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Critical Analysis of Qualified Immunity Jurisprudence: A Theoretical Study of English Law and Shariah

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Abstract

The doctrine of qualified immunity, is globally practiced as a shield, has frequently been misused as a sword by law enforcement agencies against suspects that results in violation of citizens' constitutional rights. Instead of protecting lives it promotes a culture of police violence in the name of public order and crime control that bitterly represent "shoot first think latter" approach. Pakistan is no exception as its 'thana culture' has been intact since the colonial era as a sign of public insecurity. Recently, police brutalities on international as well as national levels have compelled legislators, scholars and public alike either to alter or eliminate this lawless and ruthless prerogative that is a means of expanding the gulf of hatred between rulers and the ruled. Islamic polity cannot tolerate to encourage confiscation of human lives and dignity on the grounds of suspicion rather it promotes doctrine of proportionality and moderate use of force when it is needed inevitably as it considers everyone accountable for his actions. This paper intends to find out theoretical basis of the doctrine in English law in the light of case law and important judicial precedents while comparing it with Shariah system of justice. Likewise, due place has been assigned to Shariah immunity-free justice system and some instances from the Prophetic and rightly-guided khulafa's life with a view that the current qualified immunity doctrine may be codified in the light of Shariah principles of justice, equality and fairness.

Keywords: Doctrine, Immunity, Caliphs, English Law, Islamic law

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Introduction

Police, in the today's' modern societies, are deemed as an integral part of the social setup. In fact, they undertake complicated and critical tasks of deterring crimes, tracing criminals and keeping peace and tranquility[1] in the society that need them to exercise some extra authority. Most of their extra constitutional activities have been covered under the doctrine of qualified immunity (QI) so that they may feel themselves protected meanwhile undertaking duty. Police violations of constitutional rights normally take place under this privileged doctrine that range from free speech to the excessive use of force which, sometimes, results in death of suspects.[2]

The doctrine has been considered of importance because it shields all government officials, including police, from civil suits for monetary damages except where "clearly established law" or constitutional rights have been violated.[3] QI courts' decisions have been described as "one of the most morally and conceptually challenging tasks federal appellate judges routinely face" as there has been found no clear guidance for judges about whether and when a plaintiff's claim should be decided on merits before assessing whether the defendant is entitled to qualified immunity.[4]

The currently prevailed doctrine of QI was introduced, for the first time, by the American Supreme Court in a hallmark case of Harlow vs Fitzgerald in 1982 that then kept on various developmental stages. The doctrine has taken its roots from absolute immunity of sovereigns, a constitutional rule, though the QI is a judicial precedent of English law and thus found nowhere in written or codified form.

1. English Law Concept of the Doctrine of Qualified Immunity

1.1. Definition and Meaning of Immunity

Curzon, in his renowned Dictionary of Law defines the word immunity as "the freedom or exemption from some obligation, penalty or powers of another".[5] In line with this literal connotation, the American Supreme Court has defined the expression of QI, in a hallmark case, as an exemption from duty, burden or penalty.[6]

1.2. Origin of the Doctrine

The scheme of immunities of officials has been originated from the ancient English Law doctrine of Sovereign Immunity which was prevalent in the old feudal English society as quoted by Professor H.

Street: "*Just as no word could be sued in the court which he held to try the case of his tenants, so the King, at the apex of the feudal pyramid and subject to jurisdiction of no other court was not liable*".[7]

The above quotation highlights the origin of the immunity given to the officials which has been derived from the renowned historical principle of English Law as it says "the King can do no wrong". It also means that the king cannot be questioned in court that works under his authority except with his own consent. In fact, the expression's original meaning was that the King was immune from all sorts of criminal as well as civil wrongs for the reason he was not in a position commit any wrong will performing official duties,[8] as Professor L. Jaffe observed: "*The King though not liable in his Court (since it seemed an anomaly to issue a writ against oneself) nevertheless endorsed on petitions "let justice be done" thus empowering the Court to proceed*".

