

VIGILANTE GROUPS IN PAKISTAN THREATENING HUMAN SECURITY: A LEGAL ANALYSIS

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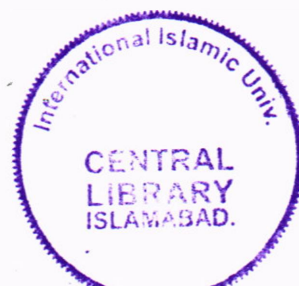
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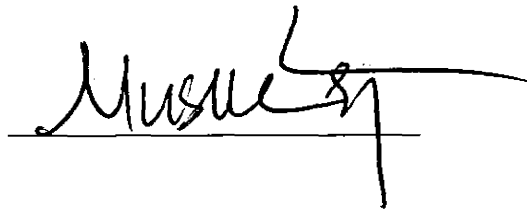
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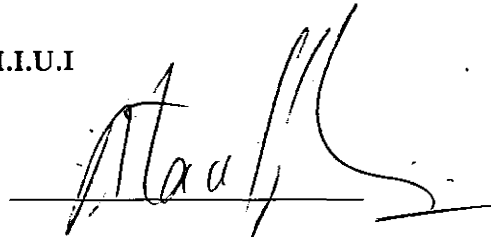


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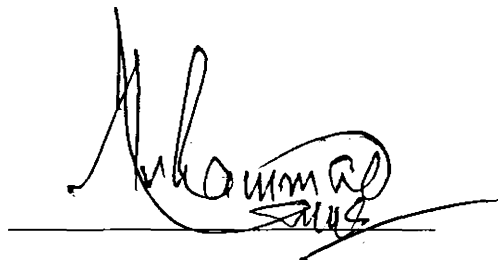
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DECLARATION

I, **M. Shahid Sultan**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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DEDICATION

TO MY PARENTS

Abstract

Vigilantism is the defiance of existing judicial system to further justice. The factors which provide impetus for the vigilante activities, religious ideology is termed at top among them, thereafter comes social injustice, political motives and cultural standards of a society. Vigilante activities are completely in violation of the constitution. The observance of proper procedure which has been laid down in Pakistan Penal Code in order to punish culprit of Blasphemy is also open to abuse. Vigilantes are encroaching, the injunctions of Islam and also undermining the instruments of International Human Rights Law. Shariah denounces spread of anarchy and disintegration in society. It discourages to refute the orders of state authorities, until or unless they openly commit infidelity. Islamic law does not allow anybody to enforce rule of law in society without lawful authority. Pakistani government has absolved itself of the liability of maintaining peace and order in federally administered tribal areas (Fata) since the birth of Pakistan. Under Frontier Crimes Regulations local tribes are authorized to form Lashkars for the settlement of minor disputes and maintenance of peace in society. After the eruption of war on terror a completely new task had been assigned to these lashkars, the task of combating Al-Qaida, Taliban and other foreign elements. Now the people of Fata are frequently suffering the violation of their fundamental rights both at the hands on miscreants and Pakistani forces and to some extent now members of lashkars are also involved in it. Formation of these lashkars is an obvious violation of fundamental principles of International Humanitarian Law (IHL). They are suffering due to atrocities of Taliban and disloyalty of military. Therefore people are strongly divided over the issue that whether they should support Taliban or the Pakistan government. Above all, accumulation of weapon in the hands of civilian and fight of local against local can lead us to civil war.

Introduction

Some people are continuously violating the law of state with impunity and trying to impose rules and regulations which are just according to their own conscience. These people are getting support from religious groups, political parties and to some extent from the machinery of state. They are so influential that it is not a hard task for them to escape system of justice prevailing in our country. These groups can be designated as vigilantes. It could be witnessed from the issue of cancelation of "mini marathons", role of female student studying at Jamia Hafsa armed with long sticks and trying to impose law of their own choice in Islamabad during regime of Musharraf. Thereafter, comes the incident of lynching of two brothers of Sialkot, assassination of Punjab governor Salman Taseer and murder of Sarfraz Shah by soldier of paramilitary force in Karachi. It indicates that menace of vigilantism is quite deep rooted in our society. People fear that increasing of vigilante practice at this rate would soon snatch their fundamental rights provided to them by the Constitution of Pakistan and instruments of Human rights law. States sponsored vigilante groups acting under the direct surveillance of state officials is clearly in violation of law. Both state officials as well as civilians are being used illegally to fulfill state ambitions. These officials and civilians are found guilty of corruption, looting and killing citizens etc., with impunity while exercising these arbitrary powers. The issue of vigilantism in Pakistan is getting serious with the passage of time. Some lobbies are playing an active role in order to justify the acts of these groups. Religious groups and some of political parties are standing beside these insurgent groups or non-state actors which permits violence by

vigilantes whether they are working in the form of group or a person is working individually.

A sense of uncertainty has been created throughout the country about the true preaching of Shariah and this debate is like to have continuing implications on Pakistan stability. Political parties' local insurgents and transnational organizations such as Al-Qaida are putting a strong pressure to Islamize the political Structure of Pakistan. The ideologies of these insurgent groups and religious parties have been shaped by their basic religious and ideological nurture. While the political parties of Pakistan are backing these forces in order to fulfill their own agendas in politics.

In Pakistan due to irrational policies of establishment, injustice in society, lack of awareness about true preaching of shariah and influence of radical religious forces on general masses, concept of vigilantism is spreading rapidly. Political parties are reluctant to condemn this practice and to some extent permitting these groups because of their own vested interests and lack of political acumen and courage. These groups and some state sponsored village defense committees (lashkars), working in tribal belt under the supervision of state machinery are abusing the writ of state. It would not help us in the long run to exterminate extremist elements from our society.

Vigilantism

Vigilantism is the encroached justice system within a periphery, challenging the credibility of state judicial system. Culture, ideology, self-defense, social defense, natural law, patriotism, religion and honor are the main elements for establishing vigilantism within

a social system aiming at the cross road justice system.¹ Vigilantism emanate usually, where the irregularities in state based system for controlling crimes are at their culmination point.² Persons, organizations and government involved in illegal activities are normally the victims/affectees of vigilante justice. Vigilantes regard the criminals and people they target as living outside the social bonds and communal ties that hold our society together.³

Literature Review

Authors H. Jon Rosebaum and Peter C. Seder berg in their article “An analysis of establishment violence” explore the inherent character and the reasons of violence and prescribe some important measures to counter social and political violence. It is narrated in this article that violence is used either to topple the existing regime or to carry on existing sociopolitical order. Authors make a struggle to distinguish between legitimate and illegitimate coercion. A state can also commit violence when it by-passes the limits which are established in order to regulate coercion by state.

In this article, it is prescribed that when individuals or groups having knowledge of rule and regulations intend to transgress these limits and then can usually be classified as vigilantes. When these rules are violated in order to over-throw an existing order it is known

¹ *Thou shalt not have fun* (Economist, 0030613, 4/16/2005, Vol. 375, Issue 8422), 38

² Les Johnston *What is Vigilantism*, (The British journal of criminology, 1996, 36(2) issue 2), 220_236

³ M Schonteich, *Crime and confidence: Voters' perceptions of crime*, (Nedbank ISS Crime Index, Volume 4 Number 2, 2000)

as revolution and the forces or groups which cause such break are known as revolutionaries.

While violence directed to maintain existing values may be termed as "Vigilante".⁴

Rosebaum and berg in this article enumerate parameters of lawful coercion. Its intensity and scope should not exceed these limits. The potential for vigilantism varies positively with the intensity and scope of belief that a regime is ineffective in dealing with the challenges to prevailing sociopolitical order. It is often useful to divide the participants in vigilante actions into private and public persons. Writers consider, feeling of deprivation, a grave cause of violence. These feelings in turn are related to extent to which "value expectations" exceed "value capabilities".⁵

Authors state if these vigilante groups are working for the benefits of state although they commit minor breaches of law it could be ignored. Vigilantism covers a wide range of violent acts emerging on one hand in the form of dissident violence and on the other in the legal exercise of physical coercion by a regime or its representatives. In the end, they classify vigilantism into various types, Such as, (a) crime control vigilantism; "It emerges when crimes are increasing and inefficient law enforcement system cannot counter it" (b) Social Group Control Vigilantism; "It concerns establishment violence posed against groups

⁴ See for Details: H.jonRosebaum and Peter C.Seder Berg, *Vigilantism: An Analysis of Establishment Violence*, (Source: Comparative Politics, Vol 6, No. 4, July, 1974), 541-570

⁵ Intensity, as it is used here is a multidimensional aggregate including such factors as: the degree of damage done to a person's value position. The degree of due process in carrying out that act; the proportionality between the damage inflicted and the act being punished; and the number affected by a given coercive act

which are competing for advocating of redistribution of values” (c) Regime control Vigilantism; “It concerns establishment violence intended to alter the regime”.⁶

In this article Michael L. Fleisher described different definitions of vigilantism by different authors and tried to portray multiple forms of vigilantism. According to writer, definition of vigilantism is affected by a number of factors as political ideology, social and cultural homogeneity, internal sanctions and control and commitment to duty.

In this article he takes up a point, why states do supports or approve such a forces when there is already law enforcement and justice system is working. Michael L. Fleisher entails the story of village vigilantism known as sungusungu emerge, for the first time in the northern Tanzania in response to the high level of cattle theft and related violence and ineffective control of law enforcement agencies to control these crimes. In the beginning both police and judiciary termed it a threat to monopoly of law and order. But with the passage of time believe of people in police and judiciary decreased and sungusungu emerged as a popular vigilante force. Eventually, by late 1994 a different type of sungusungu emerged. This time it was state sponsored and its commanders were directly responsible to government officials. Sungusungu has widened its ambit of working this time not restricted to act of cattle theft.

After getting state support, “Sungusungu” offered local people a number of significant advantages and benefits. It helps them escape bribes of government officials especially police and enables them to get justice at minimum expense. The fees paid to

⁶ The value expectation of a collectivity is the average value position to which is members believe they are justifiably entitled. The value capabilities of a collectivity are the average value position its members perceive themselves capable of attaining or maintaining.

sungusungu are lower than the bribes habitually demanded by the law enforcement agencies, and because all fees and fines collected by sungusungu remain within the community to finance not only the working of sungusungu but also other worth village projects; people have their trust in these groups.

In this article Michael L. Fleisher also highlighted the shortcomings of the village vigilantism. It created a parallel law and justice system to the system of state. There were a number of incidents of violating law and using arbitrary powers like, to put persons in prison and beating them. Sungusungu was itself not free of corruption. It enabled the member of sungusungu to punish fellow villagers only to satisfy their personal grudge and to fulfill their personal interests.

This article contains some really useful and valuable material related to formation of a vigilante groups by civilians or by state and its negative aspects. Of course, the repercussions of these groups highlighted by Michael L. Fleisher lead to accept that the formation of these groups is against the law and the peace of state is at stake due to formation of these forces.⁷

Amnesty International in his report says that, emergence of armed civilians groups or vigilante groups are very threatening. These defense forces are aggravating existing fault lines between citizens and state and contributing to an increasing number of human rights abuses and contributing to increasing number of civilian being displaced by the conflicts. Restriction on freedom of movement extra judicial killings and disappearances, as well as illegal retention and torture perpetrated by these groups are day to day reality.

⁷ See Generally Michael L. Fleisher, *Sungusungu: State-Sponsored Village Vigilante Groups among the Kuria of Tanzania*, (Source: Africa: Journal of the International African institute, Vol. 70, No. 2, 2000), 209-228.

In this report it states that administration is clearly violating the rulings of judicial authorities in order to protect human rights. In this fact finding report of Amnesty International it is envisaged that state is clearly sponsoring these groups as well as with training support from military. It is contributing to increase intensity of conflicts and casualties of civilians increasing day by day. Due to participation of civilians in armed conflicts the Maoists are directly targeting the families of those who are fighting against them and supporting state forces to fight them.

Amnesty International recommends that Law enforcement agencies should not involve civilians in hostilities in order to achieve their objectives and they should carry out their mission in accordance with International Humanitarian Law (IHL) standards. Amnesty International urges Nepal Government either disband the existing village defense forces or fully integrate them in to the security forces.⁸

According to Islamic law it is obligatory on every Muslim to do good deeds and forbid bad deeds. It is the collective obligation of Muslim nation as well as leader of Islamic State (Caliph). Therefore it is individual responsibility of every person (Muslim) to preach such deeds which are bountiful and to command against those which are unfavorable. Muslim is ordered by Allah Almighty to face all the difficulties and remain within the limits prescribed by Islamic Law while performing this duty (Amar bilMaruwanahianilMunkir). If someone does not submit himself to truth(Shariah) then no one has right to use force

⁸. "The emergence of government backed vigilante groups in Nepal", *Amnesty international reports press release* 08/03/2005. <http://www.raonline.ch/pages/story>.(lastaccessed: 25/04/2011).

against him except law enforcement authorities, It is described as principle of *Amar BilMaroofWaNahi Anil Munkir* in Islamic Literature.⁹

Fundamental Principle is, that, in order to stop evil by force someone should fulfill requirement of lawful authority we can use his authority only against those who are subject to it. This authority originates in two ways, either by the order of Shariah (Father has authority on his minor child) or by an agreement (contract of agency).¹⁰

A person who has knowledge of Religion (Deen) believes that an act is in consistent with the parameters described by Islamic Law. He has permission to pronounce it illegal and also has authority to struggle in order to frame a general opinion against it. But he cannot use force to stop such acts, if he has no legal authority to use force.¹¹

Framing of Issues

This literature review leads us to identify some important issues for the purpose of elaborating the notion of vigilante groups and the legal implications arising thereof, hence we will analyze in the thesis following issues, inter alia;

⁹ See generally: Muhammad Mushtaq Ahmed, *Jihad, Resistance and rebellion* (Gujranwala: Al-Shariah Academy, 2008), 602-609

¹⁰ In order to see details of separation of powers between judges (Qazi) and religious scholars (Mufti). See generally Abu-Al-Abbas Bin Idress Al-Qarafi, *Al-Ahkam Fe-Tameez Al-Fatawa Anil-AhkamWaTasarfaat Al-Qazi andImam*: (Barut: Daar-UI-Bashiar Al-Islamia, 1416 Hijra)

¹¹ See generally: for details of rights and duties of lawyer (Wakeel): *Almabsut, Kitab Al Wakalat* volume 9, P 193, 194

1. What is vigilantism?
2. Types of vigilantism in Pakistan with reference to three different cases
3. Above all, I will make an effort to expose the ideology of vigilante groups and the factors which are permitting the concept of vigilantism
4. . How these groups are undermining the fundamental rights of people provided to them by The Constitution of Pakistan and Instruments of Human rights law
5. State sponsored village defense committees working in tribal belt.
6. How state sponsored village defense committees (lashkars) working under the direct supervision of state violating the human rights of local population and increasing the crime ratio thereto?
7. Do these committees provide solution of the problem? It is very important to analyze that whether these groups contributing to solve the issue or aggravating the situation.
8. Whether the formation of village defense committees is not against the principles prescribed in International Humanitarian law
9. Islamic Law and concept of vigilantism:
10. Does Islamic law recognized concept of vigilantism? Whether Islamic law defines certain conditions when vigilante actions can be permitted?
11. What solution could be prescribed?
12. How it is possible to control terror and violence increasing due to formation of these groups

Chapter One: The phenomenon of Vigilantism in Pakistan

1.1. Social factors contributing to vigilantism:

1.1.1 Religious factor

Religion, a paramount factor in the framework of social paradigm, has many attributes and repercussions in establishing vigilantism. The scope and implementation of Shariah in Pakistan, has been on debate since decades and passive and active repercussions in the form of vigilante thoughts and ideology can be seen across the border. Political parties, local insurgents and transnational organizations such as Al-Qaida are in a constant struggle to Islamize the political Structure of Pakistan.

