

Provision of Hajj Umrah, Ziyarat Leaves, for the Government Servants & Fundamental Rights

Muhammad Waseem Tariq

Phd Scholar, Faculty of Law and Sharia, International Islamic University, Islamabad

Dr. Aziz-ur-Rehman

Assistant Professor / Incharge, Department of Law, International Islamic University,
Islamabad

ABSTRACT

Islam provides guidance for every human being starting from spiritual, social, political to his education. These principles are embodied in five basic tenets of Islam, such as Shahadah (Declaration of faith in Islam), Salah (Prayer), Saum (Fasting), Zakat (Alms giving) & Haj (Annual Pilgrimage to Makkah). The combine effect of these pillars of Islam reveals the true purpose of a human being's life, which is to worship his Creator (Almighty Allah) & complete devotion to Him.

It is in pursuance to this Commands of Almighty Allah and to follow the footsteps of the Holy Prophet (SAW), particularly with respect to performance of Hajj, Umrah that a Muslim specifically the serving class of the government departments, faces various problems availing sufficient leaves in this regard as the Competent Authority due to silence of the relevant provisions of laws into the ESTA Code. This situation results mostly in violation of the guaranteed fundamental rights of freedom to profess religion of such an individual and of his entire family members. This article addresses the religious reghts of a govt. servant and muslim citizen of the Islamic republic of Pakistan specifically related with Hajj, Umrah, and Ziyarat leaves.

Keywords; Haj, Umrah, Leaves, EstaCode. Fundamental Rights, Violation.

Introduction & Research Question

In this article an attempt is made to touch upon an important aspect of the violation of the guaranteed fundamental right of the citizens of professing religion (i.e., particularly of the people from Government Serving Class & their families,) which have gone unattended or deserve

the attention of our Honorable Judges, Law-Makers, Jurists, Lawyers, Electronic, Print Media and Public at large.

Fortunately Pakistan being Federal Republic to be known as the Islamic Republic of Pakistan and Islam being its State Religion, thereof. The Constitution of which under Articles 2A¹, 3², 4³, 9⁴, & 14⁵ promises to ensure rule of law and protection of people of Pakistan against all sorts of exploitations in the context of Injunction of Islam and Sunnah of Holy Prophet (P.B.U.H). Similarly in Article 20⁶, Freedom to profess religion and to manage religious institutions is another promise given to a citizen by the Constitution, expressly. Likewise Chapter 2 to the Constitution; which pertains to Principles of Policy, once again reiterates through its Articles 29⁷, 30⁸ and 31⁹ an additional promises of the promotion of social justice and eradication of social evils, while framing policies in accordance with law.

On the other hand, laws that are materialize the aforesaid promises are full of provisions to supplement the constitutional pledge but when it comes to practice there are some heart breaking breaches occurring regularly around us. One of such breaches is the grant (in shape of the total number of days to which a servant is as right entitled thereto) of leaves to a Government/ Civil/Public/ Master & Servants in connection with his Holy Journeys (in private capacity) such as Hajj, Ummrah and Ziyarat respectively, as the governing law in this respect (i.e., EstaCode) is unfortunately totally silent to this respect.

Methodology

The research raised an important issue with respect to violation of the guaranteed fundamental right of professing religion. It being case of first impression focuses at the neglected area of the grant of sufficient Ex-Pakistan Leaves to an individual particularly to the Government/Civil Serving Community at large, who intends to avail Holy journeys like, Haj, Umrah or Ziarat, but in return earns hardships, hurdles, discrimination at the cost of departmental penalties additionally. It is in this context that instant paper examined the grave issue in the light of primary sources of Islam [i.e., Quran & Sunnah (SAW)] and of the Will of the People (i.e., Constitutional Covenant) vis a vis of the domestic applicable laws, respectively. Besides above aggrieved person along with his family members were interviewed, as a result thereof the facts brought on record coupled with documentary evidence were analyzed in detail, with an object to give solution to the hardships and anxiety faced by the Muslim Serving Community at large, particularly of the Government/Civil Servants.