By following the British legal system's principles in the Common Law countries, including Pakistan, various immunities have been given to the President, Prime Minister and cabinet members from civil and criminal suits in case they commit legal wrong while serving their offices.[9]

1.3. Development of the Doctrine in Light of the Case Law

As far as state officials' immunity from constitutional rights violations is concerned, especially police officers, the American citizens were free to bring them to justice under the provisions of the "Civil Rights Act, 1871".[10]

Almost forty years back in 1982, the U.S. Supreme Court, while interpreting the Civil Rights Act in a renowned case "*Harlow vs Fitzgerald*" introducing the QI concept. The court ruled out that state officials were immune from civil rights law suits in case they did not violate "clearly established law".[11] A law is considered as "clearly established" if the plaintiff could produce a court precedent or a consensus of cases where holdings are similar[12] or, in some cases where conduct of the official concerned seems obviously unconstitutional.[13]

However, in "*Hope vs Pelzer*", the Supreme Court held that the test of finding "materially similar holdings"[14] was a rigid gloss on the QI standard hence, it was not necessary to keep officers on notice to know that their so and so conduct is unconstitutional. The Court further stated

that it is strange approach when it is accepted that general statements from which the law is derived are not capable of giving fair and clear warning to the offender of civil rights.[15] Therefore, a constitutionally general rule that has been already identified in a judgment may be applied to the specific conduct in question, even though the specific conduct in question has not previously been held unlawful by a law court."[16]

Aside from that, the Supreme Court has given little clarification on what is suitable to qualify as clearly established for the purposes of a qualified immunity analysis. In a recent case,[17] filed by a victim of police excessive use of force during his arrest, it was held by the court that the police officer was entitled to QI. The Court further explained that the appropriate question of inquiry is not whether the police officer was guilty of violating the individual's clearly established right to generally be free from excessive force, but whether any clearly established law exists that "prohibited the officers from stopping and taking down a man in these circumstances." Likewise, the Court demanded the plaintiff to present any other recent precedent where it is stressed the officer concerned shall be held liable for violating the Fourth Amendment.

It is important to note that it is not itself a substantive right as section 1983 provides a justice-providing forum where they could the offending officials for money damages.[18] QI, on one hand, is a defensive shield for government officials facing cases related to monetary liability[19] while on the other hand it protects a government official who violated constitutional rights of a citizen under the cover of good faith defense.[20] The doctrine of QI is, therefore, considered the most important and crucial in the law of constitutional torts.[21]

1.4. Justification and Rationale behind the Doctrine

The QI doctrine seems to have drawn frontiers between law enforcement agencies and states' subject. The U.S. Supreme Court therefore has offered a renowned case;[22] three types of justifications while interpreting the text of Section 1983: First, the doctrine of QI shall not be deemed a new concept as one of its elements has been derived from a common-law "good-faith" defense. Secondly, it compensates the plaintiff for an earlier putative mistake committed by an officer. Thirdly, it keeps on providing "fair warning" to government officials, akin to the rule of lenity.

While interpreting the QI defense, the courts further held that there are three major rationales behind this defense: First, it is a wanted to over-deter police officers from taking action for fear of lawsuits.[23] Secondly, the courts want to offer a sort of freedom in case they are required to use discretion or make tough decisions in tense situations. Thirdly, QI allows courts to articulate constitutional law without subjecting officers to retroactive liability.[24]

In short, by closely examining, each of these justifications that have been given in defense of QI contributed by a mix of historical, conceptual, and doctrinal reasons. The rationale given for the doctrine could not offer the best response. The unlawfulness and unlimited bounds of the doctrine are deemed doubtful because of its shoddy foundations. The reason is that the courts have given a privileged place to the QI on its agenda reserved for the offender officials that doubts courts role by not punishing the culprits.[25]

1.5. Elements of Qualified Immunity

A plaintiff is required to present a soundly proved case in order to overcome a QI defense against an official. A plaintiff is in need of proving two crucial elements: First, that there has been actually occurred a constitutional violation. Secondly, that the violated right of the plaintiff was clearly established by the law in such a way that an ordinary prudent officer would know that he is in the course of violating that right.[26]

