ownership, there Allama Shami has conditioned the reason of getting benefit from a "Mubah Thing" with the sans trouble of public rather he has declared illegal to sit or stand on a public passage in such a way which is reason of damage and trouble for people .So this can never be legal to gain political and religious aims by digging the roads, or by burning fire and placing containers on them. Here are some more opinions of Fuqaha on this matter:

IMAM KASANI says:

When to get benefit is not conditioned with any term then person getting profit should not exceed a reasonable limit because this relation is bound with habit<sup>xxxvi</sup>.

IBN UL QAYYIM writes:

If a person has opened a door or window in his tall building in such way that it gives him an opportunity to peep into neighbor's house then he will be stopped<sup>xxxvii</sup>.

#### **ETERNAL AND WORLDLY CONSEQUENCES OF THE EXCESSIVE USE OF RIGHT:**

In the light of previous debate, following results and orders have come on the surface relating to excessive use of right.

#### **REPAYMENT OF LOSS:**

To remove the injurious thing which produced as a result of excessive use of right. For example demolishing the building which was built by the owner in a such a way that caused hindrance to light and air for the neighbors. Similarly to remove those groups which cause trouble for the community by protesting on the roads is exactly the purpose of Sharia.

#### **PAYMENT TO LOSS:**

If any loss life or property has happened due to the excessive use of right then the person who used his right excessively will be bound to pay money against the loss .For example if a person digs a well adjacent to his neighbor's wall and the wall falls down,then person who dug the well will be liable of his neighbor's loss. Therefore, it is necessary to devise such a policy,to stop breathing protests in Pakistan, which would determine such a procedure that may not prove harmful for state or public and if this is not possible then a ban on the right of demonstration be imposed to stop public damage.

**TO VOID THE RIGHT USED EXCESSIVELY:**

It is to make wrong the act of TA'ASUFF to avoid loss. For example the divorce of a patient on death bed having an aim of depriving wife from inheritance and such a will which cause a loss to inheritors.

**RESTRICTION ON THE USE OF RIGHT:**

It is to stop the user from the use of his right. For example to stop a husband from taking his wife on a journey who has a aim of tormenting her in this way. Similarly it is banned a MUFTI who makes lame excuses.

**PENAL PUNISHMENT:**

It is implementation of penal punishment. For example every one has the right to file a suit in the court but penal punishment will be awarded to person who files a suit mere to cause notoriety to noble ones.

**EXCESSIVE USE OF RIGHT IN THE LIGHT OF AND QURAN O SUNNAH FIAHI RULES :**

**IN THE LIGHT OF THE QURAN:**

The excessive use of right is forbidden in according to the Quranic laws. Numerous examples are there of it. It is clearly manifested through these examples that a man is not entitled of unlimited and unconditional powers in the use of his rights. He is bound to adhere the limits set for him by The Shariah. These rights can be confiscated if they prove harmful for others .Some examples are here for the clarification of this rule: (A) Allah says:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنْمِيَ الرِّضَاعَةَ ۖ عَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلِّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدَتِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۚ إِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا اتَّيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ xxxviii

And mothers should feed their babies for the whole two years, This order is for those who wish to complete the feeding period and it is duty of baby's father to provide food and clothes to feeding mothers as per custom. And none should be put under burden more than his/her capacity neither mother be tortured due to her baby nor father be likewise. This Ayah makes us know that fostering is the right of mother and she has right of feeding her baby more than any other woman, because no other woman can feel compassion and love for the baby more than his own one<sup>xxxix</sup> .However mother's right will be preferred only when she does not demand more than the woman who gives



her consent to feed the baby on wages. IMAM JASSAS (By explaining feeding of mothers to babies says that Allah has given preference to mother during the foster period in the right of feeding baby<sup>xl</sup>. Then Allah further says:

لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ

Neither mother should be caused damage nor father be put into trouble due to their baby.

It means if mother is ready to feed her baby at the price of which another woman gives her consent to feed the baby then father don't have the right to hand over the baby to some other woman by putting the mother in trouble. So a father is forbidden to use his paternal right excessively and this Ayah clearly stops the father from this act that cause trouble to mother. Hence it is not right for the father to snatch a kid from mother if she is willing to feed her baby without cast or on cast equal to another woman cast of feeding the baby<sup>xlii</sup>. IMAM QURTABI says that if mother herself wants to feed the baby then it is not right to stop her doing so. This is the opinion of often Scholars<sup>xliii</sup>. According to JASSAS: If mother is ready to feed the baby and the kid is associated with mother then baby should not be snatched from her<sup>xliii</sup>. If mother is not willing to feed her baby then it is duty of father to arrange midwife for the baby to feed him at father's home<sup>xliv</sup>. In this condition though no material loss is occurring to mother rather she is suffering from mental torture, however it is forbidden to cause both material and mental torture to mother. It is assumed from above narrated explanation that a father can cause two types of losses to mother .One is to snatch baby from her and other is to hire another woman to feed the baby. Both the meanings are meant in the Ayah and husband is forbidden to cause both damages<sup>xlv</sup>. Ayah- لا تضار والدته بولدها - Mother should not be tormented due to her child. MUJAHID in the explanation of this says: Mother should not be stopped from feeding the baby ere she feel mental shock<sup>xlvi</sup>.

