

(20)

**IN THE FEDERAL SHARIAT COURT**  
**(ORIGINAL JURISDICTION)**

**PRESENT**

**MR. JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE**  
**MR. JUSTICE DR. FIDA MUHAMMAD KHAN**  
**MR. JUSTICE SAEED-UR-REHMAN FARRUKH**

**SHARIAT PETITION NO: 1/I OF 2003**

Abdul Majid son of Major Abdul Malik  
R/o Village and Post Office Dulmial  
Teh. Choa Sadan Shah, District Chakwal --- Petitioner

**VERSUS**

Government of Pakistan .... Respondent

Counsel for the petitioner .... Petitioner in person

Date of Institution .... 29.1.2003

Date of hearing .... 5.11.2003

Date of decision .... 5.11.2003

JUDGMENT

DR.FIDA MUHAMMAD KHAN, J.- The petitioner Abdul Majid son of Major ( R) Abdul Malik, through this petition, has assailed Pakistan Arms Ordinance No.XX of 1965 and Arms Rules 1924, hereinafter referred to as the Ordinance and Rules, on the ground of being repugnant to the Injunctions of Islam. The petition was fixed for preliminary hearing and the petitioner was heard in detail. While supporting the contents of his petition, inter-alia, he submitted that every citizen is entitled to protect his life and property and naturally he has to keep any kind of weapon for that purpose. Therefore, he argued, there was no requirement for grant of licence for keeping of fire-arm weapons, as envisaged by the said Ordinance and rules framed therewith. He also opposed levying of annual fees for the grant of licence in this connection. He placed reliance on verse 59 of sura 4 (4:59).

2. We have given our anxious consideration to the points raised by the petitioner and besides going through provisions of the Ordinance and Rules, also considered import of the above mentioned Holy Verse, as applicable in the context of instant petition. It may be pertinent to mention right in the

beginning that the Ordinance and the Rules place no embargo on keeping of weapon for the purpose of self-protection as well as protection of honour and property but, as highlighted in its preamble itself, only aims at consolidating the law relating to the sale, transport, bearing or possession of arms ammunition for military store, by making certain rules and regulations for the same. The only purpose of the Ordinance and Rules appears to regularise the possession of weapons etc. and thereby, check misuse of the same, so that the lives and properties of innocent people are properly safeguarded.

3. It may be mentioned that Islamic Shariah empowers the authorities in power to make legislation for all matters which are not specifically covered by the injunctions of Islam, as contained in Holy Quran and Sunnah of the Holy Prophet (ﷺ). The Holy Prophet (ﷺ) has made it explicitly clear that Almighty Allah has revealed Commands for certain things but has left out many other matters for consideration by the Ummah to make laws for the same if they feel the necessity to do so. The only condition, particularly imposed and emphasised upon in this connection, is

the requirement that the legislation must be in accordance with the Injunctions of Islam and no law shall be enacted which is repugnant to such injunctions. At the time of revelations, the Muslims were strictly directed to abstain from asking questions from the Holy Prophet (ﷺ), in respect of matters intentionally left out by the Injunctions. Verse No.101 of Surah No.5 which follows is very clear in this respect. The said verse reads as

under:-

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَسْأَلُوا عَن شَيْءٍ إِن تَبَدَّلَ لَكُم  
تَسْوِئَةٌ وَإِن تَسْأَلُوا عَنْهَا حِينَ يُنزَلِ الْقُرْآنُ  
تَبَدَّلَ لَكُم مِّنْهَا لَئِن سَأَلْتُمُوهُ لَأَنبَأَنَّكُم بِهَا إِن كُنتُمْ  
عَالِمِينَ

“O, ye who believe; Ask not of things which, if they were made known unto you, would trouble you, but if ye ask of them when the Quran is being revealed they will be made known unto you. Allah pardoneth this, for Allah is Forgiving, Clement. (5:101)

The Holy Prophet (Peace be upon Him) while explaining the point further is reported to have said:-

