

## **FUNDAMENTAL RIGHTS IN PAKISTAN – PROTECTED UNDER THE CONSTITUTION OF 1973**

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### **Abstract**

*Fundamental rights are the divine rights guaranteed by every religion of the world. It is protected or guaranteed by constitution of the every single country. It is the basic need and essence of the every each single citizen. It provides liberty and protection to life. The constitution basically provides equality before law and equal protection before law. The Constitution of Pakistan safeguards fundamental rights under Article 9 to 28. Man cannot live without a society. He cannot live alone. He must live with his fellow human beings. But living in a society means cooperation with other members of that society. A person who is aware of his duties and rights in his society is a good citizen. A good citizen is aware of the fact that he is indebted to his society in many ways. He knows that the labor and work of countless persons have enriched his life. His life to a very great extent depends of others. A good citizen does his best to do his duty to the society. He always keeps in view the interests of his society and state. He lives a clean and honest life. Rights of an individual are the basic and fundamental requirements of any society. It plays an important and vital role in developed society. The rights are basically divided into mainly three portions i.e. civil rights, political rights and economical rights.*

**Key Words:** Fundamental rights, Abrogate, Amendments, Guaranteed, Suspended, Writ jurisdiction, Parliamentary, Double Jeopardy

### **Introduction:**

The constitution of any State is considered as mother of all laws. It is determined as supreme law of the State. After formation of democratic government the Prime Minister named as Zulfiqar Ali Bhutto approved the Constitution of the Islamic Republic of Pakistan, 1973 on 10th April and enacted on 14th August, 1973. The nature of the constitution is parliamentary and prime minister was empowered as a chief executive of the State. The president was considered to be nominal head of the State. Under Article 227 of the said constitution no law can be formed which is against the Quran and Sunnah.

Laws conflicting with or in discrediting of Fundamental rights to be void (Article 8):

What is “RIGHT”? This question has no definite meaning. However, right means an interest which a particular person is having. Thus, Executive Authorities have to act in good faith and within the boundary of their limits, failing which the Executive acts are controlled by the Courts. President can, however, declare emergency by exercising the authority under Article 233(1), through which certain rights are suspended automatically, but for the suspension of certain other rights, a separate Notification is issued under Article 233(2).

These rights are basic and fundamental but are not absolute as certain limitations have been imposed by the Constitution itself, and certain reasonable limitations have been left to be imposed by the legislature through various Acts passed from time to time. These values were also considered necessary by the society in its best interest. Limitations are also imposed through the judgments of the Courts while defining and interpreting the reasonableness of the limitations. The reasonableness is, however, judged by the Courts. In fact a protection against the State which are enforceable by the Courts (Izhar-ul-Haq, 2009).

### **Protection of life and liberty (Article 9):**

The Constitution provides protection to person's life and liberty. Deprivation of liberty means deprivation of eating, sleeping, working and also against the bodily restraints. The instances of this right are as follows:

- arrest and detention;
- conviction and sentence;
- custody depending on pending deportation;

children to meet for their care or protection from anger;  
 protection of mental patients;  
 Preventive detention.

In *Noor Hussain v. Superintendent DarulAman*, PLD 1988 Lah. 333, it was held that once the Court is satisfied that a person is being held in custody without lawful authority, the only course open to the Court is to set him at liberty.

### **Protection provided as to Confinement and Custody (Article 10):**

The constitution provides protection to every citizen of state that no one may be detained without due process of law. If anyone is arrested may be produced before the Magistrate within twenty four hours of such arrest. Said article relates to safeguards against arrest and detention. It recognizes the right of the Government to arrest and detain. The first right of a person, after his arrest and detention is that he must be informed as to why he has been arrested. The detaining authority will have to give its reasons for detention. This duty of the State gives right to the individual to seek the remedy against the arrest. So the first right is that he must be allowed the Lawyer facility.