1.6. Challenging Nature of Police Duty and Protection of Rights of Suspects

Keeping the challenging nature of a police officer's duty, the court held that it does not seem just to force him in order to "choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does."[27] Hence, the Court created QI in order to shield them from undue interference with their duties as well as from protection from threats of legal liability."[28] The U.S. Supreme Court, further, explained that QI also keeps on balancing the three important components: (1).damages remedy to preserve citizens' rights, (2) protection of officials who are compelled to exercise their discretion, (3) vigorous exercise of official authority for preserving public interest."[29]

By maintaining balance in the competing interests of plaintiff, defendant and public, the courts allowed dismissal on QI grounds,

though, a defendant was found violative of the plaintiff's constitutional right with a condition that if the defendant could show (1) that his conduct was reasonable and (2) that he held a "good-faith" belief that his conduct was proper while exercising his discretion.[30] In subsequent cases, the court withdrew the subjective element of the QI for fear that a defendant's good faith could not be resolved without discovery. Now, the rule is that an official is entitled to unless his conduct violates "clearly established law."[31] A law is considered as "clearly established" if there has been found a precedent or a consensus of cases with similar holding facts, or, in limited situations, if the conduct of official is found obviously unconstitutional.[32]

1.7. The Qualified Immunity Implications

Let suppose that it is true that the courts' justification of QI is baseless as it has not been derived from ordinary principles of statutory interpretation. So, how should the QI cases shall be actually handled by the courts? The most appropriately possible answer may be that the Court could eliminate or modify the doctrine. This approach seems attractive for it is straightforward opinion but it is of little use for the courts. Generally, a doctrine's may be quashed on the ground of lack of a legal basis but it is not a sufficient one. Under rules of stare decisis, the Court might not feel comfortable to overturn QI, even if it is wrong for the reason that, now, it is an important part of statutory precedents.[33]

It may be considered as true that QI doctrine seems violation of legal principles in several respects: First, it is not viewed by the courts as purely statutory rule, as compared to a constitutionally protected one.[34] Second, both QI and other official immunities generally deemed to be rules of common law. The common law can be changed by the American Congress[35] but sovereign immunity is out of its jurisdiction that has limited the freedom of the legislators. Third, the QI related cases are dealt with by the courts the court while focusing on the factor of "clearly established law."[36]

The QI seems to be more dependent on the courts' interpretation than the statutory principles as it has already happened after *Harlow* when the Court reformulated the QI in order to strengthen it.[37] The courts, in accordance with the circumstances of the case, sometimes, take back the excesses of the doctrine as an expert has pointed out that when a line of the doctrine leads to a problematic direction, it is highly traditional to "narrow" it,[38] while leaving its roots intact while refusing

to allow new branches to take their natural course out of the QI jurisprudence.[39]

2. *Shariah* analysis of the Doctrine of Qualified Immunity

Immunities in its various forms that prevail in judicial systems around the globe represent a unanimously agreed upon focal point of inequality before law which is totally repugnant to the justice system of Shariah based on the principles of equality. Though there exist, globally, constitutional provisions in respect of "equality before law", but as far as Shariah principle of equality is concerned, it is based on completely unique basis. Therefore, a brief account of the Shariah justice system in the context of QI has been given in the following manner.

2.1. Equality before Law

As per the Islamic teachings, the law applies to everyone without any distinction between rulers the ruled and without prejudice to individuals based on gender, color, wealth, kin-ship or friendship, position or creed or any other differences[40] as Allah says: "*O mankind, we have created you from a male and female, and made you into races and tribes, so that you may identify one another. Surely, the noblest of you, in Allah's sight, is the one who is most pious of you…*"[41]

The Islamic history is evident of many occasions where rulers were called to the courts and were not just dealt with as ordinary men but judgments were also given against them. It was the reason the non-believers got inspired by the Shariah justice system to the extent that they embraced Islam.[42]

2.1.1. *Quranic* Teachings in Respect of Equal Justice

The *Quranic* teachings time and again, emphasizes on doing justice as it has been considered a primary duty of a Muslim soon after his faith in Allah (SWA) as Allah orders the Prophet: "*...And say, I believe in whatever book Allah has sent down. And I have been ordered to do justice among you….*"[43]