In Pakistan, due to injustice in society, misconception of shariah and influence of radical religious forces on general masses, concept of vigilantism is spreading rapidly. Political parties are reluctant to condemn this practice and to some extent permitting these groups because of their own vested interests and lack of political acumen and courage.

In year 2008, the Lal Masjid crisis led to a debate over the legitimacy and efficacy of vigilante Islamism. Murder of women minister ZilleHuma by religious fanatic and murder of late Punjab governor Salman Taseer is contemporary incidents of religious extremism in Pakistan.¹²

¹² By Joshua T. White, *Vigilante Islamism In Pakistan, Religious Party Responses to the Lal Masjid Crisis*, (Published on Tuesday, November 11, 2008. Current Trends in Islamist Ideology vol. 7)

1.1.2. Injustice

Injustice in society provokes the anger of general masses which instigate them to have recourse to vigilante practices. The anger of general public is getting more serious with the passage of time because they have started to realize that their destinies in this country are controlled by a small group of people, who are manipulating this state since its inception. Non-existence of essential justice is sowing the seeds of vigilantism in new generation.¹³

1.1.3. Political motives

Some liberals who consider them champion of democracy and rule of law are also playing their role to promote violence in society in order to accomplish their goal to be powerful.¹⁴ It is clear from the verdict of Honorable Supreme Court of Pakistan *suomoto* action in order to denominate that, who is responsible of violence in Karachi. It declared that Pakistan political parties are permitting vigilante violence in Karachi with the help of their militant wings in order to achieve their targets.¹⁵

¹³ Filed Under AdilNajam Development, Law & Justice, Politics, Society, *Vigilante justice, Horrible, Horrifying, Horrendous*, (posted on May 16,2008 in The News)

¹⁴ Filed under AdilNajam and Owais Mughal ATP society, *Pakistan in 2007: A Year of anger and Angst*, pakistaniat.com/2007/12/31/year-2007-review-pakistan

¹⁵ *Supreme Court verdict in suomotu Karachi violence case*, (Published in The Express Tribune, October 6th, 2011)

1.1.4. Concept of "izzat and ghairat" in contemporary social system

Islam vehemently denounces the concept of vigilantism and encourages the rule of law, but we could not deny the fact that this custom is still present in Muslim societies. Islam upholds the sanctity of life as the Holy Quran declares:

Killing one innocent human being is akin to killing the entire human race...¹⁶

The problem of killing over the pretext of “Ghairat” is not a step for ensuring the morality in society rather it is cruel exhibition of man dominance in community. Unfortunately this practice is so deep rooted in our community that on daily basis we hear about the cases of honor killing. Quran is explicit in its emphasis on the equality:

And their Lord has accepted of them and answered them, “Never will I suffer to be lost the work of any of you, whether male or female, you are members, one of another...”¹⁷

1.2. Some important cases of vigilante practice in Pakistan

1.2.1. Lynching incident in Sialkot

This event took place at 15th of August 2010 when both of the brothers were coming back to home after playing a cricket match. Both crime victims, according to their acquaintances,

¹⁶The Quran, 5:32, 6:151, 17:33

¹⁷The Quran, 3:195; see also 33:35

were good-natured who had never been involved in any illegal acts.¹⁸ On the day the two brothers were killed there was armed robbery in Sialkot. One of the murderers brother was shot and there house was robbed. The whole area was alerted that there are armed robbers in the area and everyone starts searching. The two brothers happened to be passing through there at the wrong time. They had cricket equipment in there bag and were on motor bike. The murderers saw them and shouted there are the robbers they had a fight with us over cricket the other day, they are the robbers, they shot the man, without any second thoughts the mob got the brothers aged 16 and 18 and beat them to death. They were killed not by bullets but with sticks and much more things like that. They were killed in a very tragic manner in the presence of a lot of people and no one came to stop their brutality even police allowed them to keep the brutality. These facts bring us some important conclusions.

Sialkot Sadarr police station lodged two FIRs, the first on August 15 in which the two brothers were accused of murder and robbery while the second was lodged after the video of the lynching was released by news channels leading to a *suomotu*¹⁹ notice by the Supreme Court.²⁰

1.2.1.1 Murder of both brothers an example of general masses vigilantism

¹⁸ It was reported in daily newspaper that one of the accused said that DPO, Waqar Chohan was present on the scene and instigated them to murder both the brothers, he assured them that police will take responsibility and exhibit it as a police encounter, published on 25, 2010.

¹⁹ *Suomotu* is a Latin legal term that means meaning "on its own motion"

²⁰ In Article 184 (3) of Pakistan's Constitution, the Supreme Court is allowed to take *suomotu* action whenever there is a possible violation of fundamental rights enumerated in Chapters 1 and 2.

This public did not recourse to concerned authorities and enforced the laws which were just according to their own conscience thus committed an act of vigilantism. It is clear from the facts of case that it was not sure at all that these two brothers were robbers. However, if we presume they had committed robbery but the mob which beaten them to death without any doubt exceeds their limitations and performed an act of vigilantism. They took the law in to their own hands. This case also depicts the mercilessness and demoralization of people as well as criminal negligence on the part of police authorities.

1.2.1.2. Judgment of Honorable Anti-Terrorist Court in Sialkot Lynching case

An anti-terrorism court the court of Mushtaq Ahmad Gondal announced its verdict, awarded death sentences to seven men charged them with terrorism and murder and life imprisonment to six others besides sentencing three years' imprisonment each to all police officials, including former Sialkot DPO Waqar Ahmad Chohan, in the Sialkot lynching.. This judgment discouraged vigilantism and upheld the sanctity of rule of law.²¹

Now this case is pending in Honorable High Court Lahore.

1.2.2. Salman Taseer Murder Case

Salman Taseer was shot dead, who proposed reform of the country blasphemy laws, Salman Taseer, was gunned down by one of his own bodyguards .He publicly

²¹pakistanistoday.com.pk/2011/09/7-sentenced-to-death (Last accessed: 09/11/2011)

supported Asia Bibi, a Christian woman who has been sentenced to death for allegedly insulting the prophet Muhammad (Peace be upon him).²²

Mumtaz Qadri, was apparently influenced by clerics who issued a decree of death against Mr Taseer for opposing the blasphemy law and sympathizing with a Christian woman convicted under it. Mr Qadri was hailed as a hero by a group of lawyers who showered rose petals on him during a court appearance.²³

1.2.2.1. Judgment in Salman Taseer murder case

The anti- terrorism court Judge Syed Pervez Ali Shah in his verdict said that it was a heinous crime and there is no justification to it. Court charged a police commando with terrorism and sentenced him to death punishment. This judgment was strongly appreciated by the anti- vigilantism class of society.²⁴ Mumtaz Qadri, filed an appeal before the Islamabad High Court (IHC) challenging his death sentence.²⁵

1.2.3. Sarfraz Shah murder case

²² tribune.com.pk/story/264609/sentenced-to-death (Last accessed: 12/11/2011)

²³ Saeed Shah, *Mainstream Pakistan religious organizations applaud killing of Salmaan Taseer*, www.Guardian.Com.uk (Last accessed: 12/11/2011)

²⁴ The Nations, Sunday, December 4, 2011

²⁵ Published in, *the Express Tribune*, October 7th, 2011.

A 22-year-old Pakistani citizen Sarfaraz Shah was killed by soldiers affiliated with rangers. . He died because of too much blood loss. The Rangers have since said that the young man had been caught trying to rob someone. His family denies this. His brother, Salik Shah, said Sarfaraz has been the victim of an extrajudicial killing..²⁶

1.2.3.1. Judgment in Sarfraz Shah Murder Case

Anti-terrorism court Judge Bashir Ahmed Khoso found accused ShahidZafar, of the Abdullah Shah Ghazi unit of Pakistan Rangers, guilty of causing fatal injury to deceased SarfrazShah. Court sentenced him to death in a offence punishable under Section 7(a) of ATA 1997 read with Section 302 and Section 34 of the Pakistan Penal Code,Zafar, 35, has also been ordered to pay compensation worth Rs200, 000 to Shah's legal heirs. Five other members of the same Pakistan Rangers unit and a civilian Afsar Khan were sentenced to life imprisonment and ordered to pay Rs100, 000 each to Shah's heirs. Rangers, the judgment said, are supposed to be "protectors in whose presence people feel safe and secure and if protectors become perpetrators. It would certainly damage the perception of the general public about their actions".²⁷

Conclusion

Law of state is being violated by different sects of society in different methods. They are trying to impose rules and regulations which are just according to their own

²⁶ www.telegraph.co.uk/news/worldnews/asia/pakistan/8568657/Pakistani-soldiers-arrested-after-TV-footage-shows-them-shooting-unarmed-man.html , (Last accessed 15,11,2011)

²⁷ Published in The Express Tribune, August 13th, 2011

conscience. These people are getting support from religious groups, political parties and to some extent from the machinery of state. They are so influential that it is not a hard task for them to escape system of justice prevailing in our country. These groups can be designated as vigilantes. The incident of lynching of two brothers in Sialkot, assassination of Punjab governor Salman Taseer and murder of Zafar Shah by soldier of paramilitary force in Karachi indicates that menace of vigilantism is quite deep rooted in our society. Some lobbies are playing an active role in order to justify the acts of these groups. Courts gave appreciable verdicts in all these case, trying their best to maintain sanctity of human life, dignity and property which are protected by the Constitution of Pakistan and documents of International Human Rights Law.

Chapter two: The legal regime about vigilantism

2.1 The Domestic Law

2.1.1. Constitutional Guarantees

These instances of recent occurrences, discussed in above lines leaves no room for doubt that vigilantes are depriving citizens of Pakistan from their fundamental rights provisioned by the constitution. These elements have no respect for the constitution and their agenda is to establish their dogmatic hegemony regardless of the nature of means used whether they are justified or not. Articles enabling people access to fundamental rights are clearly elaborated with some glaring precedents; decisions of the courts of Pakistan.

PLD 1990 SC 95 takes in account the scope of article 8 of the constitution of Islamic Republic of Pakistan. Here the apex court explained the utility and purpose of law. Court classified emphatically that acceptability of law is based upon its practical manifestation. Law is bound to be a sound guarantee to the fundamental rights provisioned by the basic structure of the constitution. In case, if law is derogative to the fundamental rights, it may be struck down. In the light of article 8, action taken as discriminatory one, opposing guarantee for fundamental rights will be considered as immaterial.²⁸

In, P L D 2007 LAHORE 128 a leading case interpreting article 9, ensuring security of person court went even more assertive regarding fundamental rights. Emphatically forbidding anyone to take life or liberty of another person, except under a law authorizing to do so, court perpetuated that life and liberty of individual are sacred. A person whose life is at stake may require lawful authority from whom he is being threatened. Law does not allow official or authority to snatch freedom, liberty and life of a citizen without a lawful

²⁸*Siraj din vs sultan and others*(PLD 1990 SC 95)

reason. This case is a landmark in history of insurance of fundamental rights in Pakistan. Court strictly stopped any vigilante group threaten fundamental right of the people.²⁹

Another laudable judgment is mentioned as, PLD, 1986 QUETTA 270, discussed in detail the omnipresence and universality of scope of security of life. While giving rights to accused; a living person cannot be deprived of fundamental rights despite in prison. In the glorious work court protected the right to self-defense. Meaning thereby that he may take service of lawyer. If he cannot afford a counsel, state would provide him. The nutshell of the judgment is that even arrest, detention and imprisonment cannot deprive one to seek justice.³⁰

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Ensuring a profound safeguard to freedom of speech empowered by article 19 of the constitution, in PLD, 1975 LAH, 1198 the higher court permitted on to say, express, publish or communicate provided that it does not run over the domain of others' lives or rights. Court further said that refraining one from publishing a newspaper has no legal or lawful justification as it is a standard way to for one to enjoy freedom of expression.³¹

AIR 1962 SC 853 enhanced the rights of an individual to perform his religious observation entitled by article 20 of the constitution. As the article allows an individual to adopt profess, observe the religion it further allows him to institutionalize it. The quoted case amounted to the right of religion as par with the right to life and liberty. Along with this it drew boundaries to its domain. Quote pointed that any freedom sanctioned by law has to follow some code of ethics which is laws, public order and morality. Hence religious

