

Abuse of Right

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1. Introduction

Shariah has endowed humankind with a distinctive privilege, conferring upon it a range of rights. Foremost among these is the right to live a peaceful life. In furtherance of this, individuals require further rights pertaining to their actions and transactions. Consequently, Shariah has granted numerous rights in various domains, such as right to ownership (*Ḥaqq-e-Milkiyat*), right to custody (*Ḥaqq-e-Ḥizānat*), right to purchase (*Ḥaqq-e-Kharīd*), right to sell (*Ḥaqq-e-Farokht*), right to maintenance (*Ḥaqq-e-Nafaqa*), right to compensation (*Ḥaqq-e-Mu'āwaza*), right to dignity (*Ḥaqq-e-Ehtirām*), right of pre-emption (*Ḥaqq-e-Shuf'a*), right to marry (*Ḥaqq-e-Nikāḥ*), right to freedom of expression (*Ḥaqq-e-Izhār-e-Rā'ī*), and many more.

Among the rights mentioned above, the "Right in Rem" (*Ḥaqq-e-ʿAynī*) is paramount. This refers to a right granted by Shariah to an individual over a specific object, such as the right to ownership of property. The holder of such a right is empowered to exercise all lawful dispositions over the owned object, including sale, gift, testamentary bequest, or utilization for any lawful benefit. In Islamic jurisprudence, such rights are deemed perpetual, non-modifiable, and irrevocable.

[See: Dr. Muhyuddin Hashmi, *Abuse of Rights and the Islamic Perspective*, p. 13 (2014), Shariah Academy, International Islamic University, Islamabad.]

2. Abuse of Right

The aforementioned rights are not absolute or unconditional and unqualified. Shariah permits their lawful exercise but prohibits abusive application. Abuse of right occurs when an individual exercises a legal right in a manner that, though ostensibly lawful, unjustly harms another. For example, Freedom of Expression is a fundamental right but the expresser must adhere to Islamic ethics. Defamation, blasphemy, breach of privacy, mockery, slander, vilification, unjust criticism and profanity are impermissible and taboo (*ḥarām*). Similarly, Right to Trade is recognized, but profiteering, exploitation of vulnerable, or hoarding (*ihtikār*) is prohibited. In the same tune, Right to Sell is constrained by the right of pre-emption (*shuf'a*) and the seller's duty to disclose

defects (*'uyūb*) in the sold item. Likewise, property rights allow construction, but installing windows overlooking a neighbor's premises is forbidden.

Contemporary Muslim jurists use the phrases like 'misuse of power', 'abuse of power', or '*malafide*' for such conduct. Similarly, in modern legal systems, the phrase 'nuisance' covers all harmful interferences. Classical Muslim jurists have used the phrases, 'condemnable exercise' (*Istikhdām al-Madhmūm*), and 'infliction of harm through rights' (*Al-Muḍārra fī al-Ḥuqūq*). [See: Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Fiqh* 9:213, also See Ibn al-Qayyim, *Al-Ṭuruq al-Ḥukmiyyah*, p. 310].

Contemporary jurists (e.g., Sheikh Muḥammad Abū Zahrah, Dr. 'Abd al-Razzāq al-Sanhūrī, Dr. Fathī al-Duraynī) employ the phrases like 'Abuse of Right' (*Ta'assuf*) or 'Misuse of Right' (*Isā'at Istikhdām al-Ḥaqq*). [See: Dr. Muhyuddin Hashmi, op. cit., p. 10.]

3. Islamic Perspective

Shariah unequivocally prohibits abuse of right and terms it as (*ḥarām*). Key evidence includes:

A. Qur'anic Injunctions

The Qur'an restricts unqualified and unjust exercise of rights, emphasizing that all rights are meant for human welfare (*maṣāliḥ* i.e. public interest). Abuse contravenes justice, promotes (*ẓulm*), causes transgression (*ta'addī*), and inflicts harm (*ḍarar*).

"Mothers may nurse their children for two full years... No soul shall be burdened beyond its capacity. A mother shall not be made to suffer harm because of her child, nor a father because of his child..." (Surah al-Baqarah 2:233)

The above verse limits a mother's right to demand unreasonable nursing compensation and also restricts a father from appointing of wet-nurse if the biological mother is willing on the same wages. By this way, right of mother and right of father have been fettered with chains.