Every believer, in individual as well as in collective capacity is bound ensure justice to the extent that even if it is against himself, parents, close relatives or rich, as *Quran* says: "*O you who believe, be upholders of justices as witnesses to Allah, even though (against the interests of) yourselves, or parents and the kinsmen; One may be rich*

or poor Allah is a better caretaker of both. So do not follow desires…."[44]

2.1.2. Conduct of the Prophet (SAW) and Sovereign Immunity

The Islamic justice system considers non above the law including rulers to the extent that even our prophet, his family members and relatives were not excluded from ambit of the law. The Prophet, throughout his life never exercised neither absolute immunity nor qualified immunity; instead he has proved himself and his family to be of equal value before the law.

Once the Prophet presented himself for accountability by asking people: "if I had done any wrong to any of you, let come and take your revenge…",[45] One another occasion, a woman from the *Bano Makhzom* tribe was found guilty of theft and the Prophet was going to announce her punishment. The tribe felt it a sham for their dignity, they have represented their stance through Usama ibn-e-Zaid in order to overrule the punishment. The Prophet became angry with Usama and asked: "are you recommending in a *hadd* …"Then the Prophet addressed people and said: "*Indeed, people received Allah's wrath in the past for when a dignified committed theft he would get indemnity but when a powerless man committed theft, he would be awarded punishment. By Allah if my daughter Fatima was found guilty of theft, I would have cut her hand off*".[46]

2.1.3. Precedents from the Era of the Rightly-guided *Khulafa*

By following the foot-steps of the Prophet (SAW), all the rightly-guided *Khulafa* (Muslim rulers) have never thought themselves to be above the law, instead, they used to encourage people to put them on the right way if they deviate from the path of the Prophet.

2.1.4. Conduct of *Khalifa* Abu Bakkar (RA) and Sovereign Immunity

It is a significant part of the Islamic History that when Abu Bakkar (RA) was elected as a *Khalifa*, he, on his inaugural ceremony addressed the assembly of people and said historical words: "...*You have elected me your khalifa although I am not better than you. I need all your advice and all your help. If I do right, help me. If I do wrong, correct me. In my sight the powerful and the weak are alike and to both I wish to render justice. You should obey me as long as I obey Allah and His Prophet, if I disobey them, you should forsake me.*"[47]

The comprehensive speech of Abu Bakkar (RA) made it clear that he would not be an autocrat or king rather would carry on business of the state with the help of people while considering him-self accountable for criticism and accountability. He claimed no immunity by rendering himself to the injunctions of *Quran* and *Sunnah* of the Prophet, where all are considered equal, in the sight of Allah, except those who are pious.[48]

2.1.5. Conduct of *Khalifa* Umar (RA) and Sovereign Immunity

The second *Khalifa* of Muslims, Umar ibn Khattab (RA), remained a role model and an ideal ruler for his successors due to his simplicity, impartiality, straight forwardness and the guiding spirit of running state administration; and thus, made him-self a bright example for the world as a successful ascetic Muslim ruler.[49]

The *Khalifa*, Umar, once addressed people while saying: "Those of you who see in me any dishonesty must straighten it"; A Muslim replied "by Allah we will straighten you with the edges of our swords if we see you in such a behavior". *Khalifa* thanked Allah for He has created someone in the *Ummah* (community) of the Prophet(S.W) who can straighten Umar with his sword.[50]

Once, during the era of Umar (RA), a dispute took place between him and Ubai ibn K'ab (RA), they attended the court of Zaid ibn Sabit (RA) for resolving the dispute. Umar (RA) was offered a distinct seat which he refused and sat with his plaintiff. The court resumed by presenting the plaint received denial from the *Khalifa*. The *Qadhi* (judge) was require to ask Umar (RA) for oath, instead, he requested the plaintiff to withdraw his plaint. Umar (RA) himself took oath and said: "Zaid cannot be eligible for the post of judge until he could deal a ruler and a common man on equal footings".[51]

On another occasion, son of Amr bin al-'As, the governor of Egypt's son was found guilty of slapping a man who defeated him in race; On the complaint of the Egyptian, son of the governor and his father, Amar ibn Al-'As were called by Umar (RA). Umar asked the complainant "hit him"; the man started hitting son of the governor to his satisfaction. Umar again added: "beat the noble man more". Then he addressed Amr bin al-'As and said: "since when have you enslaved people and their mothers have given birth to them as free persons".[52]