²⁹ *Mamoonasaeedvs government of Punjab through secretary home department and two others* (PLD 2007 LAHORE 128)

³⁰ *Saadullahvs secretary home department and another* (PLD 1986 QUETTA 270)

³¹ *Muzafirqadirvs district magistrate Lahore* (PLD 1975 LAH 1198)

freedom is bound to consider and respect these limits to. The scope of these regulations needs no explanation for a prudent mind because laws are stated to ease affairs of life, not to make them complex. Being an Islamic state any religion sponsoring any immoral practice like display of nude parts of body is strictly prohibited. Any practice causing public disorder or social imbalance is unlawful and legislature has power to intervene and regulate profession of such religion. Religious freedom is not merely to the extent of belief; it goes to the practical observation and performance of such religion too. The decision rebutted the justification of existence of a group trying to propagate the idea of use of force to undermine the religious rights of individuals. It further stops vigilantes to propagate their religious hegemony because decision particularly insures the acts, observations and institutions to profess the specific religion.³²

Neither constitution nor the courts ignores the equality of citizens before law. Article 25 of the constitution classifies citizen's equal in the eyes of law and PLD1993 SC 341 revived the soul of article. The decision said that equality before law and equal protection are rights of individuals. It contemplates that similarly situated persons would be treated alike.³³

2.1.2 Islamic provisions:

³²*SardarTaheruddinSyednaSaheb v. State of Bombay* (AIR 1962 SC 853)

³³*Additional Chief Secretary v. Aziz UllahMemon and 16 others* (PLD 1993 SC 341)

Defining more clearly religious rights and their importance article 2, 31 and 33 are much expressive. They conclude that state religion is Islam, state is duty bound to energize the Islamic way and restrict citizens to indulge in parochial, ethnic, racial, tribal, sectarian and provincial prejudices. It was further supported by the lines from the book "The constitution of Pakistan, 1973, by Justice Asif Saeed Khosa, He is of the view that to establish the Islamic authority is the purpose of these statutory provisions. Islam is the state religion hence needs special protection and space to progress and show its influence."³⁴

2.1.2.1. Blasphemy law in Pakistan

The Pakistan Penal Code prohibits blasphemy against any recognized religion, providing penalties ranging from a fine to death. However, in practice, it is only applied to Islam that is quite unfortunate damaging the real concept of equality of citizens and proper protection of rights of minorities. An accusation of blasphemy commonly subjects the accused, police, lawyers, and judges to harassment, threats, and attacks. An accusation is sometimes to invite the vigilantism and rioting. Calls for change in the blasphemy laws have been strongly resisted by Islamic parties.

Prominent figures like Salman Taseer the former governor of Punjab and Shahbaz Bhatti the Federal Minister for Minorities have been assassinated for their opposition to the blasphemy laws. So existence of vigilantism is not out of question.

Several sections of Pakistan's Criminal Procedure Code comprise of blasphemy laws. Section 295 forbids damaging or defiling a place of worship or a sacred object. 295-A

³⁴ ASIF SAEED KHOSA, *The Constitution of Pakistan*, (P.L.D. Publishers, 1995 35-Nabha Road Lahore), 3, 13, 14.

forbids outraging religious feelings. Section 295-B forbids defiling the Quran. 295-C forbids defaming the Islamic prophet Muhammad (PBUH). Except for section 295-C, the provisions of 295 require that an offence should be a consequence of the accuser's intent. Defiling the Quran merits imprisonment for life. Defaming Muhammad merits death with or without a fine. If a charge is laid under 295-C, the trial must take place in a Court of Session with a Muslim judge presiding.

Section 298 states:

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298-A prohibits the use of any derogatory remark or representation in respect of Muslim holy personages. 298-B and 298-C prohibit the Ahmadiyya from behaving as Muslims behave, calling themselves Muslims, proselytizing, or "in any manner whatsoever" outraging the religious feelings of Muslims. Violation of any part of 298 makes the violator liable to imprisonment for up to three years and liable also to a fine.³⁵

Between 1986 and 2007, Pakistani authorities charged 361 people with blasphemy offences. Fifty percent of these were non-Muslims, who represent only 3% of the national population. No judicial execution for blasphemy has ever occurred in Pakistan, but 20 of

³⁵ Muhammad Mazhar Hussain Nizami, *THE PAKISTAN PENAL CODE*, Khyber Law Publishers, 2005. Lahore), 270-272 and 274

those charged were murdered. On Jan. 12, 2011, Prime Minister of Pakistan Yusuf Raza Gillani once again said that there would be no amendments to the blasphemy law.³⁶

The only law that may be useful in countering misuse of the Blasphemy law is PPC 153 A (a), whoever "by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites, or attempts to promote or incite, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities" shall be fined and punished with imprisonment for a term that may extend to five years.³⁷

2.1.2.2. Federal Shariat court Ruling on Section 295 C of Pakistan Penal Code

The Federal Shariat court (FSC) which rules on whether any particular law is repugnant to the injunctions of Islam. If a law is repugnant to Islam, "the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam"³⁸. In October 1990, the FSC ruled that section 295-C was repugnant to Islam by permitting life imprisonment as an alternative to a death sentence. The Court said "the penalty for contempt of the Holy

³⁶ Mansoor Raza is a researcher who presented *this paper at the Reference for Salmaan Taseer*, organized by CFD in Karachi on Jan 17, 2011. citizensfordemocracy.wordpress.com/2011/05/05/pakistan-blasphemy-laws-a-fact-sheet/ (Last accessed 21,11,2011)

³⁷ *THE PAKISTAN PENAL CODE*, Lahore, P 143

³⁸ *Constitution of Pakistan 1973*, Article 203D

Prophet is death." The FSC ruled that, if the President did not take action to amend the law before 30 April 1991, then section 295-C would stand amended by its ruling.³⁹

Promptly after the FSC's ruling in 1990, Bishop Dani L. Tasleem filed an appeal in the Supreme Court of Pakistan, which has the power to overrule the FSC. In April 2009, the Shariat Appellate Bench of the Supreme Court considered the appeal. Deputy Attorney-General Agha Tariq Mahmood, who represented the federal government, said that the Shariat Appellate Bench dismissed the appeal because the appellant did not pursue it. The appellant did not present any argument on the appeal because the appellant was no longer alive. Consequently, it appears to be the law in Pakistan that persons convicted under section 295-C must be sentenced to death with or without a fine.⁴⁰

2.2. International Human Rights Law and vigilantism

Universal Declaration of Human Rights adopted on 10th of December, 1948 endorsed by general assembly of UNO, certifies that equal respect to the dignity and fundamental rights of human being is duty of every one without any discrimination.⁴¹ It was well perceived that violation of human rights at any level compels people to adopt extreme method and it propagate disharmony, disorder, violence and vigilantism. Hence proper homage to dignity of man and his rights is prevention from the entire imbalance in society. Every consensus at UNO forum like International Covenant on Civil and Political rights, International covenant on social and cultural rights and International covenant on elimination of all forms of

³⁹ *Muhammad Ismail Qurashivs Pakistan*, through secretary law and parliamentary affairs (PLD 1991 Federal Shariat Court 10)

⁴⁰ AnsarAbbasi, *Blasphemy law applies to all prophets*, January 12, 2011, (published in The News)

⁴¹ The establishment of the commission on Human Rights was approved by the assembly on January 29, 1946.

discrimination against women defend properly the sanctity of human rights. These drafts establish a common standard for all regardless of nation or race. Further, every citizen of every state and every nation is bound to secure, promote and observe these fundamental rights.⁴²

Physical torture, unsecure honor, forced disappearances and action of security forces ultra vires to constitution have brought the vigilantes to the most effective and powerful phase while predicament of fundamental rights at the poorest strata in Pakistan. The compensation of armed conflict between security forces of Pakistan and miscreants is being heavily paid by people of the poor state. At one hand armed groups working against security forces of Pakistan are destroying properties of the people, violating their privacy and fundamental rights, threatening their lives and curbing their freedom of speech and expressing, undermining right to education particularly of girls and breaching the sacred ties of social fabric. While at the other hand, in order to minimize the activities of terrorists, security forces are accused of collateral damage to common citizenry. While operating against the rivals, they liberally use disproportionate force that does not exclude civilian from severe harm.

Moreover stakes of minorities are being devastated by this sketch in society and gap between citizens and state is unable to provide due safe guard to its citizens. Hence minorities are totally and Muslim citizens partially at the mercy of vigilantes. Discrimination against minorities is more a social tendency than a legal challenge. Powerhouse of this poisonous disease is at the helm of administrative steps taken by upper hierarchy of the government. For instance, Removal of Iftikhar Muhammad Choudhry by

⁴²By prof.N.Sanajaoba, *International Human Rights*, (Manas publication, New Delhi 2005), 33-34

the then dictator Musharraf showed indifference of our government to the sanctity of institution. This wave badly affects the overall atmosphere and in the society, it becomes a justified norm to violate human rights and the soul of the constitution. Consequently brazen derogation from human rights in Baluchistan, highhandedness of terrorist groups in “KPK”, insurgency in FATA and other frontier belts, internally displaced people are contributing to enhance vigilante activities in our society.⁴³

The Human Rights Commission of Pakistan blamed the government of Pakistan for the violation of fundamental rights in Pakistan. Islamabad is failing to protect its citizens from abuses it stressed upon persecution of minorities in the mostly Muslim nation. The commission also said killings, kidnappings and other violence carried out by terrorists and criminals is further eroding the human rights situation. The government functionaries or government agencies are also contributing to a large extent in order to aggravate human rights situation in Pakistan. Therefore it has become very difficult to ensure the application of human rights instruments in Pakistan.⁴⁴

2.2.1. The Universal Declaration of Human Rights (1948)

⁴³ *Pakistan - Amnesty International Report*, 2010(Published in The Express Tribune, May 14th, 2011).

⁴⁴ [www.voanews.com,Human Rights Commission Critical of Pakistan,119865654,htm](http://www.voanews.com/Human_Rights_Commission_Critical_of_Pakistan,119865654,htm)(Last accessed: 22/01/2012)

Universal declaration of human rights (1948) provides safeguard to the human beings in order to protect their fundamental rights without any exception.⁴⁵ Here we would discuss the articles of the declaration in context with vigilante practice prevailing in Pakistan and violating the same.

First we take in to account *Article 2*; of the document passed unanimously by the general assembly on UNO .this article dismisses any distinction in prevalence of fundamental rights to every human being. Every person would have an equal right to enjoy the fundamental rights recognized by the assembly without any difference on basis of race, religion, origin, nationality, jurisdictional or political status of a country or state, meaning thereby everyone would enjoy fundamental rights equally.

Thereafter, comes the *Article 3*, which grants a person basic right to life, liberty and security: these rights would not be curbed .further *Article 7*, ensured the guarantee from any inhuman treatment, torture, cruel or degrading punishment even in case of crime. It provides rights to accused as well. Equality before law is maintained by this article. It sweeps discrimination any discrimination against any protection of law for a person.

Basic principle of freedom from any arbitrary arrest or detention or forceful exile is established under the *Article 9*, of the instrument. *Article 10*, has its domain in case of criminal charge against anyone. This article provides one the right of proper and public hearing by one independent and impartial bench in case of any acquisition of offence. Nobody can be punished without hearing. *Article 11*, presumes and accused innocent until proved guilty. Further he would have access all kind of defense which he is entitled during

⁴⁵ For detailed study of the subject, See H.O. Agarwal, *Implementation of Human Rights Covenants with special reference to India*, (Allahabad: Kitab Mahal. 1983)

the trial; more over punishment will not exceed that gravity of the alleged offence. It further ensures that one cannot be trialed in an offence which was not an offence when it was committed under the then prevailing law. . *Article 18*, envisages total freedom of thought, faith, and belief specifically of religion. It determines that change of a religion is right of a person it provides safeguard to worship, practice and observance of religion. Lastly *Article 19* of declaration provides right to opine and express. It ensures to hold opinion is a fundamental right of a person. Hence, the thorough study of provision of the declaration leave no room for infringement of any right perceived of by a prudent mind. ⁴⁶

2.2.2. The International Covenant on Civil and Political Rights (1966)

The study of International Covenant on Civil and Political Rights,⁴⁷ *Article 3*, defines equality of a person regardless of sex to enjoy civil and political rights. *Article 6 (1)*, reinforce the right to life and safeguard against arbitrary deprivation of life. *Article 7*, protect one's fundamental right against cruel inhuman treatment and protect sanctity of dignity of human being. *Article 9*, speaks louder about liberty and security of a person. It further prohibits anyone to arrest one illegally. *Article 14*, rhetorically ensures equality of citizens to be dealt in accordance with law in any trial before or competent tribunal. Freedom of thought, faith, belief and religion is granted by *Article 18*. This covenant consciously endorsed that the right of minorities should be protected. *Article 27*,

⁴⁶U.D.H.R,1948

⁴⁷ Pakistan ratified the UN International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) in 2011

considers minorities at par with majority. It shows that fundamental rights of human beings are prime priority of state, society, law and individuals to respect them and protect them.⁴⁸

Conclusion

In the light of all the three incidents of vigilantism we can conclude that fundamental rights provisioned by the constitution of Pakistan and international conventions of human rights have been violated by the pervasive vigilantism. First of all we take in account assassination of Salman Taseer in the name of Islam. Section 295-c of PPC was condemned by Salman Taseer that it should be reconsidered. Basically issue was not death penalty in blasphemy against Holy Prophet (Peace be upon him) but its adoptability and practice. The proper procedure to punish a person who is accused of blasphemy is mentioned in 295 c that his trial should be conducted by session judge, it was also violated. His assassination discouraged this provision when one person in his perception did justice himself by murdering him. The article sponsoring security of a person is brutally violated. Moreover liberal use of right to speech provisioned by article became bone of contention. Everyone is equal before law and he should be treated in accordance with law was not kept in view. This act of Mumtaz Qadri promoted vigilantism and undermined the supremacy of constitutional law as well as International Human Rights Law.

