

## EIGHTEENTH AMENDMENT IN THE CONSTITUTION OF PAKISTAN AND FUNDAMENTAL RIGHTS

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### ABSTRACT

This study is an analyses of fundamental right and examines how fundamental rights were protected and promoted in eighteenth amendment in the constitution of Pakistan. This study observes that how democratic rights are important to a nation such as right to education, right to fair trial, right to information, right to association and right to representation.

**KEYWORDS:** Constitution, Fundamental Rights, Legislation

### INTRODUCTION

Before the undivided India the government of India Act 1935 was working for the whole India. After the creation of Pakistan the responsibility of constitution making was in the hands of constituent assembly. This constituent assembly was also divided by several committees and subcommittees for constitutional tasks. The important committee of constitutional assembly was the committee of “fundamental rights of the citizens of Pakistan” and on “matters related to minorities”. In the first meeting of constitutional assembly on 26 May 1948 the assembly was decided to appoint two subcommittees the first about the fundamental rights and the second was about the minorities. On 12 April 1949 when the objective resolution was passed the constituent assembly talked about the human right described by the Islam. In objective resolution the constituent assembly described the democracy, social justice, tolerance and equality. The subcommittee about fundamental rights presents his report on 26 June 1948 and further on 17th June 1949 to the constituent assembly.

The report of the subcommittee about fundamental rights was accepted with some modification in October 1950. On the basis of this report a variety of fundamental rights were provided to the citizens in first constitution “Islamic Republic of Pakistan” which was promulgated on 23 March 1956 after the restless efforts of nine years. In the constitution of 1956 a great emphasis laid on the fundamental rights by asserting that any existing law which was inconsistent with any provision of the fundamental rights would be void. The judiciary was independent to enforce law on fundamental rights in the constitution of 1956. The civil, social, economic, political and cultural rights were guaranteed by the constitution of Pakistan 1956. On 8 October 1958 the first time Martial Law was imposed and Chief Marshal law Administrator (CMLA) was the General Ayub Khan. On 17th February 1960, General Ayub appointed commission for the constitution headed by justice Shaha buddin. On 6 May 1961 the commission present its report, on the basis of this report the constitution of “Islamic Republic of Pakistan” promulgated on March 1<sup>st</sup> 1962. Although the recommendation of the constitution commission relating to the fundamental rights were not appropriate part of the constitution. (1) so, when constitution of 1962 was published it was criticized by the

people that the powers of the courts were curtailed on the issue of fundamental rights. Ultimately the first (Amendment Act) of 1963 was introduced and fundamental rights are added in the constitution of 1962. (2) When the term of General Ayub Khan was expired and General Yahya Khan took over as Chief Martial Law Administrator (CMLA). Yahya Khan repealed the constitution of 1962 and imposed Martial Law. After the war of 1971 the Bangladesh was separated from the West Pakistan and Yahya Khan resigned the presidency and powers transferred to Zulfqar Ali Bhutto. An interim constitution was introduced in 21 April 1972 and finally on 14 August 1973 the third constitution of the nation was promulgated (3). In the constitution of 1973 the fundamental rights are provided to the citizens like as provided in the two previous constitutions of 1956 and 1962. In constitution of 1973 it was stated that any existing law which was inconsistent with any provision of fundamental rights would be void. In Pakistan no authority, Whether the Federal authority, National assembly, provincial government, legislature or local authority was not competent to make any law which was opposite to the any provision of the fundamental rights.

The judiciary was given the powers to enforce fundamental rights and courts decide either any law was against the fundamental rights are not. The democratic rights such as freedom of speech, freedom of expression, assembly, association, movement and freedom of profession were all provided in the constitution of 1973 with their usual qualifications. The civil rights were also the part of constitution of 1973 such as right of life, right of liberty and right of property. (4). Pakistani nation strongly believe that every citizen need to the universally agreed fundamental civil rights based on cooperation, impartiality and non discrimination. The concept about the civil human rights derived from Islam due to the Islamic democratic state. In Islamic state the human rights are always the matter of merit. According to Pakistani point of the view a cooperative approach at the world level helps in making a tremendous progress in achieving and promoting civil rights.