2.1.6. Conduct of *Khalifa* Ali (RA) and Sovereign Immunity

Ali (RA), the fourth *Khalifa* and son-in-law of the Prophet, was the most learned lawyer of his time but even then, he did not claim immunity rather he upheld the supremacy of law. Once, he brought complaint against a Jew in order to recover his stolen armor but failed to prove his stance due to lack of evidence. The Jew was impressed when he saw that the *Khalifa* accepted verdict of the court without hesitation. It melted his heart and promptly given back the armor to *Khalifa* and embraced Islam.[53]

3. Police Immunity Under Pakistani Law

Though Pakistan is an Islamic ideologically based state but, unfortunately, its legal system is based on the English law system that was inherited soon after partition of the united India. There has been found no written law that allows police immunity except few provisions which are normally misused by the law enforcement agencies.

3.1. The Code of Criminal Procedure 1898

Under the Code of Criminal Procedure (CrPC), police are entitled to use all necessary means to ensure arrest of a suspect who attempts to escape arrest.[54] The text of the law says: "*If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect' the arrest*". However, in the subsequent sub section it has been clearly mentioned that death shall not be caused to the person who is escaping. The text of the relevant section[55] says: "*Nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment of life*".[56]

3.2. The Code of Civil Procedure, 1908

The Code of Civil Procedure (CPC) lays down immunity to officials in respect of arrest, personal appearance and attachment of property except for the purpose of execution.[57] The officers are defended by the government; hence, they are given a prerogative to be defended in court by the Government Pleader in suits[58] for their legal wrongs.

3.3. The Prison Act, 1894

There are certain provisions under the Prison Act that clearly allow torture of the suspects in police custody. The relevant text of the Act states as: "*Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under*

the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan".[59]

3.4. Police Misuse of the Law

By thoroughly going through the above provisions of the relevant Pakistani laws, it is crystal clear that police often misuse the mentioned provisions of CrPC and CPC etc. with *mala-fide* intention as it has taken place in two recent cases.

3.4.1. Naqibullah Mehsud's Murder Case

Naqibullah[60] was one of the victims of the fake police encounters that were staged by the ex-SSP Rao Anwar who allegedly murdered 444 innocents. The SSP took the stance that Naqibullah was a TTP's[61] member which was not just denied by his father and other close relatives but ATC[62] also declare him as "innocent".[63]

The ex-SSP was arrested while Naqibullah's father filed a petition in the Supreme Court of Pakistan (SC). During the proceedings, in December 2019, he died. In Mach 2020, after almost two years later the murder took place, the SC disposed of the case with three-member bench by saying that the allegations could not be proved by the petitioners and that it was not the proper forum to try the case.[64]

3.4.2. Amir Tehkali's Torture Case

A video of the incident of brutal torture was shared on social media on 24th of June, 2020, where three to four policemen are seen humiliating and stripping the naked body of Amir in compliance with order of the superior police officer. Some days prior to the torture, the victim has used abusive language against police and then was arrested by police where he publicly apologized for his behavior. [65]

Thousands of protestors, around the country, marched towards police stations and press clubs and demanded justice for Amir.[66] Senator, Mushtaq Ahmad criticized KP[67] Police and told that few days prior to this incident, a teacher was arrested by the CTD[68] and later on was murdered in fake encounter.[69] The incident was also condemned by the political and religious parties and finally the relevant police officials were suspended[70] and the inquiry is still going on.

4. Critical Analysis of Qualified Immunity from the Perspective of *Shariah*

The inhuman doctrine of QI, derived its roots from the absolute immunity centuries-old English law's expression "the king can do no wrong", which was subsequently extended to states' officials, including police. With colonial period, the doctrine of QI was embodied in the dominated states' laws, including Pakistan. There still exist provisions in Pakistan that protect head of the state, Prime Minister and other ministers from civil and criminal liabilities during their service.[71] The *Quranic* Injunctions, *Sunnah* of the Prophet and conduct of the rightly-guided *Khulafa* clearly favor supremacy of law at all cost and oppose all sorts of immunities introduced by man-made laws.