Case of lynching of two brothers in Sialkot undermined the fundamental rights and human dignity. In this case safeguard against arbitrary arrest and detention, equality of

⁴⁸ *International covenant on civil and political right*, 1966

citizens, security of person and right to life have been demoralized by a group of vigilantes in a heinous activity. Law enforcement agencies were also part of the incident therefore they absolved themselves of their responsibilities by leaving two brothers at the mercy of violent mob.

While analyzing cold blooded murder of Sarfraz shah by security forces in Karachi, uncontroverted fact of absence of respect to law in security forces is defined. This extrajudicial killing shows that vigilantism has stretched its circle to the government officials too. They themselves are menace to security of the citizens. They do not believe in equality of citizens before law and due process of law is just time wastage in the eyes of vigilantes in uniform, therefore they are not reluctant to violate article which provides safeguard to arbitrary arrest and detention.

CHAPTER 3: State sponsored Village Defense Committees (lashkars) working in war affected areas

3.1 Repercussions of village defense committees on fundamental rights of local inhabitants.

3.1.1. Historical background of lashkars and current trends in Fata and Khyber pakhtunkhwa

Tribal lashkars are the part of tribal society. These lashkars are activated when the law and order condition becomes worse and peace of society is at stake. The government of Pakistan has absolved itself of the responsibility towards the wellbeing and peace of tribal society by adopting Frontier Crimes Regulation (FCR).⁴⁹ This authorizes tribal people to enforce peace and justice in their society with the help of lashkars.⁵⁰ State authorities do not pay reasonable attention towards the condition of these areas unless these matters do not affect the strategic interest of the state. It is not the tribal people who have rejected such state apparatus, the state has never provided it.

Inhabitants of tribal areas were authorized under the FCR and it is also culturally sanctioned that they can form an adhoc armed militia (lashkars) in order to enforce decisions of their elders. This system of providing justice is known as Jirga system. These militias were formed to enforce decisions which were mostly related to water dispute or dispute over a piece of land, forest and mountains. The time period for which a lashkars is

⁴⁹ The FCR has been operative for more than a century as a special law prescribing trial procedure for offences and civil disputes in the tribal areas. See for detail, Peter Hopkirk, *The Great Game*, (New York: Kodansha, 1994)

⁵⁰ Lashkars in the settled areas were until recently known as cheegha. Cheegha or chagha means a "cry." Usually, a village elder or tribal leader will call people together to face a particular problem or threat. Due to the recent popularity of the term "lashkar," cheegha militias are now also called lashkars.

formed may extend to hours or days or in very extreme cases for a few weeks or a month. It is due to successful working of lashkars in tribal areas that this region remained one of the most peaceful parts of the country, until the war on terror erupted in the region. After the eruption of war a completely new task was given to these lashkars, the task of combating AL-QAIDA, Taliban and other foreign elements try to occupy these areas.⁵¹

Taliban and al Qaeda militants are a radically different context than the context of local tribal disputes over land. Lashkars played a vital role in enforcing peace in tribal society in the past. But this time a difficult task has been assigned to them by the government. The tribes which formed lashkars in the beginning, among them comes the name of Mullagoris, Zakakhels and a subtribe of Ademkhales (kakakhels) who were assured by the government of full cooperation.⁵²

People who are participating in these lashkars are very much annoyed with the atrocities committed by Taliban. Lashkars themselves opted with the task of community policing. These members are answerable to local community councils and they are very strict in enforcing the decisions of these councils. British India and later Pakistan both had established means of dealing with the Lashkars, and employing them to enforce government rules.⁵³

⁵¹ Mehlaqa Samdani, *Authors interview with Fkhar-e-Alam*, Director General, Director of projects, Fata secretariat Peshawar, September 17, 2010, csis.org/files/publication/111213_Samdani_KyberAgency.pdf (Last accessed 13/12/2011)

⁵² Rahimullah Yusufzai "*The Tribes Fight Back*", Newsline, October 15, 2008, www.newslinemagazine.com, (Last accessed 13/12/2011)

⁵³ An analysis by Farah Taj "*Army's peace lashkars*" published in daily times October 22, 2011

3.1.2. Why lashkars has failed to control Taliban and who is responsible for the worse fundamental rights situation in FATA?

After the invasion of Iraq by U.S forces, inhabitants of village named as AL-Anbar decided to make private militia in order to counter Al Qaida inflicted violence. In order to stabilize the region and get rid of violence local Sunnis formed an alliance. These lashkars were supported by the U.S army .They provided them latest weapons and also monetary assistance as a result these lashkars became successful and militants had to vacate the area. Military as well as political analysts who were closely observing situation in FATA derived an inference that Al Anbar style awakening in FATA can help us to counter militancy in Fata. But this strategy in fata is proving futile. Taliban are killing tribal people openly .Here the question arises why the idea of countering Taliban through lashkars with the help of Pakistani and U.S military assistance has failed?

Among those factors first of all comes the mistrust of locals in the military leadership especially the intelligence agencies .Our military still consider Afghanistan as its strategic depth. It wants the government of its own choice in Afghanistan. Therefore they are not serious to counter insurgency and playing double game. So far more than 200 hundred tribal leaders and no one have been arrested on the charge of their murder⁵⁴

These tribes are not financially so strong that they can bore all the expenses of ongoing war with Taliban. On the other hand government is not providing the enough monetary assistance. The peace committees and lashkars are helping themselves, i.e. the

⁵⁴DaudKhattak,*Militants thrive on Pakistan military failure*,Afpakchannel,foreignpolicy,September 21,2010,http://afpak.Foreignpolicy.com/posts/2010/09/21/militants_thrive_on_pakistan_military_failure.(Last accessed 27/12/2011)

local people are putting whatever meager financial resources they might have to finance their resistance. There is simply no one to financially support their resistance, including, of course, the government of Pakistan. Haji Malik is one of those leaders who were leading anti-Taliban lashkars in Adezai in rural Peshawar. He had to spend his lifelong earning to counter Taliban. He also requested his friends' relatives and fellow villagers to provide him monetary support in this struggle. In this struggle he got murdered and his murderers are still unpunished. Lashkars working in tribal areas are facing same conditions.

Violation of human rights multiplied following the US-led war on terror during which a managed chaos has been created to hide the terror sanctuaries of the Pakistani state proxies, the Taliban. Pakistan's double dealing in the war on terror, ostensibly fighting the Taliban but tacitly entrenching them in FATA,

Human rights defenders have been target killed by the militants. Mr Zarteef Khan, Khyber Agency Coordinator of the Human Rights Commission of Pakistan (HRCP), was assassinated. The war on terror due to which local people had to take up arm against the militants violation of fundamental rights of inhabitants has reached its culmination point, ambiguous role of military is worsening the rights situation to greater extent. The militants are killing tribal leaders and general public at large without any obstacle who can be held responsible for all this?. Clearly the then government of General Pervez Musharraf was playing a double game. On one hand it joined the US led war on terror,⁵⁵ on the other hand it allowed the militants to kill the tribal leaders and replace the tribal order with the Taliban

⁵⁵ The frontier region has never been stabilized due to continuous invasion from the west, which resulted in the shifting of one empire to another. The present border has evolved through centuries of political struggle between British Empire in India and the empires of western and central Asia. see for details Michal Barthorp, *Afghan wars and the North-West Frontier*, 2002.

order because Pakistan foreign policy is army oriented and Pakistan army do not want to destroy its so called strategic depth.⁵⁶

Although member of lashkars are responsible to some extent for bad human rights condition but the government and Taliban are more responsible. Taliban and Pakistani army are making indiscriminate attacks which have caused the death of people at large scale, destruction of schools, college health centers and drinking water supply system in the area. Taliban and army are violating the right to life and property. The number of internally displaced persons is increasing with the passage of time. The total system of agriculture, business and shops has been destroyed.⁵⁷

3.1.3. Examples of government disloyalty with Qaumi lashkars and its impact on their lives

3.1.3.1. Adezai Qaumi Lshkar

Adazai Qaumi lashkars which is fighting against the militants in the rural area of Peshawar accused the concerned authorities that they are dishonest and not sincere to counter militancy in Fata. This lashkars is fighting under the command of Haji Dilawar. He said that they are fighting to bring peace and prosperity to their society and country but provincial government is not cooperating with them.

⁵⁶ Ongoing insurgency in Fata is the product of Pakistan policy towards Afghanistan. During the Afghan war of 1980 Pakistan, United States and Saudi Arabia government organized, armed and financed the Afghan groups fighting the Soviet Union Occupation. See for details Khalid Aziz, *Causes of Rebellion in Waziristan*, Regional Institute of Policy Research, Peshawar, March 2007), 40- 43. report is available at www.khalidaziz.com.

⁵⁷ Analysis By Farah Taj, *state of human rights in Fata*", *Replicating The Al Anbar Model in Fata*, Monday 02 Feb. 2009 pakhtunkhwaimes.blogspot.com/2009/02/replicating-al-anbar-model-in-fata-by.html (Last accessed 27/1/2012)

He said:

We have fought the militants in our region for years and hundreds of our men have died. We have suffered economically also and all the KP government can do is withhold the aid that was promised to us,

He accused provincial government that they are not fulfilling their promise to support lashkars economically because they want to fulfill their political interests at the cost of their country. He said missiles and mortars are being fired at them but government is taking no action to protect us. He claimed that the Lashkars had foiled many suicide attempts and had killed many militants, in order to restore peace in society. But on the other side of picture it is quite clear that government is not serious about the future of their people.⁵⁸

The book written by Farah Taj (Taliban and anti-Taliban) makes it clear that why the people of tribal areas are still deprived of their fundamental rights and who is responsible of their miserable condition. In the previous articles we have come to know that lashkars are not responsible violations of fundamental rights of tribesmen and same thing is proved by Farah Taj in this with support of certain evidence which is worth believing.

She supports the idea of Zahid Hussain who is author of *Scorpion's Tail*, he maintained in this book that a treaty was signed by General Safdar Hussain with Nek Muhammad in 2004 and due to formation of this treaty Pakistani people are suffering the recent wave of violence in Pakistan. In the wake of this agreement Taliban leaders were

⁵⁸Bureau report, *Lashkars threatens to stop fighting*, march 4.2011, www.dawn.com/tag/adezai-qaumi-lashkar. (Last accessed 27/1/2012)

given the authority that they can establish their writ in the tribal areas and they are allowed to overpower tribal leaders,

She maintains that the picture which had been posted on the book in which general Safdar Hussain and brigadier Mehmood Shah who was FATA secretary at that time standing with Naik Muhammad in such a gesture which indicates that they are going to deliver them authority of FATA region and Taliban are at liberty to force their rule and regulation over there.⁵⁹

3.1.3.2. Attack on the bus of school going children

Tehriki Taliban Pakistan made an attack on the bus of school going children in Khyber Pakhtunkhwa. In this coward and ruthless activity four students and driver of the bus were killed. These people were in no way criminal. They had committed only one crime that they were children of Kakakhel tribe present at Mani and Adeyazai. The driver was accused of the crime of association. Tehriki Taliban Pakistan had announced it several times that they would not spare any person who would be found of fighting against them or helping army in any sense. These five lost their lives leaving behind five families shedding tears. It is still obscure that what would be the result of operation against Taliban. Whether these sacrifices would yield any positive result or these sacrifices would go in vain. Those persons who have lost their lives they had paid the ultimate price of life without consenting to be involved in the madness. The children who escaped had to bear the psychological trauma. Their physical and most frightening the psychological scars would remain.

⁵⁹Farah Taj, *Taliban and anti-Taliban*, a Research Fellow at Centre for Interdisciplinary Gender Research, University of Oslo, Norway, an MPhil in Gender and Development from the University of Bergen, Norway., (Cambridge scholars publishing 2011), 37, 67

It would have very bad impact on their future life. They may recourse to take revenge from the society at large. The officers or state that is responsible for the protection of these people are not fulfilling their responsibility. . While the children of government officials who are paid every month by the taxpayers to provide them security are driven in escorted vehicles with bodyguards following them, the children of the lashkars members are sitting ducks.

Our state authorities are holding negotiations with those persons who are accused of murdering innocent school children. These tactics of government clearly indicates its hypocrisy. On the one hand they are convincing tribal people to fight against these forces and on the other they are willing to make peace deal with militant after plunging inhabitants of these areas in fire.⁶⁰

3.2 Future of those people member in these groups.

3.2.1. Future animosity between Taliban and anti-Taliban lashkars

People of tribal areas form lashkars because they are feared that terrorists would capture their territory and they would have to lead life of suppressed people. Another reason for the establishment of lashkars is that the army wants to counter Taliban with the help of local people. Lakimarwat is termed among those districts of Khyber Pakhtunkhwa where people voluntarily raised lashkar to counter militants .Taliban were warned by local people either to leave the area or face the music. Another same type of lashkars was arranged in district Hungu, here again people of local area became successful to evict Taliban and maintain peace. The people of Buner formed a lashkars after an attack on the local police

⁶⁰Gulmina Bilal Ahmed, *No rest in peace*, Friday September 16,2011,daily times

station in kingergalli. This upheaval against the militants achieved unprecedented results .It was a noteworthy anti-Taliban rising in Fata to date which encouraged tribesmen to get united against militants and face them courageously.⁶¹

A lashkar of 4,000 armed men raised by the Salarzai tribe launched a campaign against the militants, attacked their strongholds and destroyed their houses and so-called “command centers” in the Bajaur tribal region. Lashkar leaders warned local and foreign militants of dire consequences if they did not leave the area.

On the other hand where lashkars are yielding some positive results they are creating an animosity between Taliban and local people which could last even after the end of war on terror. The reality is now that more than 90 percent of Taliban are locals.