"Distribution [of inheritance] shall be after (payment of) bequests made, and (settlement of) liabilities, without harm [to heirs]." (Surah al-Nisā' 4:12)

Bequests (*waṣiyyat*) are constrained to one-third of the estate, and cannot be made for legal heirs.

According to verse no. 231 of Surah al-Baqarah, a husband possesses the right of revocation of first and second pronouncement of *talaq*, nevertheless, this right could not be exercised to torment his wife.

B. Prophetic Tradition (Sunnah)

1. The saying reads, "*Lā Ḍarar wa-lā Ḍirār*". [Ibn Mājah, *al-Aḥkām*, Ḥadīth 2332].

It means that "No harm shall be inflicted or reciprocated".

The above text encompasses all forms of harm i.e. physical, proprietary, or reputational, including lawful acts turned abusive.

2. Case of Samura b. Jundub (RA):

The Prophet (ﷺ) ordered the removal of Samura's date-palm tree when its use as a pathway caused undue hardship to a neighbor, declaring: "You are causing harm" [Sunan Abī Dāwūd, *al-Aqḍiyah*, Ḥadīth 3152].

C. Precedents of the Companions

1. Caliph 'Umar (RA) and Water Channel Dispute (Private Nuisance)

On a complaint of Dhihak, Caliph Omar compelled Muḥammad b. Maslamah to allow the passing of a shared irrigation channel through his landed property, rebuking: "By God! The channel will pass, even if over your belly!" [Muwatta' Mālik, *al-Aqḍiya*, Ḥadīth 2761].

2. Ban on Marrying Ahl al-Kitāb Women (Public Nuisance)

Caliph Omar prohibited such marriages to prevent socioeconomic harm to Muslim women, illustrating prevention of public nuisance.

The above cases distinguish between private nuisance (individual harm) and public nuisance (societal harm).

4. Judicial Remedies for Abuse of Right

Courts may:

1. Remove the Cause of Harm (e.g., blocking of drainage of chemical fluids coming out of factory and falling into the channel of irrigation of an agricultural land, and blocking of drains of washrooms of restaurants falling into the basin of river).
2. Award Compensation for material or physical damage (e.g. if the chemical fluids mentioned above spoil the standing crops or toilet drains cause damage the hydral organisms).
3. Invalidate Abusive Exercises (e.g., nullifying of *bay' al- 'īna* [It is a kind of contract in which a seller sells his property to a buyer on a deferred price, and then the said seller purchases the said property from the said buyer on a lesser prompt price], deathbed divorces disinheriting wives, and harmful bequests).
4. Restrain Further Abuse (e.g., issuing of prohibitory injunctions to a husband preventing him from taking his wife on a journey, not for a justified purpose, but with a malafide intention of teasing her).
5. Impose Punitive Sanctions (e.g., imposing of penalties on frivolous litigation).
6. Compel Lawful Exercise (e.g., forcing hoarders to sell at fair prices).
7. Besides above, the abuser shall also be accountable on the Day of Judgment.

[See Dr. Muhyuddin Hashmi, op. cit., p. 54.]

5. Comparison: Abuse of Right vs. Nuisance

Nuisance is defined as:

"Any act or omission causing inconvenience or public/personal injury, arising from the exercise of a legal right."

Under the Common Law, a person has right to enjoy his property. If someone disturbs him in the said enjoying by causing him inconveniences like various kinds of noise, bad smell and pollution, the aggrieved can sue him for damages. Here it may be noted that the just use of a right would not constitute nuisance even it may cause inconvenience to others. For example, if a neighbor paints his windows and door with a paint of pleasant smell, but his neighbor hates the

said paint. Similarly, the sound of the weeping of child though causes inconvenience to the other neighbor would not constitute nuisance.

The newly introduced pollution laws have considerably changed the old concept of abuse of right. Similarly, modern society and contemporary standards of life have also clothed the nuisance (abuse) with advanced meanings. For example, Zoning Regulations permit some activities in some area, whereas it prohibits the similar activities in some other areas. Laws for industrial zones are different from laws of non-industrial areas. So an inhabitant of an industrial area cannot claim nuisance.