### **Protection to fair trial (Article 10-A):**

This Article has made this civil right more fundamental that the plaintiff shall be entitled for an impartial hearing and due procedure. This trial must now be 'fair', failing which, this fundamental right of 'fair trial' may now be enforced by way of writ-petition under Art.199, and if public importance is attached, then under Art.184(3) of the Constitution. The fundamental rights, once inserted, cannot be taken away. This right is available not only to a citizen, but to every person, whether an artificial or natural. The association of persons, firms, companies, institutions, departments and all other entities, having legal personalities, are having this fundamental right, in addition to the individuals, as natural persons (Khan, 2013).

### **Slavery, Forced Labor, Etc. Prohibited (Article 11):**

Any kind of slavery, forced labour etc. is prohibited in Pakistan. To some extent, has been redundant in the sense that no slavery is in existence in this country. So far as the forced labour is concerned, that too is prohibited

except in case of compulsory services for public purposes or by a person undergoing punishment for an offence, which shows that from prisoners, the State can get forced labour. Usually consent is given by the Guardian with regard to his child and the child works in such factories, but as no remedy is sought against, therefore, it is to be according to law, whereas it is actually in derogation of this fundamental right. In Indian Constitution, this right has been protected in Arts.23 and 24.

### **Safeguard against the double jeopardy (Article 12):**

The Constitution provide safeguard against double jeopardy. No one can be convicted twice for the same act. It shows that this shelter has been assured in contradiction of retrospective penalty, which is only possible in criminal laws. There are criminal as well as civil laws, and again substantive and procedural laws. It is the punishment that cannot be awarded with retrospective effect, but it can be lessened and minimized. This Article creates a limitation for the Legislature not to make any law to prescribe punishments for offences that took place at the time when there was no law recognizing that particular type of offence. Though, the Legislature has the authority to make the law with retrospective or prospective effects.

### **Protection provided Against Double Jeopardy (Article 13):**

No individual:-

shall be indicted or rebuffered for a similar offense more than once; or  
 Might, when blamed for an offense, be constrained to be an observer against himself.

No person is to be prosecuted twice for the same offence, and this principle is called “double jeopardy”. This rule is based on the principle of ‘Natural Justice’, and not on the principle of ‘Equity’, which itself is based on just, fair and good conscious. In *Adnan v. Collector of Customs* PLD 1969 SC 446, the criminal proceedings were initiated in Special Court (Customs), during which the Customs Authorities issued a show cause notice for confiscation of goods which was challenged on the ground of ‘double jeopardy’, but it was held that the proceedings of Customs Authorities are in the nature of executive proceedings whereas the proceedings of Court are judicial proceedings and cannot hit by the principle of double jeopardy. Both can proceed simultaneously.

**Safeguard as to Self-respect (Article 14):**

The said Article provides safeguard and protection to human self-respect and privacy of home. No one can be tortured without any proof by any competent authorities.

**Safeguard as to Freedom of Movement (Article 15):**

Each resident should have the privilege to stay in, and, subject to any sensible confinement forced by law in people in general intrigue, enter and move uninhibitedly all through every part of State and live in any part of State. This right is absolute and unqualified, but the interpretations of Courts have made this right now a qualified one. In Indian Constitution, this right has been protected as a Fundamental right without any reasonable restrictions under Art. 19(Khan, Constitution of Pakistan, 1973, 2013).

**Safeguard as to Protection/Freedom of Assembly (Article 16):**

Each native might have the privilege to gather calmly and without any weapons. In Qari Abdul Hameed v. D.M Lahore PLD 1957 (WP), Lahore 213, assemble without arms peacefully and although reasonable restrictions in public interest can be imposed, but the right itself cannot be extinguished even temporarily. That except marriage party, funeral procession and religious meetings, five or more persons could not assemble. The order was found authorized.

**Freedom of Association (Article 17):**

Every citizen of the State has the right to make association for their well fare in a peaceful manner. A group of persons who join together for some common purpose or object is called an association. A Union is also association, which is created by law and which is a special type of association. A society is an association which is also to be recognized by law. A political party is an association. Thus, there are many types of associations, and the Constitution guarantees the right to form associations. Business associations can also be established. But this right to form associations is available to citizens only, and further there are limitations as no associations the object of which is illegal can be established, e.g., smuggling, gambling, decocting associations.