The Taliban reacted swiftly and brutally to the challenge posed by the tribal lashkars in some areas. In Bajaur, the Taliban beheaded four elders from the Charmang as they returned home after attending a jirga convened to plan action against the Taliban In another incident in the same tribal area, 22 tribesmen were killed and 45 injured when a suicide bomber blew himself up at a Salarzai jirga where members of the lashkar were finalizing their strategy after demolishing houses belonging to Taliban fighters. Over 100 people were killed in a suicide attack on an Orakzai Agency jirga which had been convened to form lashkars to clampdown on local Taliban activities. This retaliation clearly shows that people

⁶¹ See generally Mukhtar A Khan, *the role of tribal lashkars in winning Pakistan war on terror*, (publication:terrorism focus,volume:5,issue:40, the jamestone foundation)

of fata and Taliban among those also fighting large number of local people are ready to take revenge from each other.⁶²

3.2.1.1. Impact on the life of near relatives who are not part of Qaumi lashkars [Murder of Abdul Manan (the elder brother of Adezai Qaumi Lashkar chief Dilawar Khan)]

Adazai Qaumi Lashkar which was fighting under the command of Haji Dilawar in suburbs of Peshawar. The brother of Dilawar, Abdul Manan, was gunned down by unidentified men in the limits of Boat Basin Police Station on January 24, 2009 in Karachi. Deceased's son AbidRaza got registered FIR. His family is not however sure that who is responsible for his murder. However his brother Dilawar told police that he got a call from within 15 minutes of his brother's murder and the person who was calling claimed the responsibility of killing and said that Taliban are behind the murder of his brother. They also threatened to bomb Manan's funeral and his house when people came to offer condolences. Adulmanan was not part of the lashkar he was living in Karachi with six sons and two daughters, Manan, 55, was the oldest member of the family and worked at Haroon Oil Mills as field officer. He had been living in the city for 30 years. The persons like Manan are not part of tribal militias but they are suffering due to attachment of their relatives. His children also got affected by the murder of their father.

One of his associates said, adding: "Manan was killed because of his brother's foolishness. He has never been involved in any enmity with anybody in Karachi."

⁶² Ali HazratBacha, *Suicide Attack on Funeral Prayer Leaves 43 Dead, 52 Injured*, Dawn, March 10, 2011

Though this is the one case of target killings by militants in which they punished a person on the pretext of vicarious liability. Due to association of one person with lashkars how many lives had to bear the consequences? They were punished for the sin which they have not committed. Earlier the Crime Investigation Department (CID) had arrested Hakeemullah Swati, a member of the Tehrik-i-Taliban Pakistan's Fazlullah group, from Orangi Town. He was said to have beheaded a militant for being an "informant of intelligence agencies".⁶³

3.2.2. Retaliation of local against local, it could result in civil war

Following the strategy of US in anbar,Iraq,where head of American forces in Iraq,provoked the local people to raise lashkars against forenignelemnts of Al Qaida in the village,Pakistani policy makers used the same tool to sweep local militants by using local Lashkars.Consequently protest was raised from different factions of civil society that this vague strategy would result in civil war and total destruction.

Our government does not consider the sensitivity of situation and tries to use one formula for all. When first time Osama entered in Pakistan, formation of lashkars was successful under umbrella of government as they succeeded to exterminate Osama and his companions from the tribal region and they also demolished houses of those who gave them shelter. But circumstances took a twist with passage of time and Al Qaida reunited local people in its militant wings, now 98 percent of the militants are local and their stakes are interlinked with locals.

⁶³Fawad Ali Shah and Manzoor Ali Shah, *Long arms of the outlaws*, Fawad Ali Shah and Manzoor Ali Shah ,published in the express tribune on june 8,2010

Further ground realities are entirely changed. At that time issue was only in Khyber agency, but now epidemic has spread whole tribal belt. It means area of operation has widened its range, which further explains total failure of political and civil administration. Secondly every bullet will be fired from a local on a local that will ignite civil war. Thirdly, people have no more trust in government, when USA, for whom Pakistan indulged in the war, is engaged in backdoor diplomacy with militants. If USA leave and Pakistan is left with no support, the future of these lashkars seems bleak. Moreover government is unable to fulfill their economic and domestic needs. Further some factors have converted Taliban into foes of their own land, like FCR in the region, unemployment resulting in a sense of deprivation, Uncertainty, frustration and availability of only lower rank posts in forces. Last but not the least is a sense, produced through historic phenomenon, that of invincibility.

Social fabric of tribal area has been destroyed. Society is divided into militants sponsored by AL Qaida and lashkars rose by the government. Even members of one family are suffering from deep division among them three brothers are divergent to three different, one is militant, Second one is member of lashkars and third want to remain neutral. A vibrant wave of fear has engulfed the whole atmosphere.⁶⁴

There is another view point of some tribal elders that government has failed to protect civilians that's why they have formed lashkars themselves to counter atrocities of Taliban. Malik Siraj, an elder of Salarzai tribe in Bajur said "we are only protecting ourselves because the state has failed to protect us. We are not fond of violence or militancy". Over the past few years, tribes have organized lashkars in Bajur, Peshwar, Dir, Buner,

⁶⁴Salamanshahzad, the writer is a khayberpakhtankawa based freelance journalist, *Pakistan: local lashkars or anarchy*, fatalord.blogspot.com (Last accessed 23/01/2012)

Lakkimarwat and some other parts of Khyber agency in particular with the support of government. Taliban have brutally targeted the members of lashkars, their families and property. Hundreds have been killed in target killing and bomb explosions and children have been kidnapped. Some sagacious experts are fearing, a civil war in the wake of this militancy.⁶⁵

When government is deliberately handing over weapons to civilians and strengthen them, this policy will surely fire back as our past policies regarding Taliban fired back. Deadly weapons make the groups uncontrolled and government will seek closed street to escape when it will be unleashed. Same happened in Karachi since 1970s and now violence has become a potent challenge for Punjab, Fata, Baluchistan and KPK. Analyze the whole paradigm, the only cause of this bloodshed, violence; target killing throughout Pakistan is gun in wrong hands.

Now the question arises that how the civilian became militants? What factors made tribal militias? And why did these toxic entities acquire this massive weaponry? Answer is; state itself. State weapon fed the society and society is now a gun powder can be ignited by the slight flame. Therefore, it is strongly apprehended that civil war could erupt in tribal society.⁶⁶

⁶⁵ By Zia Ur Rehman, the writer is a journalist and researcher and works on military and human rights , *Tribal militants are a double edged weapon*, www.theFridaytimes.com (last accessed 28/12/2011)

⁶⁶ Salaman Tarikkurashe , writer is a marketing consultant based in Karachi, *The stench of failure*, published in The Daily Times, Saturday, September 17, 2011

3.3 Village Defense Committees (lashkars) a wrong approach to a very real problem.

3.3.1. Lashkars are incapable to counter Taliban

Our army is applying the formula to evict militants from tribal areas with the help of inhabitants of these areas. Despite the fact that the constitution of Pakistan forbids to use private militia or civilians to enforce law and order in society with the help of private armies our government is depending upon private lashkars to bring peace and stability in society.⁶⁷ Once it was said by our force that the private lashkars working in South Waziristan playing vital role to throw hardliners out from the area. They claimed that MaluviNazir accompanied by his companions was expelled by local people when the military was providing only supportive role and now the area had been cleared of the militant groups. Unfortunately these all formidable boastings came to ruin when Later on Ilyas Kashmiri was murdered in subsequent drone attack in the same area. This clearly indicates that lashkars are not achieving desirable results .The composition of these lashkars lacks in different angels therefore they cannot counter insurgency effectively. These inefficiencies are being discussed in following headings.⁶⁸

3.3.2. Financial problems

The lashkars which are working in these areas comprised of thousands of people. They are headed by notables of the area; a 5,000-strong lashkar may consist of 20 to 30 notables. The bulk of the lashkars consists of peasants, daily wagers and poor people. The

⁶⁷ *Constitution of Pakistan 1973, Article 256*

⁶⁸ Khalid Munir "*North Waziristan operation a wrong approach*", the writer is a retired army officer who served in fata and Khyber pukhtunkhwa, published in express tribune June 15, 2011.

mission given to them is also vague so it cannot provide the kind of support against terrorists that the army may require. They are not economically strong enough that they can bear all the expenses of war and run their houses as well. Our government who employed them for their own benefits is also reluctant to provide them enough financial support.

3.3.3. Lack of proper training

Pashtun are fighting collectively against an unknown and unidentified enemy is a completely different game. It is a well-established fact that their enemy is well trained and well equipped as compared to tribal people. They are taking financial support from different sources. Pashtun civilians are not trained enough to fight battles against such an enemy who is well aware of war tactics and also can bear the hardships of war easily then Pashtuns.

3.3.4. Problem for government

It is not easy for government to sustain lashkars for a longer period of time. People who are participating in lashkars have to give up their daily livelihood for it. Therefore they need monetary support from the government in order to run private militia as well as their family. When they do not get proper back up whether it is in the shape of monetary compensation or moral support they lose enthusiasm and start thinning out. It provides an opportunity to terrorist to commit atrocities on people of lashkars and their families and create a sense of terror among them. Furthermore it is onerous for a country like Pakistan with such a weak economy to sustain lashkars.⁶⁹

⁶⁹DaudKhattak ,*The Risks of Supporting Tribal Militias in Pakistan*, Mar 01, 2011 ,<http://www.ctc.usma.edu>

3.3.5. Ambiguous role of military and its impacts on local tribes

Elders of local tribe held a meeting to understand that the factors which are aggravating the suffering of tribal people. They accused military over passive and deregulatory attitude. The participants implored and requested provincial and federal government to withdraw security force from the area. They declared that rights of tribal people are being suppressed by the security forces and their sympathies are with terrorist.

3.3.5.1. Situation of Bunir

This report enumerates that military officials are involved in promoting terrorism in Bunir. Brigadier In charge is alleged to be supporting the terrorists, misbehaving with the local leaders and people. A particular religious cum political party is friendly with terrorists and some military officials are having pleasant relation with religious party in question. People affiliated with said Party and its workers are present on check posts with military in Bunir. It seems that people of Bunir are not less than people of Swat in terms of slavery of Pakistan Mulla and military alliance against Pakhtun.

3.3.5.2. Situation of Dir and some others parts of Khyber pakhtunkhwa

Malik Zarin a known pro terrorist person and military colonel are having friendly relation and a harmony is witnessed between them. Malik Zarin has been a famous Afghan war lord who has a strong linking with a pro terrorist religious organization and fought in Afghanistan during 80s. This man has occupied the lands of the people in dir and is still very much active to promote terrorism in area.

People held Jirga's several times against the atrocities but to no effect. The political parties are weak while religious parties, organizations and Jihadi outfits are active and getting strength with each passing day. Terrorist has kidnapped several people of Amnlashkar in Kohistan, District Dir/ Chitral.

The pro terrorist man is very powerful who is strongly supported by the military and a pro militant religious organization in area. In mid nights aerial firings are heard which further frighten the residents and disturb the sleeps of the people especially women and children, skirmishes often occur between police force and military personnel. Similarly in Peshawar, the situations are getting worse and people are worried about their future particularly of their children.

District Peshawar is surrounded by FATA where so called fake operations against militants are being carried out by the military. The terrorists often come to Peshawar and its suburbs where they terrorize people and in few days several schools were also blown up and others were warned to be exploded. Law and order situations are getting worse and many people were kidnapped and are being abducted with each passing day.

Government tried to form a lashkar in Mehsud tribe but the people rejected it saying it is unacceptable to them as it means that lashkar people could be easily targeted by terrorists and the government gives no protection to the people in lashkar. It is evident that people have no trust in what the government is saying to them.⁷⁰

⁷⁰Reported by zarali khan musazai (afridi) chairman tribal NGOs cosotium Peshawar/fata "Report of amnthreek steering committee", posted on sep,2010, www.tncfata.blogspot.com (Last accessed on 27/12/2012)

3.4. Issues of International Humanitarian Law

3.4.1. The Distinction between Civilians and Combatants

International Humanitarian law (IHL) which is termed as the law of war regulates the conduct of hostilities in armed conflicts.⁷¹ It is not the subject of IHL to decide whether the war which was invoked it was law or unlawful. It provides rule in order to humanize War.⁷²

The basic purpose of international humanitarian law is to humanize the conduct of hostilities when war has broken out. It states that difference should be maintained between combatants and civilians (who do not directly participate in hostility). Therefore forces are not allowed to attack non-combatants. It is the principle of humanity which makes it necessary to abide by principle of distinction.⁷³ Additional protocol 1 state that a person who is performing in the organized armed forces should be under a certain command and who is responsible for all their acts.⁷⁴

⁷¹ IHL recognizes two types of armed conflicts one is reckoned as international armed conflict (IAC) and other is named as non-international armed conflict (NIAC). IAC denotes a conflict between two or more states or between state and recognized liberation struggle. NIAC on the other hand includes hostilities between government armed forces and recognized armed groups or between such groups within such state. See for details: Hans-Peter Gasser, *Introduction to Humanitarian Law* (Haupt: Henry Daunt Institute, 1993).

⁷² International Law relating to armed conflicts is divided into two main branches: the law of resort to war (*jus ad bellum*), and the law of conduct of hostilities (*jus in bello*). The former gives rule about the legality or illegality of wars, while the latter governs the conduct of hostilities. See for details: Hans-Peter Gasser, *Introduction to Humanitarian Law* (Haupt: Henry Daunt Institute, 1993).

⁷³ Article 48, 51(2) and 52(2), Additional Protocol 1. The principle of distinction as laid down in article 48 of additional protocol 1 is recognized as rule of customary international law, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (New York: Cambridge University Press, 2009), 26.

