

## **Lecture# 5**

### **HUMAN RIGHTS IN PAKISTAN**

#### **Human Rights under the Constitution of Pakistan:**

##### **Introduction:**

The constitution is the supreme law of the land and it is considered as an instrument by which a Government can be run.

It is a social contract which binds people, society and a state to act within the framework of the constitution.

Pakistan has had a troubled constitutional history.

Government of India Act 1935; the interim constitution of Pakistan after independence

The first constitution of Pakistan 1956

Abrogation of 1956 constitution in Oct. 1958

The second constitution of Pakistan 1962

The third and current constitution of Pakistan 1973

1973-77 operational

1977-1985 suspended

1985-1999 operational

1999-2002 suspended

2002 (till now) operational

The 1973 constitution of Islamic Republic of Pakistan was adopted on April 12, 1973.

It is very comprehensive and consists of twelve parts consisting of 280 articles.

It cannot be abrogated by the use of force. No Government can change it at will. It is not easy to make amendments in it. Two-third majority of both the Houses is required for this purpose.<sup>1</sup>

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<sup>1</sup> So far 25 Amendments in the constitution.

First Amendment 1974

Eighteenth Amendment 2010

Twenty-fifth Amendment 2018

## **HUAMN RIGHTS AS PER THE CONSTITUTION OF PAKISTAN:**

Fundamental rights are the basic rights of the citizens. Fundamental rights are those natural rights which are personal to the individual as a citizen of a free and civilized country and belongs alike to every man, woman and child.

According to the constitution(1973) of Pakistan, all citizens are equal before law and are entitled to equal protection of law.

To fulfill this objective, constitution of Pakistan has provided some fundamental rights and freedom to Pakistanis.

Part-II of the constitution has rights for every citizen of Pakistan.

The Constitution contains 25 rights in all, which are mentioned in chapter 1 & 2.

Fifteen of them relate to civil and political rights whereas the rest of the ten are social and economic rights.

As per the constitution any law inconsistent with the rights provided in the constitution considered to be void ( any law that is against the constitutional provisions considered as invalid)<sup>2</sup>

**Article 9:Security of person;** It declares that a person cannot be deprived of his life or liberty except in accordance with law.

**Article 10: Safeguards as to arrest and detention;** No person who is arrested shall be detained in custody without being informed, of the grounds for such arrest...

**Article 10...**Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest...

**Article 10A<sup>3</sup>: Right to fair trial;** A person having criminal charges against him, has the rights to consult or be defended by a lawyer of his choice.

**Article 11: Slavery, forced labor, etc. prohibited;**

Slavery is forbidden and all forms of forced labor are prohibited under constitution. No person can be forced to work against his will.

No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

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<sup>2</sup> The rights, which have been categorized in our constitution as Fundamental rights, are such that no organ of the state, whether it be Executive or legislature can act in their violation. These rights can be abridged, suspended or eliminated in the constitutionally prescribed manner alone.

<sup>3</sup> 18<sup>th</sup> Amendment

**Article 12: Protection against retrospective punishment**<sup>4</sup>; No law shall authorize the punishment of a person-

- for an act or omission<sup>5</sup> that was not punishable by law at the time of the act or omission; or

-for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

**Article 13:Protection against double punishment and self- incrimination;**<sup>6</sup>

No person shall be prosecuted or punished for the same offence more than once; or, when accused of an offence, be compelled to be a witness against himself.

**Article 14:Inviolability**<sup>7</sup> of dignity of man,etc.

The dignity of man and, subject to law, the privacy of home, shall be inviolable.

No person shall be subjected to torture for the purpose of extracting evidence.<sup>8</sup>

**Article 15: Freedom of movement, etc.**

Every citizen shall have the right to remain in, and, subject, to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part.

**Article 16: Freedom of assembly**<sup>9</sup>. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

**Article 17: Freedom of association:**

Every citizen shall have the right to form associations or unions<sup>10</sup>, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party...

Every political party shall account for the source of its funds in accordance with law.

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<sup>4</sup> Only the law can define a crime and prescribe a penalty. A person cannot be held guilty and hence punished of a crime because his act was not a crime at that time under the law when he was engaged in that particular act.

<sup>5</sup> a failure to fulfil a moral or legal obligation

<sup>6</sup> Double punishment means prosecution or sentencing twice for the same offence/ crime and self incrimination means to force a person to become witness against himself.

<sup>7</sup> The quality or fact of being safe from violation

<sup>8</sup> Torture in custody to obtain confession statements is prohibited.