مَا أَهَلَ اللَّهُ فِي كِتَابِهِ فَهُوَ حَلَالٌ وَمَا حَرَّمَ فَهُوَ حَرَامٌ وَ  
مَا سَأَلْتُ عَنْهُ فَهُوَ عَفْوٌ فَاقْبَلُوا مِنَ اللَّهِ عَافِيَتَهُ فَإِنَّ  
اللَّهَ لَمْ يَلْنِ لِيَسْئَلِي شَيْئاً

ر علي بن عمر: سنن الدار القطنى، الجزء الرابع ص ١٨٤

4. The inference drawn from the above Verse and Hadith is stated to be the fact that while some Injunctions were revealed in respect of matters which are permanent in nature and scope and are not liable to be changed while some matters were left out to the discretion of Ummah so that, while keeping in view the principles and broad outlines contained in the permanent Injunctions, they should make laws according to their requirements, from time to time. This flexibility, based on the eternal principles, has made the Islamic system a solid rock to always stand the test of time everywhere. The institution of Ijtihad has played a vital role in the evolution of laws and making them progressive, modern and dynamic. It has been held that where there is no explicit provision in the Holy Quran and Sunnah, the legislative body may enact laws in respect of the same while keeping in view the general spirit of Islam. Allama Abdul Aziz Amir, a renowned authority on Islamic law, has rightly pointed out that the Ummah may consider enactment of various laws according to the requirement of its people from time to time.

He writes:-

“ إِنَّ الْجَانِبَ الْأَكْبَرَ مِنَ الْجَرَائِمِ وَالْعُقُوبَاتِ تَرَكْتُ

تَفْصِيلاً تَمَّ إِذْ وَجِبَ الْأَمْرُ فِي كُلِّ زَمَانٍ وَمَكَانٍ ، يُقَرَّرُونَ  
مِنْهَا مَا يَشَاءُونَ ، مِمَّا يَنْتَاسِبُ مَعَ كُلِّ عَصْرِ وَجِيلٍ .

التعريف في الشريعة ص ٣ ، ٤ ، ٥

Most of the details of crimes and their punishments have been left out, to the discretion of rulers, so that they may declare acts as crimes and determine punishments for them appropriate for their age and generation.

5. So it follows that where ever and in what ever matters the specific guidance is not available from the Quran, the Sunnah, or the conventions of the early periods of companions of the Prophet (صلى الله عليه وسلم), the Ummah is authorised to legislate, through their qualified representatives, in respect of the same according to their requirements. The principle governing such situations is that whatever has not been disallowed is allowed.

6. Legislation in Islam, in fact, is mainly based on public welfare and "maslaha". Imam Ghazali defines "maslaha" (public welfare) as the establishment of a legal principle for which there is no evidence in the source, but which is recommended by reason as advantageous. The rightly guided Caliphs have also followed the principles of "Maslah". The Muslim jurists have relied upon various examples of their ruling. Ali Hassaballah has

highlighted several such rulings e.g. judgment of Hazrat Umar in the case of Mawalafat ul qulub (مؤلفۃ القلوب), suspension of punishment of Hadd in the year of famine, suspension of the punishment of sending in exile for the “zani” etc. (Usul al Tashria al Islami, page 149).

7. There are a number of legal maxims laying down rules for the application of the principle of “Maslahah”. This principle defines the limit within which the rulers can exercise their administrative and political authority and take measures for the protection of the rights and freedom of the masses so as to establish law and order and maintain justice. The concept of justice is eternal but its dynamics may change in the changing circumstances. A certain law may be just in one time but may entail injustice at another time and in another context. Abdul Aziz Amir writes:

إِنَّمَا لَا يُعْتَبَرُ جُرْمٌ فِي عَصْرٍ أَوْ مَكَانٍ مَعِيْنٍ قَدْ يُعْتَبَرُ جُرْمًا  
فِي عَصْرٍ أَوْ مَكَانٍ آخَرَ، وَالْعَلَسُ صَحِيحٌ أَيْضًا.