⁷⁴ Art 43(1) AP I, customary IHL, above N 7, vol 1, rule 4

3.4.2. Legal Status of the Vigilantes

Member of militias and volunteer corps other than the regular armed forces should abide by the following principles in order to have the status of lawful combatants .a) responsible command b) carrying affixed distinctive signs recognizable at distance c) carrying arms openly d) operating in accordance with the laws and customs of war.⁷⁵

3.4.2.1. Example of Nepal

Amnesty International in his report says that, emergence of armed civilians groups or vigilante groups are very threatening. These defense forces are aggravating existing fault lines between citizens and state and contributing to an increasing number of human rights abuses

it is envisaged that state is clearly sponsoring these groups as well as with training support from military. It is contributing to increase intensity of conflicts and casualties of civilians increasing day by day. Due to participation of civilians in armed conflicts the militants are directly targeting the families of those who are fighting against them and supporting state forces to fight them.

Amnesty International recommends that Law enforcement agencies should not involve civilians in hostilities in order to achieve their objectives and they should carry out their mission in accordance with International Humanitarian Law (IHL) standards. Amnesty

⁷⁵ Art 1 H iv R; Arts 13(1)(2)(3) and (6) GC I and GC II; Art, 4A(1)(2)(3) and (6), GC III

International urges Nepal Government either disband the existing village defense forces or fully integrate them in to the security forces.⁷⁶

Conclusion

Fata was considered one of the peaceful areas of Pakistan, although Pakistan government has absolved itself of the liability of maintaining peace in Fata since the birth of Pakistan. Lashkars played an important role in maintenance of peace. After the eruption of war on terror a completely new task had been assigned to these lashkars, the task of combating Al-Qaida, Taliban and other foreign elements which are trying to occupy these areas. Now the people of Fata are frequently suffering the violation of their fundamental rights both at the hands on miscreants and Pakistani forces and to some extent now members of lashkars are also involved in it. The war on terror which was started against militants in Afghanistan has been extended to almost across the Pakistan. Pakistani government is playing double game and making the fuel of fire its own public particularly people of tribal region. In order to grab money from America on the one hand and to throw dust in the eyes of its own public and protect Taliban leadership they are making so called military operations in the region. Due to their insincerity the life, liberty, honor, education, healthcare as well as means of livelihood of people are at stake. And under such circumstances these lashkars cannot yield any result. Formation of these lashkars is an obvious violation of fundamental principles of International Humanitarian Law (IHL). It has become difficult for Taliban and security forces to abide by principle of distinction in order to protect civilians and humanize conduct of hostilities. They are not working under a

⁷⁶ The emergence of government backed vigilante groups in Nepal", *Amnesty international reports press release* 08/03/2005. <http://www.raonline.ch/pages/story>. (Last accessed 10/02/2012)

responsible command, not wearing proper uniform so that they can be distinguished, not carrying arms openly and above all they are not properly trained to fight in war like situation against a well-equipped and well trained enemy. At the present among Taliban, 90 percent of people are local people. Therefore people are strongly divided over the issue that whether they should support Taliban or Pakistan government. They are suffering due to atrocities of Taliban and disloyalty of military. The accumulation of weapon in the hands of civilian and fight of local against local can lead us to civil war.

CHAPTER 4: Islamic law and the concept of Vigilantism

4.1 Does Islamic law support vigilantism

4.1.1. Islam orders conditional obedience of the ruler

Islamic law is very strict about the observance of the Muslim rulers; adherence to Muslim ruler is “Wajib”, when he is ruling according to the injunctions of Islam.⁷⁷

Allah the Exalted says in Quran:

O you who believe! Obey Allah and obey Messenger Muhammad (PBUH), and those of you (Muslims) who are in authority. And if you differ in anything amongst yourself, refer it to Allah and His Messenger (PBUH), if you believe in Allah and in the Last Day. That is better and more suitable for final determination.⁷⁸ (Surah an-Nisa, Verse 59)⁷⁹

In the abovementioned verse the verb (obey) is used only after the order to obey Allah and before the order also to obey Prophet Muhammad (PBUH) but it is not used

⁷⁷ Muhammad Mushtaq Ahmed, *Jihad, muzahmataurbaghawat*, (Gujranwala: Al-Shariah Academy, 2008, p 597

⁷⁸ By Dr. Muhammad Taqi-ud-din-Al Hilali and Dr, Muhammad Mushin Khan, *Interpretation Of the meaning of the Noble Quran in the English language*, pp,78

⁷⁹ *Sura an nisa*, verse 59

before the direction to obey your ruler. The reason behind this is that the obedience of ruler is actually not wajib. It becomes wajib when he is ruling according to principles of Islam. Ruler of Islamic country does not have authority to abrogate, annul, amend and change that law which has been settled by The Allah Almighty and transmitted to us through Prophet Muhammad (PBUH). If he attempts to do so, then his authority should not be acceptable. It is the prime duty of Muslims to obey teachings of Allah almighty and His Prophet (PBUH), thereafter comes the obligation to obey ruler. If they do not call people towards the disobedience of Allah the Exalted and His Prophet Muhammad (PBUH) then it is obligatory for Muslims to obey him.⁸⁰

According to a very famous Hadith of prophet (PBUH)

Who obeys me he obeys ALLAH, and who obeys his ruler he obeys me, and who disobeys his ruler he disobeys me.⁸¹

A narrator said that once the prophet (PBUH) called us to pledge allegiance to him which we did. He said that the following things were asked to pledge.

We shall listen and obey whether willingly or unwillingly, whether we are in difficulty or at ease, and even when we do not receive what is our right and that we shall not contest the authority of our ruler. You can only contest their authority if

⁸⁰ Abridged by a group of scholars under the supervision of Shaykh Safiur-Rehman-Mubarakpuri, *Tafssir ibn kathir abridged volume* Darulislam publisher Lahore, pp 495,496,497

⁸¹ Sahih Al Muslim, *Kitab Al Amarah, chapter wajub tait al amar fi ghair masiat watahrimaha fi masiat*, hadith 3418

you witness outright kufar in any matter from them, in which you have clear evidence from God.⁸²

So it is clear that we must obey the Muslim rulers in everything that does not entail disobedience to Allah, and we must refrain from rising up against them even if they fall short of what is expected from them. The Prophet Muhammad (Peace be upon him) said:

There will be rulers over you. You will agree with some of what they come with and reject some of it. Whoever rejects what must be rejected will maintain his innocence and whoever hates it will maintain his innocence. However, those who accept (what should be denied) and follow the ruler will be sinners.”

The Companions said: “O Messenger of Allah, shall we fight these rulers?”

He said: “No, as long as they pray.”⁸³

According to meaning of another Hadith that when you are satisfied or agree upon the authority of someone and a person comes to you in order to revoke your unity then it is your duty to kill such person.⁸⁴

⁸² *Al-Bukhari, Al Jami al-sahih*, 1217, hadith no 7056

⁸³ *Sahih Muslim, chapter wajub al inkarala al amar femaukhalif al sharah*, Hadith 3445

⁸⁴ *Sunanabidaood, kitab al malaham, chapter al amar wanahi*, hadith 3781

We cannot infer from the text of these traditions that we should not criticize cruelty of ruler. Hazrat Muhammad (PBUH) said “*to say something right in front of a ruthless ruler is termed as superior type of jihad*” as compared to any other category of jihad.⁸⁵

So in light of these traditions of Holy Prophet and verses of Holy Quran it can be concluded that it is unlawful to rebel against the rulers even if they are oppressive as long as they do not exhibit outright unbelief. It is responsibility of every believer to point out what is wrong according to principles of shariah but he could not take up weapon in order to depose the present ruler and its government provided that they are sure that bloodshed occurring now is much greater than that what would occur in order to throw out the present regime.⁸⁶

4.1.2. Who is allowed to use force in order to implement law?

Sharaih enjoins that “*Amr Bil Maruf Wa Nahi Anil Munkir*” is responsibility of state as well as individual Muslim living in that country. Everybody is directed to perform his function within certain limits which have been fixed by Fiqh, and he is duty bound to endure all type of troubles in order to accomplish this task. Individuals do not have authority to suppress or exterminate negative actors by using force.⁸⁷

⁸⁵ *Sahi al bukhari, Chapter hukum min farqamar al muslimin wahuwamujtama*, hadith 3443

⁸⁶ Muhammad Mushtaq Ahmed, *Jihad, muzahmataurbaghawat*, (Gujranwala: Al-Shariah Academy, 2008, pp 599,600,601)

⁸⁷ *Ibid*,602

This principle has been narrated in Quran in the following words

And who is better in speech than he who says my lord is Allah (believes in His oneness), and then stands firm (acts upon His order) and invites (men) to Allah (Islamic monotheism, and does righteous deeds, and says: I am one of the Muslims. the good deed and the evil deed cannot be equal. Repel (the evil) with one which is better (i.e. Allah orders the faithful believers to be patient at the time of the anger, and to excuse those who treat them badly) then verily he, between whom and you there was enmity, (will become) as though he was a close friend. But none is granted it (the above quality) except the owner of great portion (of happiness in the hereafter, i.e., paradise and of a high moral character) in this world. And if an evil whisper from shaitan (Satan) tries to turn you away (from doing well), then seek refuge in Allah. Verily, He is the All-Hearer, the All-knower.⁸⁸

Invite (mankind Muhammad PBUH) to the way of your Lord (i.e. Islam with wisdom (i.e. with the Divine revelation and The Quran) and fair preaching, and argue with them in a way that is better. Truly, your Lord knows best who has gone astray from His path, and He is the best Knower of those who are guided.⁸⁹

After the migration of Madinah people were ordered to form groups in order to preach what is good for them and what is bad

⁸⁸ *Surah fussilat, Verse 33-36*

⁸⁹ *Surah Al- Nahil, Verse 125*

Let, there arise out of you a group of people inviting to all that is good (Islam), enjoining Al Maruf (i.e. Islamic monotheism and all that Islam orders one to do) and forbidding Al Munkir (polytheism and disbelief and all that Islam has forbidden).And it is they who are successful.⁹⁰

Where Quran orders fulfillment of this sacred obligations by public it imposes also certain duties on the government of state and defines its character in the following words of Quran

Those (Muslim rulers) who ,if We give them power in the land,(they) enjoin Iqamat-as-Salat[I,e to perform five compulsory congregational; salat(prayers) (the males in mosque)],pay the zakat(obligatory charity) and they enjoin Al Maruf (i.e. the Islamic monotheism and all that islam orders one to do),and forbid Al Munkir(i.e. disbelief, polytheism and all that islam has forbidden[i.e. they make the Quran as the law of their country in all the spheres of life].And with Allah rests the end of (all) matters (of creature).⁹¹

Quran has also defined the hypocrites. Quran enjoins that it is the characteristics of Muslims to call public toward good and stop from bad but hypocrites work with opposite tendency and they struggle to spread evil in place of virtue.

Quran has also made it clear that if Muslims renounce their duty and do not perform the function of "*Amr Bil Maruf Wa Nahi Anil Munkir*" and in the result of their negligence riots or uncertainty prevails in society they would also be liable along with miscreants and public will collectively bear the wrath of Allah Almighty.

⁹⁰ Surah Al- Imran, Verse 104

⁹¹ Surah Al- hajj, Verse 41

Thus in the light of above mentioned traditions and their meaning inference can be drawn that it is “wajib” on every Muslim to preach good and stop what is bad according to shariah. On the other hand it is necessary to determine whether he can use force to perform his duty or not. In the light of some religious and legal limitations the obligation of “*Amr Bil Maruf Wa Nahi Anil Munkir*” has been divided in three categories. People, who have the responsibility to perform this function, under which category they fall can be identified with the help of these limitations. It would be discussed in the light of following Hadith of Prophet (PBUH):

whoever among you see an evil stop it with hand and if you do not have the capacity then condemn it verbally you are not in position to denounce it even verbally then at least termed it bad in his heart and he should also made a decision in his inner self to purge society from this evil and it is the weakest degree of belief or faith.⁹²

Every Muslim has duty to preach well and denounce what is bad and preach other to refrain from doing this. But here we will only make an analysis of first type “to stop evil by using force “that who can use force to exterminate evil from society.

Fundamental Principle is, that, in order to stop evil by force someone should fulfill requirement of lawful authority we can use this authority only against those who are subject

⁹²*Sahih muslim, kitab al iman, chapter by ankon al nahian il munkir min Iman*, Hadith no 17057

to it. This authority originates in two ways, either by the order of Shariah (Father has authority on his minor child) or by an agreement (contract of agency).⁹³

A person who has knowledge of Religion (Deen) believes that an act is in consistent with the parameters described by Islamic Law. He has permission to renounce and declare it illegal and he can struggle in order to frame a general opinion against it. But he cannot use force to stop such acts, if he has no legal authority to use force.⁹⁴

But the problem may arise when the people who are in authority do not perform their duties and evil is continuously prevailing in society. On the other hand the people who are not in authority are willing to relinquish this established norm of society.

Under such a situation Imam Abu Hanifah has maintained that people has right to challenge the authority of these people if they can facilitate public with pious leadership and damage which would be occurred in order to change the existing order whether it is of life, property or dignity should be less than that which the public is suffering at the present.

⁹³ By Abu-Al-Abbas Bin Idress Al-Qarafi, *Al-Ahkam Fe-Tameez Al-Fatawâ Anil-AhkamWaTasarfaat Al-Qazi andImam*, (Barut: Daar-Ul-Bashiar Al-Islamia, 1416 Hijra)

⁹⁴ See generally: for details of rights and duties of lawyer (Wakeel): *Almabsut, Kitab Al Wakalat* volume 9, P 193, 194.

