

**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 thereof.

### SYNOPSIS

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**1. Freedom of movement.** Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. [PLD 2004 S.C. 583] This Article bestows a right on every citizen of Pakistan to enter and move freely throughout the country and to reside and settle in any part thereof. Right to enter in the country could not be denied but a citizen could be restrained from going out of the country. Petitioner is a citizen of Pakistan and has a Constitutional right to enter and remain in the country. Petitioner, in the present case has left the country on his own and no material has been brought on the record to substantiate the assertion that he was forced to leave. Petitioner, in circumstances had prayed for a relief, which in fact, always remained available to him and he himself was solely responsible for not availing the same earlier. No order prohibiting the petitioner's entry in the country was available and he had never taken concrete steps for coming back to the country. Supreme Court, in circumstances, declined to examine the issue relating to declaration of petitioner as proclaimed offender and observed that Constitutional petition of the petitioner under Article 184(3) of the Constitution had not raised a question of public importance, therefore the petition was not maintainable. Even a proclaimed offender, when arrested, had a right to be tried according to law and such right could not be taken away from him. By remaining absconder one would lose certain rights but not the right of trial according to law. [PLD 2004 S.C. 583]

Every citizen has an inalienable right to enjoy the protection of law and to be treated in accordance with law and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. No action detrimental to such Fundamental Rights can be initiated except in due course of law.

Citizens of Pakistan can return to their country as no restraint can be placed on a citizen of Pakistan to return to his country. Undertaking given by a citizen not to come back to Pakistan had no constitutional legitimacy as such citizen cannot be prohibited from coming to Pakistan. Every citizen has undeniable right vested in him as conferred under Article 15 of the Constitution to go abroad and return to Pakistan without any hindrance and restraint but it must be kept in view that it is neither absolute nor unqualified as is indicative from the language employed in Article 15 of the Constitution as a specific mention has been made "subject to any reasonable restriction imposed by law in the public interest", meaning thereby that such right is subject to the relevant law which



is in existence at relevant time but an action which is *mala fide* or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Therefore action taken upon no ground at all or without proper application of the mind of an authority would also not qualify as an action in accordance with law and would, therefore, have to be struck down as being taken in an unlawful manner.

There is no inherent power in the Executive, except what has been vested in it by law, and that law is the source of power and duty. The structure of the machinery of government, and the regulation of the powers and duties which belong to the different parts of this structure are defined by the law, which also prescribes, to some extent the mode in which these powers are to be exercised or those duties performed. From the all-prevailing presence of law, as the sole source of governmental powers and duties, there follows the consequence that the existence or non-existence of a power or duty is a matter of law and not of fact, and so must be determined by reference to some enactment or reported case. Consequently there are no powers or duties inseparably annexed to the Executive Government. It cannot be argued that a vague, indefinite and wide power has been vested in the Executive to invade upon the proprietary rights of citizens and that such invasion cannot be subjected to judicial scrutiny if it is claimed that it is a mere executive order. This is not the position in law. Any invasion upon the rights of citizens by anybody no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country. Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right. The only power of the Executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. Functionaries of State, are to function strictly within the sphere allotted to them and in accordance with law. No Court or Authority is entitled to exercise power not vested in it and all citizens have an inalienable right to be treated in accordance with law. Therefore, an action of an Authority admitted to be derogatory to law and Constitution, is liable to be struck down.

It is bounden duty of the Executive to respect an ordinary legal right of a subject in the same way as a Fundamental Right. For it is an established principle of British Jurisprudence which may be treated as constituting a part of the Pakistan law also, that no member of the executive can interfere with the liberty or a property of a subject except on the condition that he can support the legality of his action before a Court of Justice. [PLD 2007 S.C. 642] Freedom envisages in Articles 15, 16, 17 & 19 of the Constitution are not absolute, but subject to reasonable restrictions. Fundamental duty of every propagator, printer and publisher would be to establish that whatever they published is based upon truth. [PLD 2008 Kar. 558]

**2. Article 15 read with Articles 2A, 4, 9 & 25.** Article 13(1) of the Declaration of Human Rights, Article 19(1)(d)(e) of Indian Constitution, Article 11 of the 1956 Constitution and Fundamental Right No. 5 of the 1962 Constitution contain analogous provisions. As to interpretation and scope of Articles 2A, 4, 9, 15 & 25 of the Constitution, Article 2A of the Constitution 1973 by which the principles and provisions set out in the Objectives Resolution were made substantive part of the Constitution, is not a supra-constitutional provisions nor it is self-executing. Although, the principles of Islamic Law and Injunction of Islam have to be kept in view and applied while interpreting the statutes,



[Article 15]

but the superior Courts did not strike down such laws, rules and regulations on the touchstone of this Article. Article 4 speaks about right of individuals, which are to be dealt with in accordance with law. No action adversely affecting the life, liberty, body, reputation or property of any person is to be taken except in accordance with law. The proceedings or act, *ex facie*, which suffer from excess or lack of jurisdiction, or are *corum non judice* or *mala fide*, are the examples, which cannot be termed as "in accordance with law". It is an inviolable right. Article 9 speaks about security of person. According to this Article, no person shall be deprived of life or liberty save in accordance, with law. Article 15 deals with freedom of movement of the citizens. Article 25 mentions about equality of citizens. According to it, all citizens are equal before law and are entitled to equal protection of law. It discards discrimination on the basis of sex alone. It is noted that expression "Equal protection of law", in this Article does not prohibit classification, which is reasonable and sets out substantial differences. [PLD 1999 Kar. 402]

**3. Object.** The main purpose behind the safeguard in this Fundamental Right is to remove all territorial barriers within the country for the citizen of Pakistan. It is designed to be check against provincialism, regional discrimination and all parochial considerations. Subject to any reasonable restrictions imposed by law in the public interest, a citizen is free to move about, settle and reside in any part of the territory throughout Pakistan. [PLD 1969 Lah. 908] It is the inherent right of every citizen of Pakistan to move, reside and settle any where in Pakistan, which has been guaranteed in this Article. The free movement guaranteed by the present article relates not to general rights of locomotion but to the particular right of shifting or moving from one part of Pakistan territory to another without any sort of discriminatory barrier between one Province and another or between different parts of the same province. The object is the removal of all internal barriers in the country and to make it as a whole the abode of citizens. However this Article provides that the right to freedom of movement is subject to any reasonable restrictions which may be imposed by law in the public interest.