Above narrated AYAH stops mother too from the use of her foster right in a way that cause damage to child's father. If mother is divorcee and her divorced period is over then it is not right for her to demand price against feeding baby while another woman is ready to feed the baby free of cast. It is equally not right for mother to demand wages more than the customary one because this will cause a loss to child's father and it is essential to stop the mother from doing so<sup>xlvii</sup>.

Why ask for wages in this case, there is a loss of the child's father that must be prevented. In these circumstances, the child can be handed over to another woman for breastfeeding, but if the mother has not remarried, the child will not be taken away from her. Allama Zamakhshari says”It is not necessary to meet the demand of the mother of your children if the mother asks for more

compensation than the wage and if a nanny is available to breastfeed the father on wages. Because he is looking to harm him, Imam Ahmad has also specified this<sup>xlviii</sup>

The summary is that according to the above mentioned verses, it is obligatory on both the parents that neither party should harm the other because of the child and should not use their rights in a way that causes pain to the other. Also, it is obligatory on both of them to protect the child from harm. Therefore, it is necessary to devise such a policy, to stop breathing protests in Pakistan, which would determine such a procedure that may not prove harmful for state or public and if this is not possible then a ban on the right of demonstration be imposed to stop public damage.

### **Misuse of Right to reform**

An example of misuse of right to reform is to slander their gods before the polytheists. This has been explicitly forbidden in the Holy Quran. Saying bad things to the polytheists against their gods is even though no permitted to be reformed. They do not intend to reach any evil, but often they become the cause of such evil that overcome expediency.

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ-كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ عَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ<sup>xlix</sup>

" And do not insult those whom they called polytheists besides Allah, So that they may not be able to insult God in disgraceful manner ".From this verse Ibn e Tamiya argues that Allah has forbidden to speak bad things for false gods. Though this is an act of worship , the wisdom to prevent from it is that , this act does not become reason to curse Allah and consider this expediency it is more likely than abusing idols<sup>1</sup>. So it is necessary to use the right of correction in this way, which is required by the Islamic law. When purpose is asked from those who protest on roads or block them, they reply that they are doing this for rectification whereas expediency and direction of above narrated AYAH is that such a use of the right of rectification which is a reason of disturbance and is a cause of trouble for rest of the people, is forbidden.

### **Protest on the roads in the light of Sunnah and Fiqh E Sahaba**

A famous Hadith of Rasool Allah" لا ضرر ولا ضرار" (SAW ) has the status of original regarding the misuses of right. Although this Hadith is a Khabr E Wahid , but its meaning has been proven by the several verses of the Holy Quran and many other Prophetic Hadith.

Apart form this it is a great importance that it has been considered by the Jurists and Mujtahidin as one of the absolute rules, and has made it basis for inferring and extracting numerous jurisprudential issues.

Here is an overview of the meaning of this hadith and discussion of Imams of the Schools and the opinion of the Scholars in its light.

What are the meanings of the word "Zarar" and "Zaraar" according to hadith?

There is disagreement between lexicographers and writers of hadith.

The writer of "LisaanUl Arab" says that "There meaning is different from one another.

o "Zarar" is a action of a person whole "Zaraar" is a bilateral process<sup>lii</sup>.

Ibn ul aseer also took it in different meanings. He said while writing the tafseer of Hadith that "Laa Zarar" that no one should harm his brother , said about "Laa Zaraar" that no one should harm to anyone for harm<sup>liii</sup>.

Allama Shokani said about the meaning of these two words that "It is Zaraar to harm anyone without his benefit , but it is a Zarar to harm anyone for his benefit."

Harm is a reward for harm and it is harming someone firstly.

According to the same jurists and scholars of principals of Fiqh, it is a preferred saying that the meaning of word is one and the repetition is for emphasis<sup>liv</sup>.

Ibn e Rajab explains the possibility mentioned in the meaning of hadith that "Zarar is to cause harm to someone else in which there is benefit to oneself , and "Zaraar" is to harm someone in which there is no benefit to oneself. For example "A person should prevent something that does not benefit him but cause harm to others." Ibn e Abdul Bar and Ibn e Saleh has given the preference to this meaning of hadith<sup>lv</sup>.

In short all the sayings are agreed with this that Rasool Allah (SAW) has forbidden for the "Zarar and Zaraar" as wrong done.