4.2. Conditions which permit vigilantism in Islam

4.2.1. Logic behind prohibition of vigilantism in Islamic law

We have already established that Islam is strictly against the vigilantism and it condemns all forms of vigilante justice. According to some scholars of Hanfi fiqh the reason behind the prohibition of using force against those persons who are not behaving in accordance with shariah is that it would lead towards anarchy and disintegration in society. The argument which they put forward is that no Muslim citizen is allowed to revolt against the state unless he is supported by the majority of people. The reason for this is, if he does not have support of majority then revolt against state can lead people towards anarchy. It would not be a revolt against the state rather it would disturb the peace and tranquility of society which is termed by The Quran as "*Spreading lawlessness and anarchy in society*"⁹⁵ and it is punishable with death. It is evident from the following Hadith of Holy Prophet (PBUH):

When you are organized under the rule of a person and someone tries to break your collectivity apart or disrupt your government, kill him.⁹⁶

On the other hand Muhammad Mushtaq (Professor in International Islamic University Islamabad) does not accept this logic. He narrates that the use of force may lead to anarchy therefore it may be one of the reasons for the prohibition of use of force by an

⁹⁵The Quran, 5:33

⁹⁶Muslim, *Al-Jami' al-sahih*, 832, (no. 4798).

individual or a group. It is not the fundamental principal for the prohibition, rather he states that as a man can force only that person to do something over which he has authority but cannot a person who is not under his authority. Muhammad Mushtaq says that the fear of anarchy is not at the essence. It may be considered wisdom but not the underlying principle. He considers that principle behind this is, he does not have authority to force someone. This rule would be followed by Muslims that when they do not have authority they cannot stop anyone. The same rule is applicable while differentiating between the function of "Qazi" and "Mufti". Qazi can force someone to stop from doing something or in order to do something because he is an official of state and it gives him authority to enforce rule and regulation in state. Mufti who does not have authority can only make public opinion in order to stand up against something wrong but cannot force somebody to do or not to do something because he lacks authority.⁹⁷

4.2.2. Use of force in order to stop evil

According to Islamic law it is obligatory on every Muslim to do good deeds and forbid bad deeds. It is the collective obligation of Muslim nation as well as leader of Islamic State (Caliph). Therefore it is individual responsibility of every person (Muslim) to preach such deeds which are bountiful and to command against those which are unfavorable. Muslim is ordered by Almighty ALLAH to face all the difficulties and remain within the limits prescribed by Islamic Law while performing this duty. If someone does not submits

⁹⁷ *Jihad, MuzahmataurBghawat*, pp 607

himself to what is true then no one has right to use force against him, It is described as principle of Amar BilMaroofWaNahi Anil Munkir in Islamic Literature

Fundamental Principle is, that, in order to stop evil by force someone should fulfill requirement of lawful authority we can use his authority only against those who are subject to it. This authority originates in two ways, either by the order of Shariah (Father has authority on his minor child) or by an agreement (contract of agency). The same rule is applicable while differentiating between the function of "Qazi" and "Mufti". Qazi can force someone to stop from doing something or in order to do something because he is an official of state and it gives him authority to enforce rule and regulation in state. Mufti who does not have authority can only make public opinion in order to stand up against something wrong but cannot force somebody to do or not to do something because he lacks authority. Question arises when people who are in authority do not work effectively in order to stop bad what is continuously happening in society and consequently the people who do not have authority want to purify state from all bad elements and make it peaceful and worth living.⁹⁸

4.2.3. What is preferable in shariah "death" or "silence" while state rulers are promoting evil?

A Muslim is exempted from the liability of "*Amar bilmārufwānahianilmunkir*" when he has fear that he would be murdered. If we analyze the same Hadith of Prophet (PBUH) it is obvious from the context that a person who being aware of the danger do not hesitate to perform his duty and met his ultimate fate (death) he would be termed among the rank of shaheed,s. Fuqah are unanimous on the issue that a single Muslim is allowed to attack

⁹⁸ This essay "*lal masjid and hanfifiqah*" was written by Muhammad Mushtaq Ahmad and published in magazine "al-shariah" in 2007

lashkar of infidels solely when he is sure that he can cause a severe damage to them. On the other hand in case of Muslims who are performing illicit acts here he is allowed to advise them to refrain from doing such an act although he has fear that they will kill him. These two cases are differentiated by Sarkhasi in these words:

When he knows that he cannot create a strong fear among them then he is not allowed to attack because in this way he will be murdered but his act would not strengthen the religion (Islam) and ALLAH the Exalted has said that: do not kill yourself. On the other hand if he come across the Muslim who are performing illegal acts now he is free to perform his duty although he knows that he would not be able to curtail them and also fear of his death is present. In such a situation his death is preferable. He has choice to remain silent. The logic behind this rule is that because these people are Muslims and have belief in Islam although their deeds are wrong but it is probable that their preaching can affect them.⁹⁹

Thus in this way verbal advice is preferred in Islam although to remain silent is also a choice. So it is obvious that Islam strongly denounce the use of force by that person who do not have authority. But the question arises when ruler or state has failed or not willing to enforce rule of law in society or on the other hand anyone who do not possess authority did any act by which he challenge the writ of state what would be its result.

⁹⁹ Abu bakar Muhammed bin abisahl Al sarkhasi, *Sharah Al Kitabalsair al kabir*, chapter min yahillaho al khamswa al sadaqat, jild 1, pp116

4.2.4. Shariah on what basis adopt a lenient view against vigilantes

Mal is of two kinds, Mutaqawim (property which has value in Islamic Law) and GhairMutaqawim (property which do not have value in the eyes of Islamic Law) for example wine may be a Mal in the eyes of people but it is not in a mal according to Shariah therefore it is Mal GhairMutaqawam. Therefore if a Muslim possess wine and other Muslim get it wasted, here according to Hānfi fuqah he is not liable to pay daman (compensation). If the wine was kept in such a pot which was not only used for keeping wine but also used for other purposes which are just according to Shariah, he will liable to pay value of this pot. On the other side of picture if wine is in the possession of non-Muslim and any Muslim wastes it he will have to pay its compensation because it was not Mal Mutqawam in the eyes of Shariah but it is Mutaqawim in the eyes of non-Muslims. The Muslim would pay only its compensation not the wine in original form because Muslim cannot make anybody owner of wine.¹⁰⁰

The same situation arises when somebody breaks musical instrument of somebody. If these instruments are in the possession of Muslim and are damaged by a Muslim then no Daman is obligatory only the value of wood would be paid of which they are made. If same instruments are in the possession of non-Muslim and a Muslim damages them here the Muslim is obliged to pay full compensation to non-Muslim.¹⁰¹

¹⁰⁰ *Al-hidaya, kitab al ghasab, bab fi ghasb ma la yataqawim*, jild3, pp304

¹⁰¹ *Ibid*, pp307

4.2.5. What would be punishment or fine for violating the law?

Now question arises that under such a situation when a person has apparently violated the law of state what would be punishment or fine for violating law. He violated the law and promoted vigilante justice in society. He does not have any authority to punish others; he forcefully attempted to stop a misdeed. What is the duty of state under such a situation? Sarkhasi says that by doing such an act he stepped in to the shoes of government, therefore authorities has power to punish him and power of ruler to punish such an activity is called “siyasah”

It is among the fundamental duties of the existing ruler to preserve society from the menace of anarchy and disintegration. In this context Shariah has provided him authority to curb such an activity. He is authorized to award proper punishment to such an actor. Ruler by keeping in view the crime can change the nature of punishment (he can enhance or decrease the term of imprisonment or fine). He has the authority to pardon such criminals. It is the duty of ruler to narrate a proper method of taking evidence in such a case. There are a number of acts which are forbidden by Shariah but no punishment is fixed in Quran and Sunnah to punish them. Ruler has power to make legislation under such circumstances. This method of legislation in order to punish those crimes for which no punishment is fixed is called “siyasah” and the purpose behind this type of legislation is extermination of anarchy and disintegration from society. In the light of this principle Hanfi fuqah has determined the punishment of homosexuality. They declared that the *Hadd* punishment is not enforceable in such a case. But the companions of prophet Muhammad (PBUH) strongly condemned this

act and maintained that death penalty should be granted to them in horrifying manner. Therefore Hanfi fuqah are unanimous to grant them siyasah death penalty.

Here it should be made clear that under the heading of siyasah ruler does not have absolute authority to punish his opponents in order to curb anarchy. This right of ruler has certain limitations under the general principle of Shariah. While awarding punishment under the auspices of siyasah he has abided by certain principles.

What is the nature of offence? Whether the accused was provided an opportunity to establish his innocence? Whether the parameters of justice were fulfilled? It should also be considered that punishment should not be severe as compared to crime. In the present era it is also obligatory to fulfill requirements of criminal and constitutional law.¹⁰²

4.3) what does Islamic law states about state sponsored vigilante groups?

4.3.1. Islam does not promote violence and orders justice in society

Islam is a religion of peace and condemns any kind of violence and extra-judicial killings of the people. In fact, there are lots of verses in the Quran which strongly support this claim of Muslims. Islam does not allow Muslim ruler to become partial and promote injustice in society. Allah the Exalted says in Quran:

¹⁰², *Jihad, muzahmataurbaghwat* , pp. 685,686,687

God commands you to hand over the trusts to their rightful owners and when you judge between men, pass this judgment with fairness. Indeed this is from God an excellent admonition. Indeed, God is He who hears and sees all things.¹⁰³

A look at the context of this verse tells us that it occurs right before the verse in the basic principle is defined that it is obligatory on every Muslim to obey his ruler unless he commits kufur. Imam Amin Islahi comments on the above mentioned verse in following words:

This verse explains the most important aspect of the trust as well as an explanation of the most important responsibility which is incumbent on the political authorities. It is the responsibility of the ruler that he should be just and fair while deciding the disputes of general public. He is not allowed to discriminate between rich and poor or the upper or the lower class. Partiality and bias is also strongly denounced in this verse. No power or influence, greed or fear of any kind should affect the justice in society. In this verse it has also been explained that a just ruler would be rewarded on the Day of Judgment and an unjust ruler will have to bear the wrath of the Almighty. The attribute of the Allah Almighty mentioned at the end of the verse (on who hears and sees all thing) caution us that even the most concealed injustice is in his knowledge.¹⁰⁴

Allah says in Quran

Because of that, we ordained for the children of Israel that if anyone killed a person, not in retaliation of murder, or (and) be spread mischief in the land, it would be as if he killed all mankind. And if anyone saved a life, it would be as if he saved the life

¹⁰³ *Surah an- Nisa, Verse 58*

¹⁰⁴ *Tadabur al Quran*, by Amin Ahsan Islahi vol 2, pp323

of all mankind. And indeed, there came to them our messenger with clear proofs, evidences and signs, even then after that many of them continued to exceed the limit.¹⁰⁵

After analyzing the above verse we may conclude that ALLAH abhors violence. This quotation implies that, if someone kills a person unlawfully, it is like destroying a whole nation. Muslims are not allowed to kill anyone whom Allah has forbidden, except for a justice and the law.

In another verse, Allah says:

And do not kill anyone whose killing Allah has forbidden, except for a just cause. And whoever is killed wrongfully (intentionally with hostility and oppression and not by mistake), we have given his heir the authority to demand the law of equality in punishment or to forgive, or to take blood-money. But let him not exceed the limits in the matter of taking life.¹⁰⁶

It is clear from the above verses Islam is completely against violence and killing of a person without any just cause.

There are a lot of authentic Hadith from the most reliable book of Hadith which are also evident that Islam is a religion of peace and tranquility, In Sahih Bukhari:

The Hadith (saying of the Prophet) was narrated by Ibn Abbas (RA), the prophet said,

¹⁰⁵ *Surah al Maida*, verse 32

¹⁰⁶ *Surah Al Isra*, verse 33

The most hated persons with Allah are (i) A person who deviates from the right conduct (i.e. an evil-doer) in the sanctuaries of Makkah and Al-Madi..... (ii) A person who seeks that the tradition of the period of ignorance should remain in Islam (iii) and a person who seeks to shed somebody's blood without any right¹⁰⁷

In another narration from Sahih Al-Bukhari:

Abdullah Ibn Amir narrated that the Prophet (PBUH) says “whoever killed a person, having a treaty with the Muslims, shall not smell the smell of paradise, though its smell is perceived from a distance of forty years.”¹⁰⁸

These Quranic verses and Hadith quoted above do not allow Muslims to engage in violence or terrorism; rather, they are warning against violence or terrorism.

4.3.2. Prohibition of extrajudicial killings, kidnappings and subjugation of property of a citizen and Islam prohibits violating sanctity of Life, Property and dignity of a person

Allah Almighty has laid down in the Holy Quran:

Anyone who kills a believer deliberately will receive as his reward (a sentence) to live in Hell for ever. God will be angry with him and curse him, and prepare dreadful torment for him.¹⁰⁹

Prophet (PBUH) while addressing Farewell Hajj, he said:

¹⁰⁷ *Sahih Bukhari*, Volume 9, number 21:

¹⁰⁸ *Ibid*, volume 4, Hadith 391

¹⁰⁹ *Surah an Nisa*, verse no 93

Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection.

Islamic law is also very strict as for as the security of the dignity of a person is concerned. The protection of honor of man was given the same importance and the prophet (PBUH) on the occasion of farewell hajj does not only prohibit the life and property of the person but also orders to refrain from damaging the honor or dignity of a Muslim. The Holy Quran clearly lays down:

(a) You who believe do not let one (set of) people make fun of another set

.(b) Do not defame one another.

(c) Do not insult by using nicknames.

(d) And do not backbite or speak ill to one another ¹¹⁰

The Prophet has also said about the dhimmis (the non-Muslim citizens of the Muslim State):

One who kills a man under covenant (i.e. a dhimmi) will not even smell the fragrance of Paradise Islam prohibits the killing of anybody. (al-Bukhari and Abu Dawud).