**4. Reasonable restrictions.** The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. The determination by Legislature of what constitutes reasonable restriction is not conclusive but justiciable. In deciding whether any particular law provides for reasonable restrictions on the Fundamental Right guaranteed, not only the substantive provision of the law but also the procedural part by which the eventual result is secured, has to be scrutinized. As regards the reasonableness of restrictions, no abstract standard or general pattern can be laid down. The test of reasonableness cannot be put in the straight jacket of a narrow formula. [AIR 1963 Bom. 170]

In the case of East and West Steamship Co. Cornelius J. (As he then was) expressed:

The "reasonable restriction" is one which is impose with due regard to the public requirement which it is designed to meet. Anything which is arbitrary or excessive will of course be outside the bounds of reasons in the relevant regard, but in considering the disadvantage imposed upon the subject in relation to the advantage which the public derives, it is necessary that the Court should have a clear appreciation of the public need which is to be met and where the statute prescribe a restraint upon the individual, the Court should consider whether it is a reasonable restraint, in the sense of not bearing excessively on the subject and at the same time being the minimum that is required to preserve the public interest."



The question whether a law imposes reasonable restrictions on the freedom of movement and residence of a person is justiciable, and in determining this question the Court has to look at the nature and extent of the restriction, the manner in which it is imposed the nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed. [PLD 1958 S.C. 41] It has been held that the restrictions must be reasonable and in interest of community. [PLD 1966 D. 472 (DB) = 19 DLR 10]

A restriction is unreasonable if it is for an indefinite and an unlimited period or is disproportionate to the mischief sought to be prevented or if the law imposing the restrictions has not provided any safeguard at all against authority exercise of power. [17 DLR 553] This Article does grant right of residence to citizen of Pakistan without a rider. [PLD 1993 Lah. 723]

The language employed in Article 15 of the Constitution is free from any ambiguity and no scholarly interpretation would be needed. "In interpreting a provision of a Constitution the widest construction possible in its context, should be given according to the ordinary meaning of the words used, and the general words should be held to extend to all ancillary and subsidiary matters. A Constitution is not to be interpreted in a narrow or technical manner, and a construction which leads to a legal vacuum is to be avoided."

Right conferred upon a citizen is neither absolute nor unlimited but subject to "reasonable restriction" imposed by law in the public interest which means that this right can be restricted by imposing "reasonable restriction of law" in the public interest. In other words the State has power to impose reasonable restrictions on the right of freedom of movement of a free citizen where such restriction is necessary in the interests of the general public. A restriction is unreasonable if it is for an indefinite or an unlimited period or a disproportionate to the mischief sought to be prevented or if the law imposing the restrictions has not provided any safeguard at all against arbitrary exercise of power.

Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. The right to enter in the country cannot be denied but a citizen can be restrained from going out of the country. Citizens of Pakistan have a constitutional right and a sacred prerogative to enter and remain in Pakistan.

Where a fundamental right is sought to be restricted by any law, care should be taken that it provides sufficient safeguards against casual, capricious or even malicious exercise of the powers conferred by it. In this respect it must be remembered that though a law may not in terms restrict the exercise of certain right under this Article yet if it has the effect of doing so, it will be open to challenge. In the case of citizens of Pakistan, there is a fundamental right to enter Pakistan from outside and, therefore, any restriction of such right will be an invasion of this Article. The imposition of restrictions by requirement of permits, etc., is justified as a reasonable restriction in the public interest. But a law which subjects a citizen to the extreme penalty of a virtual forfeiture of a citizenship upon conviction for a mere breach of the permit regulations or upon a reasonable suspicion of having committed such a breach can hardly be justified upon the ground that it imposes a reasonable restriction upon the fundamental right to reside and settle in the country, in the interests of the public. [PLD 2007 S.C. 642]



[Article 15]

**4.1 Fundamental right cannot be denied or infringed or curtailed on ground of laches.** Fundamental Rights cannot be denied or infringed or curtailed on the ground of laches. It depends upon a citizen to exercise such rights when he so wishes and no time limit can be prescribed for claiming such rights because the Fundamental Rights enshrined in the Constitution are always considered paramount and cannot be curtailed, usurped or infringed by any reasonable restriction that may be imposed by law in the public interest. The undertaking given by a citizen not to come back to Pakistan cannot be equated to that of "legal restrictions imposed in the public interest."

The Fundamental Right granted by Article 15 of the Constitution is backed by international norms. Article 9 of the Universal Declaration of Human Rights declares: that "No one shall be subjected to arbitrary arrest, detention or exile." Furthermore, Article 13 states: "Everyone has the right to leave any country, including his own, and to return to his country". The Human Rights Declaration itself draws its inspiration in this regard from the Magna Carta, which, as early as 1215, proclaimed: "No man shall be outlawed or exiled ... except by the lawful judgment of his equals or by the law of the land". Although the Human Rights Declaration is not a legally binding treaty, its provisions are considered customary international law and binding, as such, on all member States of the United Nations and therefore on Pakistan. Although the International Covenant on Civil and Political Rights (ICCPR), the treaty that gives legal force to many of the rights proclaimed in the Human Rights Declaration, does not expressly prohibit exile, it codifies the right to return. Its Article 12(4) states that "no one shall be arbitrarily deprived of the right to enter his own country". The substance of Article 12(4) implicitly prohibits forcible exile, since an order that would force a person to leave his country would in effect restrict his return to the country and therefore would be in violation of this Article. It is evident that both national and international law forbid forcible exile. For whatever reason, a government cannot force individuals to leave their own country or prohibit their return. Notwithstanding national and international efforts to outlaw political exile, the practice persists in authoritarian and politically under-developed societies as an undesirable legacy of ancient times:

No restriction can be imposed on the right of citizens of Pakistan to enter into Pakistan who had given undertaking not to come back to Pakistan. [PLD 2007 S.C. 642]

**5. Public Interest.** Public interest is very wide expression and embraces public security, public order and public morality. It means something in which the interest of the public the community at large, are kept in view and are duly looked after. [1992 FSC 252] A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected. [PLD 1988 Lah. 1] General social welfare or regard for social good and predicated interest of the general public in matter of first moment. [PLD 1989 Lah. 554] The free movement of citizens may have to be restricted in the interest of the general public. A person suffering from an infectious disease. Likewise healthy people may be prevented, in the interests of the general public, from entering a plague infected areas.



**6. Citizen of Pakistan.** It should be noted that the right of freedom of movement and residence is limited to citizens of Pakistan. Therefore, a person invoking this right has to show that he is a Pakistani citizen, as defined by the law relating to citizenship. The status of citizenship on which the existence or continuance of the right rests is not one of the Fundamental Rights guaranteed to any one. A citizen returning from abroad may reasonably be required to produce a permit or a passport before he is allowed to enter the country. [AIR 1959 S.C. 1215]

**6.1 Right to enter into country.** Right to enter in the country cannot be denied but a citizen can be restrained from going out of the country. [PLD 2007 S.C. 642]

**6.2 Undertaking.** An undertaking cannot be equated to that of an agreement which has its own peculiar characteristics, connotations, import and significance. The striking difference between the two would be the element of enforcement. The agreement can be enforced legally but an undertaking cannot because it has got no legal sanctity behind it. [PLD 2007 S.C. 642]

**7. Preventive detention.** The provision is not applicable to laws relating to preventive detention whose constitutionality has, within certain limits, been specifically recognized. [PLD 1967 Lah. 676]

**8. Externment and internment orders.** An order of externment or internment will be valid only if it imposes reasonable restrictions on the person affected. [52 Cr. L. Jour. 1442] It has been held that a law which does not provide furnishing of grounds to the externed person, so that he may make a representation, imposes unreasonable restrictions on the exercise of the Fundamental Right may be struck down on that ground. [PLD 1956 Kar. 533] The validity of orders of externment would depend upon the length of the period for which the statute allows externment. The order will not be upheld if the externment is for an indefinite period, or from the country, [AIR 1954 S.C. 229] but will be sustained if the Act under which it was made was itself temporary, [AIR 1950 S.C. 211] or if the externment was for a short period. [AIR 1950 S.C. 27]

**9. Power to bar a person's entry in a particular place.** Where under the Rules framed by the Government the mere satisfaction of the Deputy Commissioner that the presence in the district of any person who is not a native of the district is or may be injurious to the peace or good administration of the district is enough to order such person to leave the district within a given time or if he is outside district to forbid him to enter it. There is no provision for giving to the aggrieved person any opportunity to show cause why he should not be ordered to leave the district nor is there any provision for the person to be resent before the Deputy Commissioner when he may pass such an order. The rule does not put any limitation on the person during which an order passed thereunder will remain in force, *held*, this is clearly an infringement of Fundamental right of freedom of movement. Such drastic infringement or curtailment of the right of a citizen to move freely throughout Pakistan and to reside and settle in any part thereof can only be tolerated under exceptional circumstances and solely and strictly in the public interest. [PLD 1966 Dacca 576 (DB)]

**10. Sending of a person to Darul Aman.** Keeping a woman in Darul Aman against her wishes, his against law. Petitioner a married woman, categorically stating that she was not willing stay in Darul Aman, requesting to be set at liberty to look after her matrimonial and other affairs of normal life. Adults and major woman who is capable to



take decision cannot be forced to be lodged in *Darul Aman* to curtail her right of liberty. Petitioner could not be kept in *Darul Aman* for definite period against her wishes as a preventive detention. Set at liberty to lead a normal life for a free person. [2006 YLR 35] Petitioner 24 years old educated lady, *sui juris*, cannot be lodged in *Darul Aman* without her wishes. Set at liberty to go wherever she liked. [2001 P.Cr.L.J. 599] Petitioner, who was sent to '*Dar-ul-Aman*' by order of Judicial Magistrate, moved an application under s. 491, Cr.P.C., before Sessions Judge wherein she sought her release from '*Dar-ul-Aman*', which application having been dismissed, petitioner had filed Constitutional petition against said dismissal order. Petitioner was *sui juris* and her consistent stand was that she did not want to accompany her parents as she apprehended a danger to her life at their hands. Article 25 of Constitution provided that all citizens were equal before law and entitled to equal protection of law and there would be no discrimination on the basis of sex alone. Under Articles 9 & 15 of Constitution no citizen could be deprived of liberty and no restriction could be imposed on the freedom of citizen. Sessions Judge being aware of legal status of petitioner, while passing impugned order, observed that petitioner could be sent to *Dar-ul-Aman* if she liked so. Impugned order of Sessions Judge was ambiguous in nature as on the one hand Sessions Judge had imposed a condition on petitioner that she could only accompany the relative relating to her within the prohibited degree and on the other hand he ordered that she could be sent to '*Dar-ul-Aman*' if so liked. Petitioner, in circumstances was never given a choice as she had filed petition with prayer to be set free. No restriction on the movement of petitioner could be imposed by Sessions Judge. High Court allowing petition, set aside order of Sessions Judge to the extent of restriction imposed. Petitioner being *sui juris* citizen of Pakistan, was set free and she could lead a life of her own choice. [2004 P.Cr.L.J. 1084; 1998 SCMR 6 ref.]