1.Importance of Hajj, Umrah and Ziyarat in Islam

Hajj is the most divine and sacred journey to Makkah, Ka'aba. Being fifth pillar of Islam its performance is made obligatory for all adult Muslims (male and female) who can afford to undertake the journey and are in good health, at least once in a lifetime, while similar is the value of the rituals of Umrah as well. Apart from Hajj and Umrah, Muslims may also choose to take other religiously inspired trips known as Ziyarat, in order to have visit local or regional shrines or to travel to the tombs of the Imams and their immediate descendants and close associates (known as Imamzadeh, a name also given to their shrines) in Iran, Iraq or India as the case may be. In fact, these holy journeys are meant to purify the soul and heart of a person who performed it and then such a person (Muslim) boards on a new stage of life which leads him to spiritual and temporal gains. So, it is clear that religious rituals of Muslim Community are all about leaving the concerns and trappings of this world behind to get closer to Allah in a unique environment where one exercises the high principles, values and objectives of Islam, as it influences social, moral, national and economical life of a Muslim. Thus, pilgrimage in either of the shapes as discussed hereinabove unites the Muslims of the world into one international fraternity, emphasizing thereby the basic concept that there is only one God i.e. "ALLAH".

2.Concept of Leave for Hajj, Umrah or Ziyarat in our Domestic Law

It is astonishing to note here that being an Islamic country our domestic legislation does not contain any express provision regarding leaves of the kinds with respect to the holy journeys titled above except that of the only Special Leave to Khuddam-ul-Hajjaj that too without specifying any number of days in the Revised Leave Rules, 1980. Interestingly, the said Rules also does not provide any criteria or limit of the period of Hajj Umrah or Ziyarat Leaves, to which a person (Government Servant etc.) while being travelling in the capacity of a private pilgrimage, would have been entitled there too, and as such it left open the matter of the grant of LFP (i.e., Leave with Full Pay) into the sole discretion of departmental Administration Authority, leaving thereby a servant in a vacuum having no alternate choice but to accept whatsoever the number of leaves sanctioned by his parent administration authority, as is self evident from the bare reading of relevant provision of the Revised Leave Rules, 1980; in Chapter V to the ESTA Code, which reads as follows.

Sl. No. 14 Grant of Special Leave to “Khuddam-ul-Hajjaj”

It has been decided that “Khuddam-ul-Hajjaj, who remain away from their respective duties to work as Khuddam, may be granted special leave on full pay for that period outside their leave account.¹⁰

Another interesting aspect of the case is that although the Revised Leave Rules, 1980 do have the provisions relating to Recreation Leave¹¹, Special Leave¹², Maternity Leave¹³, Disability Leave¹⁴, Hospital Leave¹⁵, Study Leave¹⁶, Ex-Pakistan Leave¹⁷, Leave Preparatory to Retirement¹⁸ etc., besides having the provision for grant of Leave on full pay¹⁹ comprising on a maximum period of 120 days at one time without any medical certificate, similarly the Leave on half pay²⁰ as well as Extraordinary leave (leave without pay)²¹, but admittedly there is no such provision in the Rules which specifically prescribe the number of Leaves in the shape of the total number of Days to which as a matter of right an intended pilgrimage who is proceeding on Holy Journey in his/her private capacity, is entitled thereto, hence leaving the decision as to grant of such leave into the unfettered powers of the administration authority concern, which in practice always seems to be applied (with utmost respect) discriminately, while keeping aside the glaring Commandments of the Al-Mighty Allah and of the precepts of the Holy Prophet (PBUH) respectively.

To illustrate the above said position, let's have a look on the various texts of Holy Quran and of the Precepts of the Holy Prophet (PBUH), which emphasis on the performance of such rituals respectively.