The general meaning of this hadith is that it includes all kinds of harm, whether it is related to a person's personality or his property, honor, or any right. The hadith has the status of original regarding the prohibition of harming someone in the context of the exercise of rights, in which every owner of the right was forbidden to use his right in this way which is a cause of harm to another<sup>lvi</sup>

There are two ways to act upon on the meaning of hadith "لا ضرر ولا ضرار"

1 - Preventing damage before it happens

2- Repairing damage after it has been done

Sometimes the loss is expected and sometimes it actually happens. If the loss is expected, then the requirement to follow the hadith is to prevent it from happening. It is based on the prevention of

damage as much as possible. In addition, the principle of sound sources, which most jurists have adopted in one form or another, while Malikiyyah and Hanablah widely applied it, used it to provide protection against anticipated harm<sup>lvii</sup>.

In the light of above narrated rules and explanations, it is generally observed that benefits of protesting on the roads are far less than the damages which are not possible to encircle. Moreover these protests convey a bad universal image of our country and financial and political circumstances fall prey to more destruction. Therefore to deal with the protestors through dialogue to remove the expected damage or to stop them with full force in case they don't negotiate is the aim and Target of above narrated Hadith and FIQAHI RULES.

Fiqah e Sahaba represents all the purposes of Sharia. This aspect can clearly be seen in the verdicts of Sahaba (.R.A) and especially in the great caliphs (R.A).

Few examples are as follows with regard to excessive use of right from Fiqah e Sahaba.

Hazrat Umar (R.A) on many occasions has forbidden the owner from using his right excessively. During his caliphate when Muhammad Bin Muslma (R.A) was not allowing Dahak to pass water drainage from his owned land whereas there was no loss in it to Muhammad Bin Muslma (R.A) rather he was in profit. Hazrat Umar (R.A) stopped Muhammad Bin Muslma (R.A) from the use of his excessive right forcibly. Hazrat Umar (R.A) said: "Why are you stopping a thing which is beneficial for your brother and there is also benefit for you in it as this water will saturate your land in the beginning and in the end and there is no loss of you in it." When Muhammad Bin Muslma (R.A) didn't get ready to accept it at any cast then Hazrat Umar (R.A) severely disliked it and said by making a vow: "By God! This drain shall must pass even it has to pass on your belly"<sup>lviii</sup>. Hazrat Umar (R.A) also forebode to marry with women of AHL E KITAB in special circumstances. This is another example of stopping from the use of right while there is fear of common loss due to this<sup>lix</sup>. Here was a common loss and it was that after victories, Muslims began to marry women of AHL E KITAB abundantly and Husbands were not easily available for Muslims women. This was such a state when there was a fear of involving in adultery of the Muslim women. In the first example, Hazrat Umar (R.A) decided to stop excessive use of right for the remedy of individual loss while in the second case, he imposed sanction on the use of right to close the door of common societal loss.

## **Conclusion**

Teachings of Quran and Sunnah are not only demand the complete and real justice rather they give preference to gratitude. In Quranic Nasoos, ADL, Legal Justice and QIST are used in the meanings of real justice. By legal justice, it means that concerned steps and requirements of any matter may happen as per law. But the responsibilities of MUQALAYFEEN or parties involved do not come to an end till the demands of real justice are not kept into consideration. Because, sometimes, it is not important to keep into consideration the apparent needs of law. In this kind of situation when the adherence of apparent face of justice could not end on real justice then the nature of Shari order changes. Moreover, Islam considers gratitude in highest values and according to this, it is not only necessary to fulfill the requirements of legal and real justice rather it is persuaded to give people more than they deserve. By TA'ASUFF, which is excessive use of right, means that a person does something as per the requirement of his legal right which in fact is right but he executes it in such a way that it cause damage to other or it is against that Shari strategy under which it was declared legal by SHARAY. This concept of excessive use of right is derived from the clear instructions given in the Quran and Sunnah which, by making their MUSTADIL, FUQAHA has determined its explanations and in the light of them and by giving relaxation of time and age, FUQAHA have done legislation. Though this concept is present in many systems of the world in any shape which is narrated first, however it is a recognized fact that this concept appeared much later in solid and practical form in the legislative thinking of the Non-Muslim world. Moreover, narrated sections and sub sections in this regard are evident of this fact that Concept in Western thoughts is benefited from Islamic legislation. As it cleared earlier that protest on roads, to block them, to cause damage to national and individual property and to create troubles for people is not acceptable in any way but this act becomes more heinous one when it is performed on the name of Islam. Therefore, by understanding the severity of this matter, all the religious leaders should devise such a comprehensive plan through which damages done in protests could be uprooted and opponents couldn't avail the chance of pointing fingers at Islam and Muslims. Otherwise Govt. should set its writ by using full state force and the politics of protests should be uprooted so that it become possible to give practical shape to the concept of Islamic Welfare society.

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- <sup>lvi</sup> Ibn E Rajab, *Jamey ul uloom wal Hikam*, page 267.
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