<sup>9</sup> A group of persons organized and united for some common purpose

<sup>10</sup> e.g: Labour union, Pensioners' association etc are allowed as per the constitution within limits as defined by the law. The associations or unions working against the ideology of Pakistan or creating problems for the citizens are prohibited

**Article 18: Freedom of trade, business or profession;** every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

**Article 19: Freedom of speech, etc;** Every citizen of Pakistan shall have freedom of speech as well as expression.

There shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan...

**Article 19A: Right to information:** <sup>11</sup>Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

**Article 20: Freedom to profess religion and to manage religious institutions<sup>12</sup> ;** Subject to law, public order and morality-

every citizen shall have the right to profess, practice and propagate his religion; and

every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

**Article 21:Safeguard against taxation for purposes of any particular religion;** No person shall be compelled to pay any special tax that can be spent on the propagation or maintenance of any religion other than his own.<sup>13</sup>

**Article 22: Safeguards as to educational institutions in respect of religion, etc;**

No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own...<sup>14</sup>

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<sup>11</sup> (18th Amendment ) Any Pakistani citizen can make a request for seeking information regarding public offices by paying a certain amount. Under the law, citizens can avail documents and information from any public body or government department. For example: information regarding construction works in their area, and merit lists of jobs announced in any department.

<sup>12</sup> Everyone is free not only to spend his/ her life according to religious teachings but can propagate it ( spread/ tableegh) as allowed by the law. Likewise all sects within a religion are allowed to continue their practices through the maintenance of their separate institutions

<sup>13</sup> For example Christians would not be forced for paying tax for Muslims

<sup>14</sup> For the students ( being a follower of different faith/ religion other than the institution in which they are enrolled) there shall be no compulsion to attend and take part in the religious ceremonies/ events /worship other than their own religion.

**Article 23-24: Right to property;** Every citizen shall have the right to **acquire, hold and dispose of property**<sup>15</sup> in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

No person shall be deprived of his property save in accordance with law. <sup>16</sup>

If property, land is needed in **public interest**, then the government has to give reasonable **compensation to the owner** (For instance, acquiring land for hospitals, schools, residential colonies, setting-up industry and acquisition of land by public bodies/Government agencies like Railways, Water and Power Development Authority etc and the owners are paid as a compensation for using their property)

### **Article 25: Equality of citizens.**

All citizens are equal before law and are entitled to equal protection of law.

There shall be no discrimination on the basis of sex alone.

Nothing in this Article shall prevent the State from making any special provision for the protection of women and children

### **Article: 25A Right to Education**<sup>17</sup>

The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

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<sup>15</sup> Free to purchase the property, to own and to sell, gift or exchange it anytime. Some people may *waqf* their property for charitable, religious or public purpose. The terms 'land' and 'property' are used often-interchangeably under the Pakistani laws. Land in Pakistan is considered immovable property (land, buildings, benefits to arise out of land and things attached to the earth ( A Guide on Land and Property Rights in Pakistan - <http://www.ndma.gov.pk/Publications/A%20Guide%20on%20Land%20and%20Property%20Rights%20in%20Pakistan%202012.pdf>)

<sup>16</sup> This empowers the state to requisition (to officially request /demand) any private property, temporarily or acquire it permanently for a public purpose under authority of law. The state can compulsorily acquire or take into possession the private property under article 24 in the following cases:

- i. For preventing danger to life, property or public health;
- ii. If any property which has been acquired by, or comes into the possession of, any person by any unfair means, or in violation of law (*Qabza*)
- iii. Enemy property or evacuee property (when people are removed from or leave a place) under any law;
- iv. For providing education and medical aid to all or any specified class of citizens;
- v. For providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; and
- vi. For providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves ( A Guide on Land and Property Rights in Pakistan - <http://www.ndma.gov.pk/Publications/A%20Guide%20on%20Land%20and%20Property%20Rights%20in%20Pakistan%202012.pdf>)

<sup>17</sup> inserted in the Constitution by the 18th Amendment. Prior to the 2010 amendment, education was added as a principle of policy and in Article 37-b that State shall “remove illiteracy and provide free and compulsory secondary education within minimal possible period”

**Article 26: Non-discrimination in respect of access to public places ;** In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

**Article 27: Safeguard against discrimination in services;** No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

**Article 28: Preservation of language, script and culture<sup>18</sup>;** any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose (Efforts should be made equally for all the cultures of Pakistan to get promoted. The provincial departments of Culture have been mandated to look after cultural matters).

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<sup>18</sup> Every group is free to use the ways to protect their own native language and cultural heritage.