3.Commandments of Al-Mighty Allah in Holy Quran about performing Hajj, Umrah

Following are the verses (in sequence) that emphasis on importance of religious rituals likes Hajj (Pilgrimage), Umrah in the Holy Quran, such as.

وَاتِمُوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ²²

Complete the Hajj (Obligatory pilgrimage to Makkah) and the Umrah (Optional visit to Makkah) for the sake of Allah.

الْحَجُّ أَشْهُرٌ مَّعْلُومَاتٌ ۚ فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ²³

Hajj is in the well known months. One who undertakes to perform it must abstain from husband-wife relationship, obscene language, and wrangling during Hajj.

وَلِلّٰهِ عَلَى النَّاسِ حُجُّ الْبَيْتِ مَنِ اسْتَطَاعَ اِلَيْهِ سَبِيْلًا ۚ وَمَنْ كَفَرَ فَاِنَّ اللّٰهَ غَنِيٌّ عَنِ الْعَالَمِيْنَ²⁴

Performance of Hajj (Pilgrimage) to this House is a duty to Allah for all who can afford the journey to it; and the one who disobeys this commandment should know that Allah is Self-sufficient, beyond the need of any from the worlds.

وَاقِظْنَ فِي النَّاسِ بِالْحَجِّ يَأْتُوكَ رِجَالًا وَعَلَى كُلِّ ضَامِرٍ يَأْتِيَنَّ مِنْ كُلِّ فِجٍّ عَبِيقٍ²⁵

And make a proclamation of Hajj (Pilgrimage) to mankind: they will come to you on foot and on lean camels, from every distant quarter.

4. Precepts of Holy Prophet (PBUH) on performing Hajj, Umrah

Likewise we do have numerous Precepts of the Holy Prophet (PBUH) which explain the importance of Hajj, Umrah and its great reward, few of which are as follows:

Ibn e Umar R.A said the Prophet of Allah (PBUH) said: "Islam is built upon five pillars: testifying that there is no god but Allah and that Muhammad (PBUH) is the Messenger of Allah, subsidizing regular prayer, paying Zakah, Hajj and fasting Ramadan".²⁶

Abu Hurayrah RA narrated that Allah's Messenger (PBUH) said: "Umrah is reparation for the time between it and the previous Umrah; and an accepted hajj has no less a reward than Paradise".²⁷

Ali Bin Abi Talib RA narrated that the Messenger of Allah (PBUH) gave an exhortation and said: "O people Allah has admonish Hajj upon you so do Hajj". A man said, Is it every year, O Messenger of Allah? He hovers silent until the man had said it three times; then he said, if I say yes, it will become mandatory and you will not be able to do. Then he said, "Do not push me to tell you more than what I have left you with, for those who came before you were destroyed because they asked too many questions and quibble with their Prophets. If I command you to do a thing, do as much of it as you can, and if I proscribe you to do something; then avoid it".²⁸

Similarly, in response to a query from Qatada, when Hazrat Anas RA was asked as such, as to how many Pilgrimages had been performed by Allah's Messenger (PBUH), he replied: "One Hajj and four Umrahs were performed by him".²⁹

Hence, from all these (Versus of Holy Quran & Hadith Mubarkas) one can easily understand the importance of the religious rituals (such as

Hajj, Umrah) very well; as wisdom behind all these rituals is to remove our sins and in exchange Al-Mighty Allah gives reward to His pilgrims. So it is obligatory upon every Muslim to obey & respond to His Commands, when he gets an opportunity in this regard.

5. Tours on Ziyarats

The Ziyarat literally means "to visit", that's why under Islam it refers to pious visitation, pilgrimage to a holy place, tomb, shrine, mosques, maqams, battlefields, mountains, and caves associated with Holy Prophet Muhammad (PBUH), his family members and descendants (as per Fiqh-e-Jafria), the Companions of Holy Prophet (PBUH), the prophets and other venerated figures in Islam such as the prophets, sufi auliyas and prominent Islamic scholars around the world.³⁰ Greeting and saluting thereby their masters who lived long before they were born but also as a means of seeking nearness to God and more of His blessings, according to their respective faith and beliefs.