The modern concept of QI empowers law enforcement agencies, including police, to misuse this shield as a weapon by violating citizens' constitutional rights. Police could not be sued in their official capacity for legal wrongs which is not just against the constitutional concept of equality before law[72] but it is also against the police duties.[73] *Shariah* considers equality of all humans before law including rulers and even the noble guides; the Prophets and their families, of the mankind are accountable before law. Though, the wording of the constitutional right of equality before law seems similar but in fact the Shariah concept is a comprehensive one as it has been derived from divine law.

Torture is another means that has been used by police for extracting evidence which is not just inhuman act against human dignity but it is also in contravention of the constitutional provisions.[74] In fact, theoretically torture is considered an unlawful and disgracing act but its practice in police custodies is a global phenomenon to the extend the police consider themselves helpless without this brutal practice.

No doubt, policing is a crucial part of state policy in the current age and no country could be imagined without police. Hence, it may not be possible to totally quash out QI of officials, including police but their discretion shall be made limited by codifying rules in this respect so that governments' resources and police time shall not be wasted in courts. Therefore, the QI doctrine needs to be revisited by states and the United Nations shall draw guide lines while maintaining balance between interests of state, police and citizens by codifying a code in this respect in order to bridge the gulf between the police and the subjects.

Shariah, under the doctrines of objectives of *Shariah* and *al-siyasah al-shariyyah* (discretion of the state authorities) recognizes changes in administrative laws to be brought with the passage of time so that government business may carry on smoothly. Islamic State shall codify their own law based on the Shariah general principles of justice, equality and supremacy of law.

Conclusion

Consequently, the study demonstrate that QI is globally practiced and has frequently been misused by officials facing various cases and those who violated constitutional rights including torts of citizens under the umbrella of legal sword i.e. good faith or self-defense. Pakistan is no exception as it is apparent from the '*thana* culture' in preview of two recent (Naqibullah–*Naseemullah* murder and Amir Tehkali's torture) cases that police often misuse the provisions of CrPC and CPC etc., with *mala-fide* intention. Thinking of the absolute immunity, centuries-old English law's expression that "the king can do no wrong" was subsequently extended to states' officials, including police. With colonial period, QI was embodied in the dominated states' laws, including Pakistan, where still exist provisions that protect head of the state and government including ministers from civil and criminal liabilities during their service. Thus, **this kind of attitude of state officials particularly** police brutalities on international as well as national levels have compelled legislators, scholars and public alike either to alter or eliminate this lawless and ruthless prerogative that is means of expanding the gulf of hatred between rulers and the ruled. Islamic polity cannot tolerate the doctrine of QI at all. However, im**munities** in its various forms prevail in judicial systems around the globe represent unanimously agreed upon focal point of inequality before law which is totally repugnant to the justice system of Shariah based on the principles of equality. Though there exist, globally, constitutional provisions in respect of "equality before law", but as far as Shariah principle of equality is concerned, it is based on completely unique basis. Additionally, the QI modern concept empowers law enforcement agencies, including police, to misuse this shield as a weapon by violating citizens' constitutional rights. Police could not be sued in their official capacity for legal wrongs which is not just against the constitutional concept of equality before law but also against the police duties. While, on the other hand, Shariah considers equality of all humans before law including rulers and even the noble guides**.** And thus, the Islamic history is evident of many occasions where rulers