**16. Freedom of assembly.** 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.

#### SYNOPSIS

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| 1. Scope.    | 4. In the interest of Public Order.      |
| 2. General.  | 5. Freedom of Assembly and Public Order. |
| 3. Peaceful. | 6. Right to hold demonstration.          |

**1. Scope.** Provision contained in Article 18 of the Covenant on Civil and Political Rights, the First Amendment to the Constitution of the U.S.A., Article 19(1) (b) and (3) of the Indian Constitution Article 9 of the 1956 Constitution and F.R. No. 6 of the 1962 Constitution are analogous to the provisions embodied in this Article. Freedom envisages in Articles 15, 16, 17 & 19 of the Constitution are not absolute, but subject to reasonable restrictions. Fundamental duty of every propagator, printer and publisher would be to establish that whatever they published is based upon truth. [PLD 2008 Kar. 558]

**2. General.** The right to free assembly is a sacred human liberty which is of the very essence of democracy. It connotes that the citizens have the right to assemble peacefully at any public place for the discussion of public questions of any kind. [(1949) 335 US 886] Persons are entitled to assemble and to discuss the public issue of the day; and thus, in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. The need is imperative to preserve inviolate these rights, in order to maintain



the opportunity for free political discussion, to the end that Government may be responsive to the will of the people and the changes, if desired, may be obtained by peaceful means. [(1937) 299 US 353] Appointment of a Government servant should not be based on political dictation, principles of transparency and good governance are not to be flagrantly violated. [PLJ 2004 S.C. 224]

The constitutional right to freedom of assembly, although fundamental, is not in its nature absolute, and it is subject to reasonable restrictions with necessary conditions to safeguard the public interest. [PLD 1965 Lah. 642] Such restrictions may however be imposed only to prevent the grave and immediate danger to interests which the State may lawfully protect. The constitutional guarantee is not to be construed as a licence for illegality or as an incitement to violence and crime. In the United States it is now the generally accepted rule that freedom of assembly is susceptible to restriction only to prevent grave and immediate danger to interest, which the State may lawfully protect. In other words, any attempt to restrict freedom of assembly must be justified by clear and present danger and only the gravest abuses, endangering paramount interests, give occasion for permissible limitations on the right.

The right to assembly freely is subject to two conditions:

- (i) the assembly should be for a peaceful purpose, and
- (ii) no participant should have any arm.

It is not a Fundamental Right of a citizen to carry arms to an assembly even if he holds a licence for their possession or to join an assembly the object of which is not peaceful. Therefore, laws which punish members of an unlawful assembly, or authorize the use of force to disperse such assembly, are not infractions of the right of freedom of assembly. Nor are a Magistrate's power under Section 144 Criminal Procedure Code, unconstitutional, if they are exercised in good faith for the protection of public interest. [PLD 1957 Lah. 213 + 1990 MLD 1807]

**3. Peaceful.** The assembly, must be peaceable and unarmed. As observed by Benn and Peters, Public assembly presents more difficulties than discussion. Since public meetings may degenerate into riots, there is often a better case for suppressing them. Freedom of assembly and association are necessary if criticism is to be heard and produce results, but for that very reason they need to be more strictly limited than simple freedom of discussion. The most elementary duty of a Government is to preserve the public peace, when a public meeting threatens to turn from airing grievances to smashing windows the time has come to disperse it. The word 'peaceful' indicates protection is given only to orderly assemblage. Disorderly or tumultuous assemblages may be forbidden. It is obvious that the right exists only in the case of an assemblage for lawful purpose. [(1876) 92 US 542]

**4. In the interest of Public Order.** It is not a Fundamental Right of a person to carry arms to an assembly even if he holds a licence for their possession or to join an assembly the object of which is not peaceful. It is held that provisions of S. 30 of Amended Police Act are repugnant and violative of Articles 16 and 20 so far it relate to 'public interest' which is much wider phrase than the 'public order' used in Articles 16 and 20 of the Constitution, therefore, to that extent it is *ultra vires*. [1990 MLD 1807]



[Article 17]

**5. Freedom of Assembly and Public Order.** The Constitution in the Article under reference has guaranteed the freedom of assembly subject to the following three limitations:

- (a) the assembly must be peaceful and for peaceful purpose.
- (b) the members of the assembly must be unarmed and
- (c) this right is subject to any reasonable restrictions imposed by law in the interest of public order.

The expression 'public order' is not defined in the Constitution. It is an expression of wide connotation and signifies that state of tranquility prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. The words are wider than and include the words 'security of State'. [AIR 1950 S.C. 124 + AIR 1943 FC 75] The Lahore High Court has held that danger to human life and safety and the disturbance of the public tranquility fall within the purview of the expression 'public order'. [PLD 1957 Lah. 213]

**6. Right to hold demonstration.** Right to hold demonstration is conferred on every citizen as a fundamental right under Article 16 of the Constitution which provides that every citizen should have the right to assemble peacefully and without arms subject to any reasonable restrictions imposed by the law in the interest of public order. Holding of demonstration and freedom of assembly are essential elements in a democratic set-up; such right has to be construed liberally. Right to assemble peacefully is a sacred and inalienable right which cannot be abridged or construed or termed an offence of unlawful assembly. Right guaranteed under the Constitution cannot be translated as a crime as the same would amount to denial of such right undermining the ideas of civil liberty, freedom of expression and freedom of assembly. Exercise of fundamental right by the citizens cannot justifiably be made ground for registering F.I.R. against them. Demonstration in question was held in exercise of right of freedom of assembly in terms of Article 16 of the Constitution. [PLD 2011 Kar. 99]

**Article 17 as substituted by Constitution (Eighteenth Amndt.) Act, X of 2010:-**

**17. Freedom of association.**—(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

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



**Article 17 before its substitution by Constitution (Eighteenth Amendment) Act, X of 2010, ran as under:-**

"17. **Freedom of association.** (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of <sup>2</sup>[sovereignty or integrity of Pakistan, public order or morality].