6. Discrimination in the Provision of law and Practice.

As being Muslims we do have certain belief that those whom Allah favored to perform Hajj, Umrah are chosen people among of His servants who can under took the task of accomplishment of these acts of worship, as per His Commands only. However, when the matter of a pilgrimage of an individual particularly among the class of a Government Servant, is tested upon the touch stone of guaranteed Fundamental Right of Professing Religion under the Constitution of Islamic Republic of Pakistan, 1973, unfortunately we do find an ugly example of the discrimination of Religious Rights of a citizen which belied theory and practice altogether.

When due to silence of the relevant provisions in the EstaCode (with respect to grant of the Ex-Pakistan Leave to a Government Servant etc.) a victim to such discrimination while being proceeding as a pilgrimage in his private capacity, faced mental agony at the hands of its administration authorities, that too at the cost of discrimination, humiliation, hurdles in schedule departure, non-issuance of the requisite NOC for flight clearance in addition to earning huge financial loss (i.e., for re-scheduling of the conformed flight tickets including that of the expenses of the reservations of hoteling both at Makkah and Madina) and dual penalties (censure³¹ plus leave without pay³²) in violation of the legal provisions as contained the Rule 24 to the Revised Leave Rules of 1980³³ as well of the guaranteed constitutional mandates including that of the Principles of Double Jeopardy³⁴, respectively.

That too contrary to the admitted established fact of brutality of his office administration itself proved on the record, whereby the office administration in power, while turning down the minimum requested period of 30 days leaves by illegally reducing it to 21 days; despite of having knowledge of the fact that timely request of the enhancement of the said reduced period (i.e., 21 days), with that of the minimum period of VISA (i.e., 30 days) was duly made by moving a separate application in this regard, which was unfortunately turn down while ignoring the fact in view of having sufficient balance in his leave (of the kind due i.e., Leave with Full Pay) accounts, thereto.³⁵ Consequently violating guaranteed fundamental rights of Professing Religion as well as of the of Protection of Family etc., available to the victim's family, that too without being found at fault at any stage of the proceedings, thereof.³⁶

Suffice it to state here that this kind of a living example of the injustice in an Islamic State, and above all from the corridors of a Supreme Judicial Institution, which is meant for imparting justice according to Islamic values and recognized standards of legal justice, to its suppressed peoples unfortunately reminds all of us the pre-Islamic historical events of the tyranny invoked by the Quraish against the Muslims pilgrimages in 6th Hijri, by not allowing them to perform religious ritual like Umrah.

7. Can a State interfere in Rights of God of an individual?

The above scenario raises a serious question as to can a State interfere into the religious rights of an individual, particularly with respect to the discharge of the Prime responsibility of a human being in performance of Right of God (Huquq Allah)? The answer to this query definitely rests in a big "No". Let us see how one could reach to this definite conclusion, while keeping in view the following facts in sight. As we all know that Religion is a private matter between a person and his Creator, as ordained in Chapter 51 verse 56 of Holy Quran, which speaks about the very purpose of the creation of Jin and human being is meant to worship his Creator. Therefore, performance of religious rituals like proceeding to Hajj or Umrah, being part of the absolute religious belief of every Muslim and also an integral part of one of the pillars of Islam; that in such like situations (in cases where as a matter of right the question of the freedom of belief in a religion is involved, therein) the state does not have any right to interfere in the relationship of a man and his Creator. Particularly, when his Creator (Allah) has Himself chosen them from among His servants to perform these acts of worship through which they should implore Almighty Allah to accept their good deeds. Hence, if that being

so, then the state cannot restrict the right of a private pilgrimage (Government Servant) proceeding either individually or as a “Mahram”³⁷ of his family or similarly they can also not create hurdles in such holy journey being act of devotions, (that too carried out upon the specific Commands of his Creator only) while making excuses on the pretext of preserving public order and moral values or likewise even not on the ground of the protection of the rights and freedom of others, at all.