**Safeguard as to protection of Employment Professional or Occupation (Article 18):**

Every citizen of the State has right to equal and fair excess to job, employment, profession and occupation. No one can be deprived of its legal right by any form. It protects certain rights with regard to profession, occupation, trade and business, which are lawful. Profession is for earning livelihood. The qualification with regard to profession is the condition that is necessary for adopting a particular type of profession. Occupation is used in general terms. Trade and business are the commercial activities for earning profits. These activities are to be 'lawful', but despite this, certain restrictions have been imposed that the ordinary Legislature can restrict this right. The word 'lawful' is to be interpreted as in text, and the best interpretation is that 'lawful' means that where the individual activity is not prohibited by Law. Where the activity itself is prohibited by law as crime and it is made an offence to protect the tranquility and peace of the people, but the individual activity, if prohibited, would be 'unlawful'.

Freedom of trade, business and profession are the fundamental rights pertaining to these businesses, and are guaranteed subject to the following conditions: -

It is available only to citizens and not to aliens, which too in subject to;

License

free competitions; and

Government monopoly allowed.

Profession is dependent upon certain qualifications, while business can be started by persons without having any qualifications about the business.

All the freedoms in this Article are subject to law(Pirzada, 1966).

**Safeguard as to Freedom of Speech (Article 19):**

Every citizen of the State has equal freedom of speech. Speech may not be derogative or violent against any person expressly or impliedly. However, the right to speak freely and opportunity of press are liable to sensible confinements forced by law. If he unjustly attacks an individual, the person defamed may sue for damages, and if the words, on the other hand, are written or printed and shows treason or immorality, he can be tried for the offence of misdemeanor either by information or indictment. In State v. Abdul Ghaffar Khan, PLD 1957 (WP) LHR. 142, Bacha Khan was arrested for offence of sedition and the cases were pending before the Magistrate when the State filed an application for its hearing in the writ petition.

Accused made speeches in Pakistan besides to create hatred in the minds of Pathans against the Punjabis. The offences were held proved but the accused was sentenced only to fine, and the imprisonment was up to the rising of the Court.

**Right of information under Article 19-A:**

Every citizen of the State has equal right and excess to information or public documents.

Freedom to Acknowledge Religion and to Accomplish Spiritual Associations (Article 20):

Every citizen of the State has equal excess and right to perform their own religion and excess to their spiritual or holly places without any fear. This flexibility is just accessible to a native of Pakistan and the privilege to this opportunity is, (i) to claim, rehearse and engender the religion, (ii) to set up, keep up and deal with the religious organizations, and (iii) these flexibilities are further subject to the limitations forced by law, open request and profound quality. Islam, there is complete freedom of religion. It is also available in every secular State. In USA, the 1st amendment provided this right. There is no State religion in America and the Government cannot establish any religion in USA. It was also provided in the Constitutions of 1956 and 1962. It is also found in Objective Resolution and pre-amble of the Constitution. Generally no religion can go beyond the General standards of morality.

Protection Beside Taxation for Devotions of Any Specific Faith (Article 21):

The constitution provides protection beside taxation for devotions of any specific faith.

No individual is to be burdened with the end goal of engendering or support of any religion other than his own.

**Protections as to Educational Organizations in Reverence of Faith (Article 22):**

Every citizen has the equal protection as to educational organizations in reverence of faith. This Article guarantees certain freedom with regard to religion, as (i) freedom from receiving religious instructions for a religion other than his own; (ii) no discrimination in taxation on religious institutions, (iii) religious institutions are not prohibited in respect of same community; and (iv) no discrimination in an admission to an Institution funded by public revenue.