<sup>3</sup>[(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, [or public order]<sup>4</sup> the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final:

["Provided that no political party shall promote sectarian, ethnic, regional hatred or animosity, or be titled or constituted as a militant group or section"]<sup>5</sup>

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

[(4) Every political party shall, subject to law, hold intra-party election to elect its office-bearers and party leaders.]<sup>6</sup>"

**SYNOPSIS**

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| 1. Freedom of association.   | 12. "Political rights" and "Political justice".             |
| 2. "Reasonable restriction".   | 13. Reasonable restriction.                                 |
| 3. Right to form association.  | 14. Not a check against all violations of the Constitution. |
| 4. Association of persons.   | 15. Companies.  |
| 5. Whether a union can function independently.   | 16. Trade union.  |
| 6. Public importance.  | 17. Regulations.  |
| 7. Public order.   | 18. Government servant.                                     |
| 8. Political justice.  | 19. Raising of construction over own's property.            |
| 9. Morality.   | 20. Article 62 read with Article 8-A—                       |
| 10. Art. 17(2)—'Operating' includes both healthy and unhealthy operation of a political party. | Conduct of General Election Order, 2002 (C.E. Order, 2002). |
| 11. Right to form political party.   |   |

**1. Freedom of association.** The provisions of Article 17 are analogous to the provisions of Article 11(1) and (2) of the Covenant on Human Rights, Article 19 (1) (e) and (4) of the Indian Constitution and Article 10 of the 1956 Constitution and Fundamental Right No. 7 of 1962 Constitution. Article 17(2) provides a basic guarantee to the citizen against usurpation of his will to freely participate in the affairs and governance of Pakistan through political activity relating thereto.

2. Subs. by Constitution Fourth Amendment Act, 1975, w.e.f. 21.11.1975 for the words "morality or public order".
3. Subs. by Ibid. in place of original clause which read as under:
  - (2) 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.
4. Inst. by Legal Framework Order, 2002.
5. Added by Legal Framework Order, 2002.
6. Added by Legal Framework Order, 2002.



While the rights guaranteed under sub-Article (1) of Article 17, Constitution of Pakistan (1973) are subject to "any reasonable restrictions imposed by law in the interest of morality or public order", sub-Article (2) guaranteed "the right to form or be a member of a political party with the further obligation to "account for the source of its funds in accordance with law." The words "sovereignty or integrity of Pakistan" were added in sub-clause (1) after the words "in the interest of" and before the words "public order and morality" by the Constitution (Fourth Amendment) Act, 1975, (LXXI of 1975). Earlier by the Constitution (First Amendment) Act, 1974, (XXXIII of 1974), sub-Articles (2) and (3) were amended in its present form. [PLD 1988 S.C. 416 (p. 518)]

A perusal of Article 17 of the Constitution of Pakistan (1973) indicates that clause (1) thereof confers on every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Whereas, clause (2) confers on every citizen, not being in the service of Pakistan, the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan, it also empowers the Federal Government to declare that a political party has been formed, or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, subject to a reference to be made within 15 days from such declaration to the Supreme Court whose decision on such reference is to be final. [PLD 1993 S.C. 473]

Democracy is a method of life which provides and paves way for achieving political, economic and social rights which a human being is entitled to and almost all of them have been guaranteed by the Constitution as Fundamental Rights. The political right or political justice does not end with the election to the Assemblies. It is an on-going process which starts with the formation of the political parties, participation in the elections and thereafter to operate and participate in governance of the country by the majority rule. How can in these circumstances be it contended successfully that immediately after the election the political rights cease to exist. It is true that such Fundamental Rights which emanate from Article 17(2) travel to the Assemblies with the process of election and may be regulated by other provisions of the Constitution, namely, Articles 50, 51, 52, 91 and 92, but it will be a far cry to state that these provisions of the Constitution put an end to the Fundamental Rights which had started with the formation of political parties. [PLD 1993 S.C. 473 + PLD 1988 S.C. 416]

Article 17(2) of the Constitution guarantees the right to form or to be a member of a political party and to operate as the formation and operation of a political party are two such spheres which by a process of legal path as provided by the Constitution and law the party attains its goal inside and outside the Assembly. The political functioning and activities of a political multifarious activities within the Assembly and outside the Assembly. Election is merely a process to choose its representatives by the political sovereign, i.e., the electorate to authorize them to continue their political activity inside the Assembly. Election is merely a road leading a successful member to enter the Assembly but it does not end there. The process continues transforming into formation of the Ministry or becoming a Minister or to be a leader of the Opposition or member of the Opposition Party, to participate in the debates and discharge all such constitutional and legal duties which are enshrined in the Constitution, responsibility of which is cast on the members. The elected members have far more responsibility than the members of the



political parties working outside the Assembly as un-elected representatives. The Minister is not only collectively responsible to the National Assembly, but he is also accountable to the people. Thus, if the political right as conferred by Article 17 is violated in breach of the provisions of the Constitution, Article 184(3) can be invoked for violation of Fundamental Rights.

The infringement of Fundamental Rights can be in many ways. At times even a law made by the legislature may offend a Fundamental Right and to that extent it may be void, but in certain cases the law may not be void, but the machinery adopted and the orders passed under it may be such which violate the Fundamental Rights, they are thus challengeable. The same principle will apply where the Constitution imposes any restriction on exercise of a Fundamental Right and provides parameters and conditions for exercise of such power. Any authority or person exceeding that jurisdiction passes an order which is not within the framework of the restrictions imposed, then such order violates the Fundamental Rights and can be scrutinized by Supreme Court as provided by the Constitution. Therefore, the order passed by the President dissolving National Assembly and dismissing the Prime Minister and the Cabinet under Article 58(2) (b) of the Constitution does affect the right conferred under Article 17(2). It is only to be seen that although the President of Pakistan is empowered to pass an order for dissolution of National Assembly in certain given circumstances, have they been observed without infringing the Fundamental Right. Because Fundamental Right can be restricted or controlled in terms of the provisions of the Constitution and no authority can derive power from any other source to restrict, abridge, offend or violate Fundamental Right. [PLD 1993 S.C. 473]

Individuals have the right to organize themselves into parties and even into special groups to advance causes and to circulate their views and difficulties and to advocate their cause in public assemblies. It is only when people combine together with illegal purposes, that the law prohibits their association and creates vicarious liability for acts done by others.