التعريف الشريعة الإسلامية ص ٤٤

(Whatever is not treated as a crime in a particular era and country may be treated as crime in other era and country and vice versa. )

8. Another significant feature of Islamic legislation worth-mentioning is that every harm and corruption, in whatever form and whatever degree and proportion it may be, should be removed and exterminated as far as possible.

Dr. Farooq al Nabhan writes:

وَقَدْ قَامَتِ الشَّرِيعَةُ الْإِسْلَامِيَّةُ عَلَى آسَاسِ جَلْبِ الْمَصَالِحِ وَدَفْعِ الْمَنَاسِدِ  
فَإِذَا كَانَتْ تَصَرُّفَاتُ الْإِنْسَانِ فِي حَقِّهِ تَلْحُقُ الصَّرْدُ بِالْجَمَاعَةِ فَعِنْدَئِذٍ  
يُمنَعُ هَذَا الْمَرْءُ مِنْ اسْتِجْمَالِ حَقِّهِ، تَحْقِيقًا لِلْمَبْدَأِ الْعَامِّ فِي الشَّرِيعَةِ الَّذِي يَقُومُ  
عَلَى آسَاسِ رَدِّ الْمَنَاسِدِ مُقَدِّمًا عَلَى جَلْبِ الْمَصَالِحِ ( نظام العلم في الإسلام ص ١٢١ )

“ Islamic law is based on the principle of gaining public interest and warding off harms. If the commission of any action of a human being causes harms to the public, then he will be prohibited from the using of the same right. So that the basic legal maxim may be implemented, i.e. to ward off harm has priority over gaining interest. ”

9. The same opinion has been supported by the internationally acknowledged scholar and authority on Islamic law, namely Abdul Qadir

Audah, He writes:

وَأَبَاءُ السُّلْطَاتِ الشَّرِيعِيَّةِ فِي جَرَائِمِ التَّعَاوِينِ تَخْتَلِفُ  
بِاخْتِلَافِ الْبُلْدَانِ وَالْعَادَاتِ ، فَمَا قَدْ تُبَيِّهُ سُلْطَةٌ  
تَشْرِيْعِيَّةٌ فِي بَلَدٍ مَا قَدْ تُحْرِمُهُ سُلْطَةٌ أُخْرَى فِي بَلَدٍ أُخْرَى  
قَدْ تَعَاقَبَ عَلَيْهِ سُلْطَةٌ تَشْرِيْعِيَّةٌ مِنْ وَجْهِ قَدْ تَعَاقَبَ عَلَيْهِ  
سُلْطَةٌ أُخْرَى مِنْ وَجْهِ أُخَرَ ( التَّشْرِيحُ الْجِنَائِي الْإِسْلَامِي ج ١ ص ٩٢ )

“ The approach of the legislature to penal crimes varies with lands and customs. The same act may be declared by the legislature of one state as lawful and by that of another as unlawful. Similarly the court of one country may award punishment for an act on grounds other than the court of another country may do so.”



10. In this respect Shariah has given vast power to the authorities in power to enact appropriate laws for the public welfare. Here we may refer to a legal maxim laid down by the Muslim Jurists which is as follows:-

” تَعْرِفُ الْإِمَامَ عَلَى الرَّعِيَّةِ مَنْوُطٌ بِالْمَصْلَحَةِ ”

“ The ruling of a ruler over his subject is based on their welfare. (Majallah, Article-558).

The maxim has been derived from the following verses. The Holy Quran says:

” يَا أَيُّهَا الَّذِينَ آمَنُوا اطِيعُوا اللَّهَ وَاطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ ”

“ O, you who believe, Obey Allah, Obey the Prophet and those who are in power among you.” (4:58).

Explaining the above verse, Abdullah Yousaf Ali writes;

“ As Islam makes no sharp division between sacred and secular affairs, it expects ordinary government to be imbued with righteousness, and stand in the place of the righteous Imam, and we must respect and obey such authority, otherwise there will be no order or discipline”. ( Commentary on Holy Quran by Abdullah Yousaf Ali, Page. 198).