were called to the courts and were not just dealt with as ordinary men but judgments were also given against them. It was the reason that non-believers got inspired by the Shariah justice system to the extent that they embraced Islam. Even the Prophet, his family and relatives were not excluded from ambit of the law. The Prophet, throughout his life never exercised neither absolute immunity nor QI. The words of Prophet: "if I had done any wrong to any of you, let come and take your revenge", while in the case of *Bano Makhzom*: "by Allah if my daughter Fatima was found guilty of theft, I would have cut her hand off", clearly shows that he has proved himself and his family to be of equal value before the law. Likewise, the rightly-guided *Khulafa* have never thought them-selves to be above the law. Significantly, the comprehensive speech of Abu Bakkar (RA), as a *Khalifa*, made it clear that he would not be an autocrat or king rather would carry on business of the state with the help of people while considering him-self accountable for criticism, accountability and claimed no immunity. Equally, Umar (RA) when a dispute took place between him and Ubai ibn K'ab (RA), and alike the story of son of Amr bin al-'As, the governor of Egypt, shows that he including his administration subjected themselves to the guided Shariah principles and claimed no immunity. Similarly, Ali (RA), during his *Khalifa*, did not claim immunity rather he upheld the supremacy of law by accepting the verdict of the court without hesitation knowing that the Jew has stolen his armor, confirms that even the ruler of Islam is subject and accountable before law. Though, in Pakistani law, the wording of the constitutional right of equality before law seems similar but in fact the Shariah concept is a comprehensive one as it has been derived from divine law.

No doubt, policing is a crucial part of state policy in the current age and no country could be imagined without police. Hence, it may not be possible to totally quash out QI of officials, including police but their discretion shall be made limited by codifying rules in this respect so that governments' resources and police time shall not be wasted in courts. Therefore, the QI doctrine needs to be revisited by states and the UN shall draw guide lines maintaining balance between interests of state, police and citizens codifying a code in order to bridge the gulf between the police and the subjects. Correspondingly, changes in administrative laws are needed keeping in view Shariah general principles of justice, equality and supremacy of law.

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[3] Harlow vs Fitzgerald, 457 U.S. 800, 818 (1982)
[4] The Court, in Saucier vs Katz, asked judges that at first sight they shall look into the conduct of an official whether it was constitutional and then decide if it was clearly established. The Court described this process as "the process for the law's elaboration from case to case."
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[9] Art: 248 sub arts: 1-4, the Constitution of Republic of Pakistan 1973.
[10] Sec: 1983, Title: 42, the Civil Rights Act, 1871.
[11] Ibid, Sec: 1983 (2012) lays down citizens' right to bring officials to the justice in these words: *"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" . . . .".*
[12] Wilson vs Layne, 603, 617 (1999)
[13] Hope vs Pelzer, 730, 741 (2002)
[14] Ibid, 975, 981 (2001)
[15] United States vs Lanier, 259, 271 (1997)
[16] Pierce vs Gilchrist (2004)
[17] City of Escondido, California vs Emmons (2019)
[18] Monroe vs Pape (1961), the history of sec. 1983 and the meaning of "under color of law"
[19] Harlow vs Fitzgerald, 457 U.S. 800, 815 (1982)
[20] Wood vs Strickland, 308, 322 (1975), explains that QI doctrine is not flexible that it shall be applicable to all official rather it shields those who "reasonably" found violative of constitutional rights.
[21] John C. Jeffries, Jr., What's Wrong with Qualified Immunity? 851, 852 (2010)
[22] Harlow vs Fitzgerald, 457 U.S. 800, 815 (1982)
[23] Ibid, U.S. at 819; lays down that "the public interest may be better served by action taken with independence and without fear of consequences"
[24] Saucier vs Katz, 533 U.S. 194, 201 (2001)
[25] William Baude, Is Qualified Immunity Unlawful? 45-46.
[26] Wilson vs Layne, 526 U.S. 603, 609 (1999)
[27] Scheuer vs Rhodes, 416 U.S. 232, 245 (1974)
[28] Harlow vs Fitzgerald, 457 U.S. 800, 806 (1982)
[29] Butz vs Economou, 438 U.S. 478, 504–06 (1978)
[30] Harlow, 457 U.S. at 817.
[31] Wilson vs Layne, 526 U.S. 603, 617 (1999)