The right to form an association does not include a right that the association must be recognized by the Government. Therefore refusal by the Government to recognize an association does not infringe the right. [AIR 1962 S.C. 263]

The right does not refer to statutory bodies like Local Boards and Municipalities. Hence, the supersession of a local board or municipality under the relevant law cannot be deemed as an invasion of the Fundamental Right to form associations or unions. [AIR 1952 Cal. 901]

**1.1 Application to political party.** Political party cannot be formed or operate in a manner prejudicial to the sovereignty or integrity of Pakistan. If the Government succeed in establishing that any political party is operating in a manner prejudicial to the sovereignty or integrity of Pakistan provisions of Article 17 of the Constitution read with S. 15 Political Parties Order, 2002 can be invoked. [PLD 2011 S.C. 997]

**2. "Reasonable restriction".** Freedom envisages in Articles 15, 16, 17 & 19 of the Constitution are not absolute, but subject to reasonable restrictions. Fundamental duty of every propagator, printer and publisher would be to establish that whatever they published is based upon truth. [PLD 2008 Kar. 558] Word "reasonable" means just, proper, fair,



equitable. Reasonable restriction within the contemplation of Article 17 of the Constitution is one which does not deprive the society as a whole or the majority of people from exercising their fundamental rights. [PLD 1985 AJ&K 95] Total prohibition on freedom of association is not envisaged by Article 17(1) of the Constitution but the right can be regulated/restricted by law if any of the four ingredients of Article 17(1) is present. This does not admit and permit total denial of input. [PLD 1997 S.C. 781]

**3. Right to form association.** Right to form or be a member of political party conferred by Article 17(2) of the Constitution includes the right to contest election and form Government by a political party commanding confidence of the majority of the members of National Assembly or a Provincial Assembly as the case may be. [PLD 2009 S.C. 107; PLD 1989 S.C. 66]

Clause (1) of Article 17 of the Constitution indicates that it confers on every citizen the right to form associations or unions, but this right is subject to reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Whereas clause (2) of the said Article confers on every citizen, not being in the Service of Pakistan, the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of two items specified therein, namely,

- (a) the interest of the sovereignty; or
- (b) integrity of Pakistan.

It also provides the mechanism whereby any political party, which has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, can be prevented from functioning by making a declaration to that effect and making reference in respect thereof within 15 days of such declaration to this Court. [PLD 1997 S.C. 781 = PLD 2003 S.C. 955] Every citizen has a right to contest election but the relevant principle do not confer an unbridled right on every citizen to contest an election. The right to contest an election is subject to the provisions of the Constitution and the law, and only those citizens are eligible who contest election who possesses the qualifications contained in Article 62 and the law including the law made under Article 62(i) and do not suffer from disqualifications laid down in Article 63 of the Constitution and the law. [PLD 2003 S.C. 955]

Provision of Article 17 of Constitution of Pakistan, 1973 confers on every citizen a right to form an association or union subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. [2001 PLC (CS) 933] Law which is inconsistent and in contravention of Fundamental Rights or which takes away or abridge such rights, was void to the extent of such contravention. Paramountcy of Fundamental Rights is recognized by Article 8 of Constitution of Pakistan, 1973 limiting the powers of State organs to the extent that what had been conferred by the Constitution as Fundamental Rights, could not be taken away or abridged by the State. What had been guaranteed by the Constitution as a Fundamental Rights could not be annihilated or taken away in the garb of 'reasonable restrictions'. [2001 PLC (CS) 933]

Constitutional petition to form a Registered Trade Union Association for the rights of its members is competent. [2000 YLR 2644] Impugned order completely banning activities of a Union is void being in conflict with Article 17(1) of the Constitution. [PLD 2000 Lah 2139 = 2001 PLC 1]



Position of the Federal Government, Provincial Governments and other State functionaries on the issue of ban on political activities i.e. rallies, strikes etc. having been found to be divergent, the matter was admitted to a regular hearing by the Supreme Court to consider the questions as to whether ban on political activities had been validly imposed and if so under what provision of law and whether the restrictions, so imposed, were ultra vires of the Fundamental Rights guaranteed under Articles 15, 16, 17 and 19 of the Constitution of Pakistan, 1973. [2000 SCMR 770]

No material available which might have justified the District Magistrate to interfere in the holding of referendum for determination of Collective Bargaining Agent and was not clear whether the order of the District Magistrate was passed under S. 144, Cr.P.C. neither any provision of law nor any period was prescribed in that order. Such order was to deprive workers of their Fundamental Rights as guaranteed under Article 17 of the Constitution. [2000 PLC 6]

**4. Association of persons.** Islam does not prohibit an association of persons from forming themselves into a society under the law of the land to attain the status of a juristic person with the legal capacity to take out or defend proceedings in Courts/Tribunals like other individuals/citizens. [1999 SCMR 2918]