11. Another basic principle which naturally follows in Islamic Shariah is that if a permissible act becomes a source of trouble and harm to the public, it will be prohibited in the interest of the public. In this connection a famous contemporary scholar Ali Hasabullah writes:

فَإِذَا تَبَيَّنَ فِي بَعْضِ الْجَزْئِيَّاتِ أَنَّ الْعَمَلَ بِالْمَنْصَرِّ أَوْ الْقِيَاسِ لَا يَحْتَقِقُ الْمَصْلَحَةَ الْمَقْصُودَةَ بَلْ يَتَرَجَّمُ إِفْضَاؤُهُ إِلَى مَفْسَدَةٍ وَهَبَّ اسْتِنَاءُ

## هَذِهِ الْجُزْئِيَّاتِ فِي أَصْبَحِ الْحُدُودِ تَحْقِيقًا لِلْمَصْلَحَةِ الشَّرْعِيَّةِ

“ When it appears in some matters that to act therein according to the text ( نص ) (of Holy Quran or Sunnah) or analogy do not fulfil the requirements of mas laha (public welfare) but rather it amounts to mischief or harm (to the public), such act will be suspended (prohibited) in such critical situation for the achievement of public weal). (Usul al. Tashri’ a al Islami, P. 160).

Explaining Maliki opinion in this regard, Abdul Aziz Amir writes:

وَقَدْ يَلُونُ الْفِعْلُ مَبَاهَا فِي ذَاتِهِ كَلِنَةٌ يُؤَدِّي إِلَى مَفْسَدَةٍ وَهَكَمَهُ عِنْدَ كَثِيرٍ مِنَ الْفُقَهَاءِ خُصُوصًا فِي الْمَدَّعِبِ الْمَالِيِّ أَنَّهُ يُصِيرُ مَهْرَامًا بِنَاءً عَلَى قَاعِدَةٍ سَدِّ الدَّارِ الْبَاطِلِ - وَعَلَى ذَلِكَ فَإِنَّ تَكْرَارَ هَذَا الْفِعْلِ فِيهِ التَّغْيِيرُ مَا دَامَ لَا تَقْدِيرَ لِلْعَتُوبَةِ.

“ Some times the commission of an act in itself is permissible but it amounts to a mischief or public harm. According to the majority of the Maliki jurists such act in such context will be prohibited as preventive measure (سداً للذريعة) and the violation of such prohibition should be made punishable with tazir if punishment has not been prescribed therefore”.

(Al-Tazir fi al-shariah al-Islamiyyah, P.85).

12. In view of the above we have come to the conclusion to hold that the impugned law and Rules having been duly made for the general welfare and security of Umma at large are not against the injunctions of Islam.

13. Regarding the imposition of fees for keeping arms, we may refer here to a judgement of this court reported as PLD 1992 FSC 329

wherein, inter alia, it has been held that:


چنانچہ مذکورہ بالا دلائل کی بناء پر ہم یہ سمجھتے ہیں کہ اسلامی حکومت کو یہ حق حاصل ہے کہ وہ بنیادی فرائض سے متعلق امور کے سلسلے میں ہونے والے جائز اخراجات کی تکمیل کیلئے شوری کے ذریعے لوگوں پر بقدر ضرورت و بقدر استطاعت ٹیکس عائد کر سکتی ہے اور اس طرح فاضل درخواست دہندہ کا یہ موقف کہ زکوٰۃ اور عشر

اے علاوہ اور کوئی ٹیکس مانڈ نہیں کیا جاسکتا صحیح نہیں ہے۔

14. Consequently for the reasons stated above, we find this petition misconceived and therefore, dismiss it accordingly in limine.



(DR. FIDA MUHAMMAD KHAN)  
Judge



( Ch. Ejaz Yousaf )  
Chief Justice



( Saeed-ur-Rahman Farrukh )  
Judge

Islamabad 5-11-2003  
Arshad Khan & Mujeeb/

File for reporting