[32] Charles R. Wilson, "Location, Location, Location": Recent Developments in the Qualified Immunity Defense, 445, 447 (2000)
[33] Indeed, Section 1983 has got amended by the Congress in respect of dealing with injunctive relief against judges
[34] Seth P. Waxman & Trevor W. Morrison, What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause, 112 (2003)
[35] William Baude, Sharing the Necessary and Proper Clause, 46–47 (2014)
[36] Harlow vs Fitzgerald, 457 U.S. 800, 818–19 (1982)
[37] Kathryn R. Urbonya, Problematic Standards of Reasonableness: Qualified Immunity in Section 1983 Actions for a Police Officer's Use of Excessive Force, 61, 81 (1989)
[38] Richard M. Re, Narrowing Precedent in the Supreme Court, 1861 (2014)
[39] Wyatt vs Cole, 504 U.S. 158, 171 (1992) (Kennedy, J., concurring), the stance of the U.S.C was explained in these words: "We need not decide whether or not it was appropriate for the Court in Harlow to depart from history in the name of public policy, reshaping immunity doctrines in light of those policy considerations. But I would not extend that approach to other contexts".
[40] Zaidan, A.K., Individual and the State (Malaysafa, Playgraphic Press, 1982), 57
[41] Al-Quran, Al-Hujur'at: 13, translation by Mufti Muhammad Taqi Usmani.
[42]Maqbool Hassan, judicial immunity of rulers: an analysis in the light of Islamic teachings, research journal, "Tehqeeqat-e-Islami", vol. 33, Issue. April-June 2014, Idara Tehqeeq- wa- Tasneef, Ali Garh, India, 39-54.
[43] Al-Quran, Al-Shur'a: 15, translation by Mufti Muhammad Taqi Usmani.
[44]Ibid, Al-Nis'a: 135.
[45] Al-baihaqi, Al-sunan Al-kubr'a, Dar-ul-kutub Al-ilmiyah, Beirut Lebanon (1424 a.h), ed. 3rd, vol.8, 48
[46] Saheeh Al-Bukhari, 3475.
[47] Rahim, A., Islamic History (Lagos: Islamic Publication Bureau, 1981), 55
[48]Al-Quran, Al-Hujur'at: 13, translation by Mufti Muhammad Taqi Usmani.
[49] Rahim, A., Islamic History, 79.
[50] Ibid, 55
[51] Maqbool Hassan, judicial immunity of rulers: an analysis in the light of Islamic teachings, research journal, "Tehqeeqat-e-Islami", vol. 33, Issue. April-June 2014, Idara Tehqeeq- wa- Tasneef, Ali Garh, India, 39-54.
[52] Abdul Karim Zaidan, Individual and the State, 59
[53] Al-Haj Mohammad Ullah, the Administration of Justice in Islamic, no. 12, 9.
[54] Sec. 46, sub sec. 2, CrPC 1898
[55] Ibid, sub sec.3.
[56] Ibid.
[57] Sec. 81 (a,b), CPC, 1908.
[58] Ibid, Ord. XXVII (8): Procedure in suits against public officers.
[59] Sec.53, sub sec. 2, Prison Act, 1894
[60] His real name on his CNIC was Naseemullah
[61] Tehreek-e-Taliban, Pakistan.
[62] Anti-Terrorism Court
[63] Available at: https://www.dawn.com/news/1459522, visited: 5th July, 2020.
[64] Available at: https://www.pakistantoday.com.pk/2020/03/18/sc-disposes-case-pertaining-judicial-inquiry-ex-ssp-rao-anwar/, visited: 6th July, 2020.
[65] https://www.thenews.com.pk/print/678605-police-station-attacked-in-tehkal, visited: 7th July, 2020.

[66] https://nation.com.pk/26-Jun-2020/protest-rallies-condemn-police-torture-of-citizen, visited: 7th July, 2020.
[67] (the province of) Khyber Pakhtunkhwa.
[68] Counter- Terrorism Department
[69] Available at: https://www.thenews.com.pk/print/677530-disturbing-videos-reveal-abuse-of-powers-by-kp-police-three-cops-arrested-sho-suspended-for-humiliating-citizen-in-custody, visited: 8th July, 2020.
[70] https://nation.com.pk/25-Jun-2020/4-cops-suspended-in-torture-video-case, visited: 10th July, 2020.
[71] Art. 248, sub arts: 1-4, the Constitution of Republic of Pakistan, 1973.
[72] Sec. 4, the Khyber Pakhtunkhwa Police Act, 2017.
[73] Ibid, art.25, sub art 1
[74] Ibid, art. 14, sub arts: 1-2.