Freedom of Expression is a fundamental right as guaranteed under Article 19 of the constitution of Islamic Republic of Pakistan 1973; nonetheless this right can be exercised subject to Pakistan's Press and Publication Ordinance (1960). Similarly, under Pakistan Penal Code, there are severe punishments for blasphemous expressions. The relevant provision flows as under:

295(A) *Whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.*

295(B) *Whoever willfully defiles, damages, or desecrates a copy of the Holy Qur'an, or of an extract therefrom, or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.*

295(C) *Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

It is evident from the above that blasphemous and derogatory expressions in respect of religions, holy books and holy personalities could not be allowed under the umbrella of freedom of expression. That is why it is said that “*The reach of your freedom halts at the*

edge of myself”

Another example of nuisance is aerial firing at occasions of celebrations. This practice causes disturbance to those busy in beneficial works on one hand, and inflicts physical and financial injuries on the other. For this reason, the offense is punishable under Section 4 of the *Khyber Pakhtunkhwa Aerial Firing Act 2017*, which runs as under:

Whoever contravenes any provision of this Act shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

Loudspeaker misuse is also a nuisance and is, therefore, banned near hospitals, courts, or during worship, except for *adhān* and necessary sermons. In this connection Section 2 of the West Pakistan Loudspeakers and Amplifiers Act 1965 is worth mentioning, which flows as under:

2. (1) *No person shall operate or use or cause to be operated or used a loudspeaker or a sound amplifier:—*
 - (a) *in a public place, in a manner so as to cause or to be likely to cause annoyance or injury to persons residing in any residential locality; or*
 - (b) *in any place in the proximity of—*
 - (i) *a place of worship during prayer times.*
 - (ii) *a hospital providing facilities for indoor patients at any time of the day or night.*
 - (iii) *an educational institution, a Court, a hospital not providing facilities for indoor patients or any other public institution, office or undertaking during their usual working hours at a volume or in a manner whereby the working or the use of such place of worship, hospital, educational institution, court, or other public institution, office or undertaking is likely to be disturbed by the use or operation of such loud speaker or sound amplifier; or*

(c) *in a mosque, church, temple or other place of worship in a manner or at a volume whereby any sound from such loud speaker or sound amplifier could be heard outside the immediate precincts of such mosque church, temple or other place of worship; or*

(d) *in any public or private place, for the voicing of any sectarian or other utterances of a controversial nature likely to lead to public disorder, if such utterances are or can be heard outside or beyond the immediate limits or precincts of such place.*

(2) *Nothing in the section shall be applicable to the use of loudspeaker or sound amplifiers for the purposes of Azan, prayers, or of Khutba delivered on Friday or at the time of Eid prayers in a moderate tone.*

In the light of the above, daily *Dars-e-Quran Al-kareem*, daily *Dars-e-Ahadith*, and other daily sermons after and before daily prayers (except Friday prayer), proceedings in the assemblies of educational institutions and the like are not covered by Sub section 2 above. For all these activities, loudspeakers and amplifiers could be used in a moderate tone, restricting the sound to the relevant premises only, not beyond that. This is to ensure the peace and tranquility of the inhabitants on one hand, and to prevent the possibility of sinfulness of the general public (*Ummah*) on the other.

6. Difference between Common Law Courts and Equity Courts regarding Nuisance

Under common law, as mentioned before, the only remedy for nuisance is the damages for the inconvenience/injury caused. Under principles of equity, the courts have been empowered to issue prohibitory injunctions preventing him from repetition of the torturous act. Moreover, the equity court can also impose penalty in case of disobeying of the injunctions.

Here, it is also necessary to mention that every nuisance if remains continued for twenty years, being not objected to, turns into the principle of prescription, hence, (under the law, not under Shariah) could not be put into question via civil suit.

Similarly, if a person himself goes to the area where nuisance is normal, he would not be allowed to file a suit, because he has himself put his self in the situation, the nuisance has not come to him.

Again, there is difference between nuisance and trespass. Trespass means direct interference in the right (possession or ownership) of a person and is therefore unlawful itself, whereas in case of nuisance, the act done is not unlawful *per se*, however, the said act becomes unlawful if resulting in harm to others.