Islam prohibits killing of anybody except less than one condition, Quran refers to as bi al-haqq (with the truth). In the light of these references of Quran and hadith in a state only court of law is considered as lawful authority who can order for that lawful execution of a

¹¹⁰The Quran,49:11-12

person. This was the reason why the Caliph 'Umar said: "In Islam no one can be imprisoned except in pursuance of justice." The words used here clearly indicate that justice means due process of law. But when the court is working under the influence of administration and it may miscarry justice weighty decisions cannot be left in the hands of a court which has become heedless to God. State cannot take help of Holy Quran and sayings of Prophet (PBUH when the state murders its citizens openly and secretly without any hesitation or on the slightest pretext, because they are opposed to its unjust policies and actions or criticize it for its misdeed, and also provides protection to its hired assassins who have been guilty of the heinous crime of murder of an innocent person resulting in the fact, that neither the police take any action against such criminals nor can any proof or witnesses against these criminals be produced in the courts of law. The very existence of such a government is a crime and none of the killings carried out by them can be called "execution for the sake of justice" in the phraseology of the Holy Quran.¹¹¹

Conclusion

After analyzing all this literature we can come to conclusion that people at individual as well as collective level are not allowed to use force in order to enforce rule of law (shariah). They would not be allowed to enforce vigilante justice in a state where all institution to enforce justice in society are functional. If the state is not performing its duty honestly then people should struggle peacefully to force authorities to provide them justice. A peaceful movement may be launched by the intellectuals of that era in order to gather

¹¹¹ 'Allamah Abu al-'A'la Mawdudia, Tawhid, *Human Rights in Islam*, vol. IV, No. 3, Rajab-Ramadhan 1407

public against authorities on one platform, so that they can be pressurized and forced to perform according to law. Only that person is empowered to use force in order to enforce rule of law in society who has authority to enforce it. As far as action of an individual or of a group against others in their personal capacity to enforce law is concerned is strongly prohibited in Islam.

So, it is quite obvious that Islam does not under any circumstance support the act of taking the law in to hands (vigilante justice). It is preferred for a Muslim that he should verbally denounce misdeed of others. In case. When a wrongdoer is Muslim, it is preferred that he should perform his duty even he has fear of death. When he encroaches his limits and uses force to stop evil in society. Islamic law adopts a sympathetic way of awarding punishment to those persons, who by force stopped the other Muslim to do an act which is prohibited by the laws of Shariah. It maintains that they would be punished by determining the punishment according to siyasah. On the other hand a non-Muslim cannot be forced to act according to Shariah, if a Muslim attempts to do so, he will be punished severely and no sympathy should be acceded to him. Islam disallows to challenge the authority of state. It is ordered that a Muslim is not under an obligation to obey that order which is against the injunctions of Shariah. Even in such a situation it is not preferred to take up arm and destroy the peace of society. Islamic law has provisions regarding the change of regime but this is a separate issue and has been completely discussed in the book of Muhammad Mushtaq Ahmed "jihad muzahmataurbaghawat".

Along with security of life, Islam has with equal clarity and definiteness conferred the right of security of ownership of property, as mentioned earlier with reference to the address of the Farewell Hajj. On the other hand, the Holy Quran goes so far as to declare

that the taking of people's possessions or property is completely prohibited unless they are acquired by lawful means as permitted in the Laws of God. The Law of God categorically declares that it is strictly prohibited in Islam to derive anyone of his right to life, property and honor.

It has been maintained in the previous chapters that Islam does not allow violation of law whether it is by individual or by group of a person in order to enforce rule of law in society. Islam also denounces the action of government officials who are abusing their power and promote vigilantism in society. Islam is a religion of peace and does not support anarchy and disintegration in the society. It states very clearly that nobody (individuals, groups or state authorities) is allowed to take law in to his hands and deprive a person of his life property or dignity. Everybody who commits such an act would be punished according to law, although in certain circumstances this punishment should be not as severe as it is normal situation.

Bibliography

Books

“The Quran”Sura an nisa, verse 59

Saeed Asif Khosa, “The Constitution of Pakistan”, 1973, pp3, 13, 14

Muhammad Hussaian Mazhar Nizami “The Pakistan penal code”, Lahore, PP 270-272 and 274

Sanajaoba,N, “International Human Rights”, pp33-34

Dr.Muhammad HilaliTaqi-ud-din-Al and Dr, Muhammad Khan Mushin , “Interpretation Of the meaning of the Nobel Quran in the English language” pp,78

Mubarak puri -Safiur-Rehman “Tafssir ibn kathir”, pp. 495,496,497

Muslim-bin-Habaj al Nisha puri Abul-Hussain“Sahih Al Muslim”, Kitab Al Amarah, chapter wajubtait al amar fi ghair masiat wa tahrimaha fimasiat, hadith 3418

Muhammad ibn Isma'ilAbu'abd Allah “Al-Bukhari,Al Jami al-sahih”,pp 1217, hadith no 7056

“Sahi Muslim,chapter wajub al inkarala al amar fe maukhalif al sharah” ,Hadith 3445

IbnAsh'ath al-Azadi al-Sijistan Abu Dawood Sulayman“Sunan abi dawood, kitab al malaham,chapter al amarwanahi” ,hadith 3781

“Sahi al bukhari,Chapterh ukum min farqamar al muslamine wahu wamujtama”, hadith 3443

Ahmed, Muhammad Mushtaq, "Jihad Muuzahmat aur Baghawat": islami shariat aur Bayn al – Aqwami Qanun ki Roshni mian".(Gujranwala: Al-Shariah Academy, 2008.pp 599,600,601)

Ibid, 602

"The Quran" Surah fussilat, Verse 33-36

Ibid Surah An- Nahil, Verse I25

Ibid Surah Al- Imran, Verse I04

Ibid Surah Al- hajj, Verse 41

"Sahih muslim" kitab al iman, annan al nahi anil munkir min Iman, Hadith no 17057

Bin Idress Al-Qarafi, *Al-Ahkam Abu-Al-Abbas, Fe-Tameez Al-Fatawa Anil-Ahkam Wa TasarfaatAl-Qazi and Imam*: (Barut: Daar-Ul-Bashiar Al-Islamia, 1416 Hijra)

Al – Sarkahsi AbuBakr Muhammad B. Amad b. AbiSahl, *Almabsut, Kitab Al Wakalat*.
Beitut: Dar a al – Kutub al _ilmiyyah, 1997.

"Jihad, muzahmat aur Baghawat" ,pp 610)

"The Quran", 5:33

"Muslim, Al-Jami‘al-sahih",pp 832, (no. 4798).

"Jihad, Muzahmat aur Bghawat" ,pp 607

Al sarkhasi AbubakarMuhammed bin abisahil" *Sharah Al Kitabalsair al kabir*",chapter min yahillaho al khamswa al sadaqat,jild 1,pp116

Al Marghiani Burhanud din, Al-hidaya, kitab al ghasab bab fi ghasb ma la yataqawim,jild3, pp304

Ahmed, Muhammad Mushtaq Jihad, muzahmat aur baghwat, pp. 685,686,687

Surah an- Nisa, Verse 58

By Ahsan Amin AhsanIslahi "Tadabur al Quran", vol 2, pp323

Surah al Maida,verse 32

Surah Al Isra,verse 33

Sahih Bukhari, Volume 9, number 21:

Ibid, volume 4, Hadith 391

Surah an Nisa verse no 93

Kamali, Muhammad Hashim, "Freedom of Expression in Islam", Revised Edition(Cambridge: Islamic texts society,1997)

Ghamidi, Javed Ahmed, "The Penal Shariah of Islam", (Lahore: Dar al Tazkeer, 2004)

Asad, Muhammad, "The Message of the Quran", Dar al Andalus, Gibraltar 1984

Nyazee Imran Ahsan Khan, "Islamic Law and Human Rights", Islamabad Law Review, vol, 1:1& 2

Khadduri Majjid, "The Islamic Concept of Justice.United States Of America", 1984

Khan Zafarullah, "Human Rights In Pakistan", 2003

Mahmood M, "The Constitution Of Islamic Republic Of Pakistan,1973",7th Edition Lhaore, Markazi Kitab Khana, 2008

Brohi, A.K, "Fundamental Law Of Pakistan",Krachi Din Muhammadi Press,1958

Khaki Dr. Aslam. Issues "Islam and Human rights".Islamabad, 2006

Robertson, David. "A Dictionary of Human Rights" 2nd Ed. London and New York, 2004

By Taj Farah "Taliban and anti-Taliban", Cambridge scholars publishing 2011, .pp37,67

Peter Gasser –Hans, "Introduction to Humanitarian Law" Haupt: Henry Daunt Institute, 1993. Henckaerts Jean Maric and Louise Doswald-Beck, "Customary International Humanitarian Law", New York: Cambridge University Press, 2009, P26

Additional Protocol 1, 1977

GC 1, GC II and GC III, 1948

ARTICLES

Thou shalt not have fun. Economist, 0030613, 4/16/2005, Vol. 375, Issue 8422, 38.

Database:

Academic search premier.

The British journal of criminology, 1996, 36(2) issue 2, page 220_236

Filed Under Najam Adil ,Development, Law & Justice, Politics, Society Vigilante justice, Horrible, Horrifying, Horrendous(Reader Discretion Advised), posted on May 16, 2008 in THE NEWS

Filed under Najam Adil and Mughal awaits ATP society Pakistan in 2007: A Year of anger and Angst pakistaniat.com/2007/12/31/year-2007-review-pakistan

Supreme Court verdict in suo motu Karachi violence case, Published in The Express Tribune, October 6th, 2011

Shah Saeed Mainstream Pakistan religious organizations applaud killing of Salmaan Taseer",

www.Guardian.Com.uk (accessed: 12/11/2011)

Abbasi Ansar "Blasphemy law applies to all prophets", January 12, 2011, published in THE NEWS

Ahmad Muhammad Mushtaq "Ial masjid and hanfifiqah" published in magazine, al-shariah, in 2007

Mawdudia Abu al-'A'la , "Human Rights in Islam" Tawhid Journal, vol. IV, No. 3, Rajab-Ramadhan 1407

Mehlaqa Samdani "Authors interview with Fkhar-e-Alam", Director General, Director of projects ,Fata secretariat Peshawar, septemper 17, 2010,

Yusufzai Rahimullah "The Tribes Fight Back", Newslin, October 15, 2008

Taj Farah "Army's peace lashkars" published in daily times October 22, 2011

Ibid "state of human rights in Fata, Replicating The Al Anbar Model in Fata" ,Monday 02 Feb. 2009 pakhtunkhwaetimes.blogspot.com/2009/02/replicating-al-anbar-model-in-fata-by.html

Bilal Ahmed Gulmina "No rest in peace" Friday September 16, 2011, daily times www.dailytimes.com.pk

Khan Mukhtar "the role of tribal lashkars in winning Pakistan war on terror", publication: terrorism focus, volume:5, issue:40, the jamestone foundation

Ali Shah Fawad and Ali Shah Manzoor ,Long arms of the outlaws published in the express tribune on june 8, 2010

Shahzad Salaman "Pakistan: local lashkars or anarchy" fatalord.blogspot.com

Ur Rehman Zia Ur "Tribal militants are a double edged weapon", www.theFridaytimes.com accessed 28/12/2011

Tarik kurashe Salaman, "The stench of failure", published in The Daily Times, Saturday, september 17, 2011

Munir Khalid "North Waziristan operation a wrong approach", published in express tribune June 15, 2011.

Smurr, J. W. after thoughts on Vigilantes, The Magazine of Western History, Vol. 8, No. 2 (Spring, 1958), pp. 8-20 (Montana Historical Society) <http://www.jstor.org/stable/4516215>. Accessed: 25/04/2011.

Bloc Manyon Marc ,Fudal society, vol.1, 1965, p. 127,

T White Joshua, Vigilante Islamism in Pakistan: Religious party response to Lal Masjid Crises. This article appeared in Vol 7, November 11, 2008

Rosebaum H. Jon and Seder Berg Peter C., Vigilantism: An Analysis Establishment Violence.

Source: Comparative Politics, Vol 6, No. 4 (July, 1974). <http://www.jstor.org/stable/421337>.

Accessed: 28/07/2011.

Fleisher Michael L. "Sungusungu": State-Sponsored Village Vigilante Groups among the Kuria of Tanzania, Source: Africa: Journal of the International African institute, Vol. 70, No. 2, 2000.

<http://www.jstor.org/stable/1160816>. Accessed: 21/04/2011.

Vigilante Violence: Economic and Political Weekly, Vol. 23, No. 36 (Sep. 3, 1988), <http://www.jstor.org/stable/4378974>. Accessed: 25/04/2011.

The satanic verses case revisited, AAoba, Journal of law and society, January 2001

Newspaper and Reports

The emergence of government backed vigilante groups in Nepal, Amnesty international reports

press release 08/03/2005. <http://www.raonline.ch/pages/story>.

Raza Mansoor, is a researcher who presented this paper at the Reference for Salmaan Taseer, Organized by CFD in Karachi on Jan 17, 2011. [citizensfordemocracy.wordpress.com /2011/05/05/pakistan-blasphemy-laws-a-fact-sheet](http://citizensfordemocracy.wordpress.com/2011/05/05/pakistan-blasphemy-laws-a-fact-sheet), accessed 21,11,2011

Pakistan - Amnesty International Report 2010

"Lashkars threatens to stop fighting" Bureau report march 4.2011, www.dawn.com/tag/adezai-qaumi-lashkar

Reported by khan zaralimusazai (afridi) "Report of amnthreek steering committee"
,www.tncfata.blogspot.com accessed on 27/12/2012

Tribune

The Nations

Express

Dawn

CONVENTIONS AND STATUTES

Universal Declaration of Human Rights 1948

European Convention on Human Rights 1950

International Covenant on Civil and Political Rights 1966

International Covenant on Social and Cultural Rights 1966

Convention on Elimination of Discrimination against Women 1979

Declaration on The Elimination of all forms Of Intolerance and of Discrimination based on
Religion and Belief 1981

Declaration on the Rights of persons belonging to National or Ethnic, Religious and
Linguistic Minorities 1997

Constitution of Pakistan 1973

Pakistan penal code, 1860

WEIBLOGGRAPHY

www.telegraph.co.uk/news/

www.voanews.com, Human Rights Commission Critical of
Pakistan, 119865654, <http://www.newslinemagazine.com>
csis.org/files/publication/111213_Samdani_KyberAgency
www.jstor.org.
<http://www.raonline.ch/pages/story>
www.dawn.com