Pakistan as a founding member of Human Rights Council from 2006-2011 played a vital role of in achieving the convergences between the Islamic and the western world on some of the challenging human rights issues. Pakistan's national report on human rights for promoting and protecting in front of the human rights Council is very favourable. From 2008 the Pakistanis have taken many steps for restoring the democratic setup of the state intuitions. The media is free in broadcasting, the political prisoner were released and civil rights defenders were appreciated. The month of April 2010 was jubilant that the 18<sup>th</sup> amendment was passed and the government take very positive step for promoting and protecting the fundamental human civil rights. The three major article are added in the constitution, article 10A is about to the right of fair trial, article 19A is about the right of information and article 25A is about the right of education are the symbols of fundamental rights. (Khalid Iqbal November 05, 2012)

## **RIGHT TO EDUCATION (RTE)**

Article 25A the "right of education" is inserted as a fundamental right in the constitution. Education is the basic structure of any nation because it is not concerned with the single group or class, but it has the direct influence on the entire population of the country. Education is very important factor and helpful in creating social order. Social order is always based on the educational essential values and right to education is the basic human right.<sup>(6)</sup> In Pakistan according to 1973 constitution Article 37(b) stated that the state of Pakistan shall remove illiteracy, and provide compulsory and free secondary education with minimum time period.

The article 37(b) remained as the only article because this policy is only a pious wish. But in April 2010 under the eighteenth amendment right to education (RTE) Article 25A added.<sup>(7)</sup> The Article 25A reads as: "Article 25A: The state shall

provide free and compulsory education to all children of the age of five to sixteen years in such manners as may be determined by law". The age of 5-16 has been inserted with the aim of the misuse of prevented the any provision of the constitution.

## **RIGHT TO INFORMATION**

First time in the constitutional history of Pakistan the "right to information" created as the fundamental right through Article 19A. The Article 19A has been introduced in the constitution for the protection of civil citizens' rights. The new Article 19A proclaims: "Article 19A: Right to information—Every citizens shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law". The main insertion aim of this Article 19A in the constitution is to make easily approachable the activities of the people of their formerly secretive government. Before the 18<sup>th</sup> amendment the process of decision taking and policy making has been considered to the right of ruling elite. Commonly citizens were not permitted to witness the process. According to the Article 19A, the matters of national security which were kept classified for a period of time, should finally be represented transparent and the decision makers should accountable.<sup>(8)</sup>

## **RIGHT TO FAIR TRIAL**

First time in the constitutional history of Pakistan the "right to fair trial" created as the fundamental right through Article 10A. The Article 10A has been introduced in the constitution after Article 10. The Article declares: "Article 10A: Right to fair trial—For the determination of his civil rights and obligation or in any criminal charge against him a person shall be entitled to a fair trial and the due process ". In past when the right to fair trial is not the provision of the constitution. The fundamental rights of the citizens under political and military has been denied. Before the eighteenth amendment laws have been promulgated that reject the norms of natural justice and international conventions of fundamental human rights and that violate the human rights provided in the constitution of Pakistan. So, when the 18<sup>th</sup> amendment has been legislated to protect citizens rights from the misuse of law. The committee headed by Mian Raza Rabani was aware that, following the adaptation of this Article 10A many laws would be challenged in superior courts in order to test their validity by this new touchstone.<sup>(9)</sup>

## **RIGHT TO ASSOCIATION**

Another addition have been made in the constitution, that the right of association is repaired. The right of association had been inserted in the constitution of Pakistan order NO 24 of 2002 by the chief executive. In past the political parties were exploited by the group of peoples, ethnic, militancy and acrimony, but under the 18th amendment of the constitution removed these limitations plainly. The crime of public disorder has been deleted from the crimes which disqualify any person to become a Member of Parliament.<sup>(10)</sup>

## **RIGHT TO REPRESENTATION**

Since from 1947 Pakistani nation facing the problems of inequalities of jobs. This patterns created the poverty and backwardness in the country. No doubt some occasionalefforts were made to meet the challenges of the balance job opportunities on population basis. So, this challenging issue was addressed in constitution of Pakistan and a safeguard was provided against the discrimination in services though Article 27. The Article 27 appeared in part ii of the constitution, dealing with the fundamental rights, principles and policy. It is the demand of federal structure that all the classes and regional population must be represented. So, A new proviso was added to clause (1) of Article 27: The Article declares, Provided also

that under representation of any class or area in the service of Pakistan may be addressed in such manners as may be determined by an Act of Majlis-e-shora (Parliament). The aim of this provision of the constitution is to meet the class, area and regional representation through law and parliament. This provision of the constitution save the citizen of Pakistan from under representation and providing equal job opportunities to the country population.<sup>(11)</sup>

## CONCLUSIONS

Before the 18<sup>th</sup> amendment the most of amendments in the constitution of Pakistan were on the separation of powers between the federal and the units and also on the presidential system and the Parliamentary system However 18<sup>th</sup> amendment discusses fundamental rights as well as powers in the parliamentary system. The 18<sup>th</sup> amendment in the constitution of Pakistan is well defender of nation's rights such as education, fairtrial, information, association and representation. The 18<sup>th</sup> amendment increases common man's interest in his lawmakers.

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