**Safeguard as to protection of Property (Article 23):**

Every citizen of the State has equal safeguard and protection of property from any corner. No one can be illegal deprived of his legal property. The right guaranteed in this Article is of general means the right to become the owner of the property, to possess in virtue of lawful title and to sale it out respectively. Acquisition of property may be (i) by purchase, (ii) by gift, (iii) by will; and (iv) by inheritance. In *Rashid Asghar v. ShareefGulzar* PLD 1989 SC 369, the CDA acquired certain properties of the Company at Rawalpindi under CDA Ordinance, 1960 which was challenged on the ground that CDA had no jurisdiction. First, these properties were requisitioned for President's Secretariat. It was held that the acquisition of property must be in accordance with the purposes of the Law and not beyond that. Hence, the appeals were allowed and the acquisition was declared null and void.

**Safety of Property Rights under Article 24:**

No man should be denied of his property (spare as per law). In our Constitution, the basic principle of socialism has been adopted. According to this Article, no person is to be destitute of his property except "due process of law". Acquirement or demand is allowed for 'public purpose'. There is a right to compensation of property acquired or requisitioned. However, the adequacy of compensation is not a Fundamental Right but only compensation is. But, there is another view that compensation itself means money equivalent to the price of the terrestrial, ordinarily the bazaar price.

**Equality of Citizen (Article 25):**

Everyone is equal before the law. No one superior or above the law. This is a general right whereas Arts. 26 & 27 are in addition to it. Article-25 has three Clauses. The first clause deals with equality. The third clause deals with exception to it or it can be said that it is a special provision. Generally, Art.25 is operative where;

there is substantial discrimination;

**Infringes fundamental right.**

Protection as to Non-Discrimination in Admission of Right of entry to Public Dwellings (Article 26):



Every citizen has the equal protection as to non-discrimination in admiration of right of entry to public dwellings. No one can be deprived of its color, creed, language and religion.

Protection Against Discernment in Services (Article 27):

Every citizen of the State has equal protection against discernment in service. There should be merit. No one should be deprived of service by its color, creed, language and religion. In *Mohammad Ashraf Mirza v. Govt. of Punjab*, 1998 PLC (CS) 400, it was held that creation of Regions/Zone for smooth administration is not hit by Art. 27 and posts could be reserved for any class or area.

### **Conclusion and Recommendations:**

Thus, it is concluded that the fundamental rights is the soul of any constitution of any State. The main purpose of the Government is to provide protection to life, freedom and property of the individual of the State as guaranteed by the constitution of every State. The fundamental rights in any legal system have protection. It is considered being inalienable rights. The fundamental rights are based on old custom, tradition and norms of any society which provide protection to individuals of that society. It provides protection irrespective of individual creed, color, caste and language. It is derived from the natural law which is also protected by the Supreme Court of any state or nation. It determines the responsibilities of the Government towards individual and duties of individual towards the Government. It is enforceable by the Supreme Court with subject to certain limitations.

The significance of the said study will help legislators to formulate effective legislation and rules that will provide a long term elucidation to the safeguard of basic fundamental rights. It will be valuable for both Government and non-governmental organizations, concerned with protection of fundamental rights, to implement their plans and get auspicious results. This article will acknowledge the general masses to aware of their civil and political rights as guaranteed by the constitution (Khan, Constitution of Pakistan, 1973, 2013).

**References**

TauseefZada Khan, 'Constitution of Pakistan, 1973', TauseefZada Khan  
Publisher Lahore, Edition 2013

Izhar-ul-Haq, 'Political Science Theory and Practice', Book land, Lahore

[Syed SharifuddinPirzada](#), 'Fundamental Rights and Constitutional Remedies  
in Pakistan', All Pakistan Legal Decisions, 1966

**Legal Cases**

Noor Hussain v. Superintendent DarulAman, PLD 1988 Lah. 333

Khair Muhammad Khan v. Govt. of Pakistan, PLD 1956 (W.P) Lahore, 668

Adnan v. Collector of Customs PLD 1969 SC 446

Qari Abdul Hameed v. D.M Lahore PLD 1957 (WP), Lahore 213

State v. Abdul Ghaffar Khan, PLD 1957 (WP) LHR. 142

Rashid Asghar v. ShareefGulzar PLD 1989 SC 369

Mohammad Ashraf Mirza v. Govt. of Punjab, 1998 PLC (CS) 400