7. Nuisance under Islamic Jurisprudence:

Shariah rejects the common law doctrine of prescription. Harm must be removed regardless of its extant nature, lengthy duration and lapsed limitation. [Ibn 'Ābidīn, *Radd al-Muḥtār* 4:245].

Shariah prohibits activities harming/hurting neighbors e.g., smoke-emitting baths, bakeries and the like. [al-Zayla'ī, *Tabyīn al-Ḥaqā'iq* 4:196].

Under the above principle, Shariah ordains its followers to;

- Avoid matters / activities that may prove detrimental to the noble purpose of preaching of religion (*tableegh-e-Deen*)
- Avoid lengthy recitations in the congregational prayers
- Avoid delivering sermons on daily basis (frequent sermons)

The underlying reason for the above rulings is prioritizing of communal harmony, and protecting the people from monotony and hardships.

As Shariah prohibits harm / nuisance in general, it prohibits harm/nuisance to neighbors in particular. Allama Ibn e Abideen writes, “if a person builds bathhouse (*hammam*) in his home, and causes harm to his neighbor through fire-smoke, he shall be prevented from the act. Nevertheless, if the smoke of the bathhouse is equal in quantity and density to the fire smoke of the kitchen of the neighbor, then he shall not be prevented. (Ibn-e-Abideen, *Radd al-Muḥtār*, 4: 245). This principle shall also apply to a situation where an owner builds a factory or install machinery in his house. In this regard, Imam Zailaee opines, “The Jurists concur on the point that if a person intents to install a stove (*Tandoor or Tannoor*) in his mansion or install a

watermill (*panchaki*) in his cottage, or construct laundry (*Dhobigot*) for launderers, he shall be prevented from the side works, for the reason that it would render the neighbors facing unavoidable inconvenience. (al-Zayla‘ī, *Tabyīn al-Ḥaḡā’iq* 4:196).

Most important in the above discussion is the point that, under Shariah, removal of the harmful is necessary howsoever extant it may be. This proposition is covered by the legal maximum, “A harm shall never be considered as extant/longstanding (لا ضرر يـ كون قديماً). Therefore, under Shariah, the plea of prescription shall not hold sway. Hence, it could not be used as defense.

8. Rights of Neighbors in Islam (Nuisance to Neighbors)

Islam emphasizes neighborly rights (*ḥuqūq al-jār*) as integral to faith and belief. Rights of neighbors have been guaranteed in Quran al-Kareem and Sunnah. The scope of neighborhood extends to forty houses in each direction [Bukhārī, *al-Adab al-Mufrad*, 109]. The Holy Quran mandates kindness to kin, orphans, the needy, and near and distant neighbors. The verse reads as under:

"Serve Allah, and join not any partners with Him; and do good – to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess: For Allah loveth not the arrogant, the vainglorious;" (translation by Abdullah Yusuf Ali)

The following sayings of the Holy Prophet Muhammad (SWA) are worth mentioning.

"Jibrīl (AS) enjoined me so much regarding neighbors that I thought they might inherit" [Bukhārī 6024, Muslim 2624].

"He who believes in Allah and the Last Day must not harm his neighbor" [Bukhārī 6018, Muslim 2624].

"He whose neighbor is not safe from his mischief shall not enter Paradise" [Muslim].

"He is not a believer who eats his fill while his neighbor starves" [Ṭabarānī, *al-Mu‘jam al-Kabīr* 12:119].

And last but not the least, a person who shall contravene the above directions shall be liable to civil and criminal proceedings, and shall also be accountable for his bad deeds in the Eternity.

9. Conclusion

The Islamic doctrine of "Abuse of Right" (*al-Ta'assuf*) derives from Qur'anic and Sunnah precedents, later codified by jurists. Though analogous concepts exist in Western law (e.g., nuisance, malafide, malice), the systematic formulation of abuse of right under Islamic jurisprudence predates modern jurisprudence and reflects Islamic legal influence. The emphasis on neighborly rights underscores Shariah's holistic approach to social harmony, blending ethical imperatives with enforceable legal duties. One of the most salient features of Shariah is its rejection of time-barring doctrines such as prescription, laches, and statutes of limitation in cases concerning nuisance.