**5. Whether a union can function independently.** Union is an organization of employees furthering the interest of workers with respect to higher wages, improved labour conditions, bettering the hours of labour. In other word, it is a combination of workmen for the purpose of securing by united action favourable conditions as regards wages, hours and terms of employment by bargaining on behalf of the workers with employers. A Labour union can either be a corporate body or an unincorporated body. An unincorporated union can function and for certain purposes, it can be treated as a legal entity. However, it may be stated that since strictly speaking an unincorporated body is not a legal entity for all intents and purposes, it is doubtful, whether it can enter into a binding contract on behalf of its members with its employer. On the other hand, a corporated/registered union is a legal entity, and thus it can enter into a binding contract with an employer. Any change in the membership will not affect its legal status. Since there is no requirement under Article 17(1) of the Constitution that an association or a union is to be registered, strictly speaking, there can be a union without any registration but it cannot effectively function unless it is registered and a legal framework is provided within which it can operate as a collective bargaining agent for its members. The operation of a union is *sine qua non* for exercising the Fundamental Rights guaranteed under Article 17(1) of the Constitution. [PLD 1997 S.C. 781]

**6. Public importance.** The expression "public importance" has been interpreted by the Supreme Court in the following cases:

- (i) Manzoor Elahi vs Federation; PLD 1975 S.C. 66.
- (ii) Ms. Benazir Bhutto vs Federation; PLD 1988 S.C. 416.
- (iii) Salt Miners' Labour Union vs Director of Industries; 1984 SCMR 2061.
- (iv) Ms. Sbahida Zaheer Abbasi vs President of Pakistan; PLD 1996 S.C. 632.

Whether a particular case involves the element of "public importance" is a question which is to be determined by the Court with reference to the facts and circumstances of each case. There is no hard and fast rule that an individual grievance



can never be treated as a matter involving question of "public importance". Similarly, it cannot be said that a case brought by a large number of people should always be considered as a case of "public importance". The "public importance" of a case is determined by decision on question whether the legal rights and liberties of the people at large, even though the individual who may have brought the matter before the Court is of no significance. "Public importance" should be viewed with reference to freedom and liberties granted under the Constitution, their protection and invasion of these rights in a manner which raises a serious question regarding their enforcement, irrespective of the fact whether such infraction of right, freedom or liberty is alleged by an individual or a group of individuals. Disqualification from being a member of the Senate is, a matter of "public importance". Likewise, right to contest an election is not only a statutory but also a Fundamental Right conferred by Chapter 1 of Part II of the Constitution. Every citizen who fulfils the conditions laid down under Article 62 and 63 of the Constitution and the related law is eligible to contest an election and to participate in the ensuing formation of Government either in his individual capacity or as a member of a political party. Such right is guaranteed under Article 17(2) of the Constitution and has been recognized as such in *Mian Muhammad Nawaz Sharif's case*; PLD 1993 S.C. 473 and *P.M.L. vs Chief Executive*; PLD 2002 S.C. 994. [PLD 2003 S.C. 995]

**7. Public order.** In sub-article (1) of Article 17, the word "public order" is mentioned in addition to the expression "in the interest of sovereignty or integrity of Pakistan." The above expression includes public order when it undermines or is likely to undermine the security and solidarity of the State. It will also include prejudicial activities such as:

- (a) Agitating for secession of the Provinces from Pakistan;
- (b) Disrupting or threatening to disrupt the sovereignty, integrity, unity or security of the nation, the harmony between different sections of the people;
- (c) Any scheme to overthrow the Government by force or to create internal disturbance or the disruption of public forces.

As the phrase "public order" is separately used, it has to be construed in the ordinary context as being synonymous with public peace, safety and tranquillity. Public order is an elemental need in any organized society, and no association can flourish in a state of disorder.

The word "public order" is accordingly referable to public order of local significance as distinguished from national upheavals such as revolution, civil strife and war. Equally it is distinguishable from the popular concept of law and order and of security of State. Law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents security of the State. Hence an activity which affects law and order may not necessarily affect public order and an activity which may be prejudicial to public order may not necessarily affect security of the State. It has not been incorporated as a separate limitation apart from being a constituent of the expression "sovereignty or integrity of Pakistan" in Article 17(2) of the Constitution. Therefore, it cannot be read into it as it would amount to re-writing the limitation in the Constitution. The limitation cannot be enlarged to admit other grounds on any theory of police power. [PLD 1988 S.C. 416]



The freedom of association is subject to any reasonable restrictions that may be imposed by law in the interest of morality or public order. As observed by Mr. Justice Kayani, [PLD 1958 Lah. 929] "Morality and decency are as fundamental as the Fundamental Rights themselves and in the context of our Constitution, bearing in mind the preamble and the directly principles, a Fundamental Right is like the moon and morality like the disk of light surrounding it".

**8. Political justice.** The expression 'political justice' represents an idea with myriad of facets and for that very reason does not admit of a precise definition. Broadly speaking, every time a group or a class or even an individual is deprived of a right or a privilege which is available to the majority of others similarly placed or is discriminated against, one immediately starts thinking in terms of political justice. So far as the Objectives Resolution is concerned it does not by itself add any new independent Fundamental Right in Chapter 1 of Part II of the Constitution so as to bring its violation within the compass of the jurisdiction conferred on the Supreme Court by Article 184(3). Political justice has innumerable dimensions. Its theme runs throughout the Constitution. It is not confined to any particular portion thereof; in fact, the various Articles of the Constitution receive inspiration from or reflect one or the other aspect of political justice. There seems little doubt that the paramount consideration before the Constitution-makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal. [PLD 1993 S.C. 473]

**9. Morality.** In common parlance the word "morality" occurring in Article 17(1), is far more vague than the word decency. The difficulty of determining what would offend against morality differ between man and man, but the collective notion of society also differs amazingly in different ages. All that can be said is that the antonym of the word "morality" according to the existing notion depends upon acts which are regarded as acts of immorality by the consensus of general opinion. However, it may be pointed out that owing to ethnic, cultural and even physiological differences, it is not possible to formulate a universal standard of morality. Thus notions of morality vary from country to country and from age to age and the international community has not yet been able to settle any common code of morality. This is because like all other social ideas, ethical ideas are largely shaped or influenced by the exigencies of a particular society. Morality and obscenity are comparative terms and what is obscene or immoral in one society may be considered to be quite decent and moral in another. While considering the question whether certain words or representations are obscene or not, one has to apply standards that are current in the society in which those words have been uttered or representations made.