As such proceeding on Hajj, Umrah or Ziyarat are the religious rituals which are common to all sects of Muslim Ummah according to their respective beliefs. Moreover, these holy rituals also do not clash with the religious beliefs of other Muslim sects or non-Muslim Communities at all, the public performance of which would justify a valid reason for interference of the State agencies. Therefore, by creating any systematic prohibition or curtailment of the possibility for pilgrims to undertake journeys to sacred places, (God Forbid) would amounts to be preferring “will of man” (i.e., Registrar) over the “Will of God (Allah)”, as is the unfortunate living example of its kind which is set by the administration of the Supreme Judicial Institution of our country, contrary to the judicial precedents set by itself publically.

For instance, in a case over dispute on mosque and in order to avoid danger of breach of peace, the orders of a Magistrate sealing the mosque (Masjid) were set aside by the honorable High Court, while in an another case the imposition of curfew for an indefinite period without relaxation of time for prayers in mosques were got challenged in apex Courts of Law whereby the honorable High Court has declared it to be violates to fundamental rights while placing reliance on Article 20 of the Constitution and Command of Allah in Verse 114 Surah Al-Baqrah³⁸, while holding that the prayer being devotional act common to Muslim Community according to their respective practices, accordingly. Similarly, we do have precedent of apex Court to this effect too, whereby the prayer of petitioner for promulgation of new law against forced conversion from one religion to another was declined by the Supreme Court on the ground that in view of Article 20 to the Constitution there was no necessity of a specific legislation as had been prayed for, because every citizen had a fundamental right to profess, practice and propagate his religion per Constitutionally Guarantees.³⁹

Hence, in view of these glaring examples of the apex Courts in field, one wonders as to when the matter of the protection of guaranteed fundamental right of an individual to profess his/her religion, came under

considerations before it, then why he being in status of an employee of the apex Court, he is discriminated in enjoyment of similarly protection of professing his religion as available to general public, thereof?

Conclusion and Recommendations

Keeping in view the above, the first question which needs to be addressed here is that in absence of any express provision with respect to the grant of total number of days, of such leave to which a Government Servant intending to proceed on his private pilgrimage tour is entitled thereto, while discharging his duties towards Rights of God? And secondly whether being citizen of an Islamic Republic of Pakistan, with having guaranteed protection of religious right etc., by virtue of Article 20 to the Constitution of Islamic Republic of Pakistan 1973, could the number of such leaves be curtailed, refused or denied to an individual under the cover of any administrative policy, contrary to facts that when the individual's own Creator Himself invites him to HIS SACRED HOUSE (Makkah)?

Ironically the seriousness of the neglected issue which deserves due attention of the competent authorities, had unfortunately did not received its due considerations so far. However the upshot of above referred discussion finally rest in only solution that is the Revised Leave Rules 1980 contained in the EstaCode be amended by incorporating therein the maximum number of leaves to which a Government Servant etc., proceeding as a pilgrimage in his private capacity, be entitled thereto; which shall not be less than the number of days of his/her VISA; as allowed by the host country (i.e., Kindom of Saudi Arabia, Iran, Iraq etc.,) in which such pilgrimage intends, to have a visit, in this regard. These positive steps will INSHALLAH do away with incarceration of these poor serving communities and safe them, from being humiliation at the hands of its mighty office administration once for all.

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37 A “Mahram” is an unmarriageable kin with whom marriage or sexual intercourse would be considered haram, illegal in Islam, or people from whom purdah is not obligatory or legal escorts of a woman during journey longer than a day and night, 24 hours.

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