It is difficult to accept how the word "morality" can be read as a separate limitation in Article 17(2) when there is a conscious omission of it as a limitation in the sub-Article and it will be outside the scope of limitation unless the expression "sovereignty or integrity of Pakistan" itself includes it as its constituent.

The Holy Qur'an itself is the guide for eliciting the meaning of the word "morality". In Ayat 152, Sura Al-Anam (VI), it is ordained:

"Draw not near to shameful deeds, that which be apparent and that which be concealed". This being the moral code, every Muslim is enjoined to obey it. This verse is the touchstone of what is moral and what is immoral. Necessarily, morality is part and



parcel of Islamic Ideology of Pakistan and included in the expression "Integrity of Pakistan." Therefore, not only individually but also collectively Muslims have to live within an exclusively moral framework as enjoined by the Holy Qur'an and the Sunnah. No civilized society can deny this standard of morality. The concept of democracy in our Constitution should therefore, be regarded to be imbued with individual and collective morality as according to Islam (Holy Qur'an and Sunnah). It goes without saying that morality provides the basis for the society's spiritual values and in terms of democracy freedom, equality, tolerance and social justice.

An association may take the form of a political party company, a firm, union, society or club, or it may just be an association of persons. People may associate for a political, economic or social purpose or their object may be no more than the promotion of science, religion, art, literature or charity. So long as the purpose for which they associate is lawful, law imposes no restriction on their association. But no one has any Fundamental Right in immorality, obscenity, commission of offences, or doing of other illegal and unlawful acts. The right to freedom of association, is therefore, subject to this important qualification that reasonable restrictions on its exercise may be imposed by law in the interest of morality, or public orders. Thus associations, the object of which is to advocate or carry on some immoral purpose e.g. gambling or any illegal activity may be prohibited by law, or such prohibition will not amount to a denial of the constitutional right to freedom of association. [PLD 1958 Lah. 887]

**10. Art. 17(2) — 'Operating' includes both healthy and unhealthy operation of a political party.** The ordinary conception of a political party includes a right within the framework of the Constitution to exert itself through its following and Organization, and using all available channels of mass communication, to propagate its views in relation to the whole complex of the administrative machine, including the Legislatures, in respect of matters which appear to it to require attention for the amelioration of conditions generally throughout the nation, for improvements particularly in administrative procedures and policies as well as in the legislative field, even to the extent of proposing and pressing for amendment of the Constitution itself.

Term "operating" as used in Article 17(2) includes both healthy and unhealthy operation of a political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right 17 does not also comprise this aspect of the matter. Indeed, a positive right implies, as part of the same right, a negative right and vice versa. [PLD 1993 S.C. 473]

**11. Right to form political party.** Term "operating" as used in Article 17(2) includes both healthy and unhealthy operation of a political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right implies, as part of the same right, a negative right and vice versa.

Reading Article 17(2) of the Constitution as a whole it not only guarantees the right to form or be a member of a political party but also to operate as a political party... Again, the forming of a political party necessarily implies the right of carrying on of all its activities as otherwise the formation itself would be of no consequence. In other word, the functioning is implicit in the formation of the party.



According, the basic right "to form or be a member of a political party" conferred by Article 17(2) comprises the right of that political party not only to form a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority. The Government of the political party so formed must implement the programme of the political party which the electorate has mandate to carry into effect. Any unlawful order which results in frustrating this activity, by removing it from office before the completion of its normal tenure would, therefore, constitute an infringement of this Fundamental Right.

If the lawful functioning of Government of a political party is frustrated (by its dismissal) by an unlawful order, such an order is an impediment in the healthy functioning of the political party and would, therefore, constitute an infringement of the Fundamental Right conferred by Article 17(2). A petition under Article 184(3) for its enforcement would, accordingly, be maintainable.

View that rights guaranteed under Article 17(2) extend only to the right to form a political party and the right to become a member of a political party or for that matter the right guaranteed under Article 17(2) extends only to all the political processes culminating in the election of its members to the National Assembly and no more, cannot therefore be accepted. [PLD 1993 S.C. 473 (p. 559)]

**12. "Political rights" and "Political justice".** The political rights and the political justice are interlinked with each other. The former encompasses the right to participate directly or indirectly in the establishment or management of the Government. These rights are delineated and demarcated in the Constitution of every country; whereas the latter caters for providing in the Constitution equal rights to engage and participate in the public affairs. It envisages that the Constitution should guarantee equal liberty and provide an efficient and honest machinery/mechanism through which people can elect their representatives in a manner which should ensure that—

- (i) each vote has approximately the same weight in determining the outcome of the election;
- (ii) people similarly endowed and motivated should have roughly the same chance of attaining political authority irrespective of their economic and social class;
- (iii) the majority should get into power.

The Fundamental Rights contained in the Constitution referred to hereinabove provide to some extent for the Political Rights and the Political Justice. However, there is a lot of scope for improving upon and expanding the same through legislation and the judicial creativity. [PLD 1993 S.C. 473 (p. 666)]

**13. Reasonable restriction.** Reasonable of restrictions imposed largely depends upon the circumstances which necessitated taking of such an action, the evil sought to be prevented, the duration for which it is to be taken, and the safeguards provided against abuse of power. If the circumstance do not demand such action or the action is disproportionate to the mischief to be prevented and can be exercised without any check then the restriction will certainly be unreasonable. [PLD 1964 S.C. 673 + PLD 1976 S.C. 57] Thus, where an act destroys the right of association for an indefinite period, or where no opportunity of being heard is provided by it to the person whose right is denied,



[PLD 1964 S.C. 673 + PLD 1964 Dacca 795] or where the satisfaction of the Government is subjective satisfaction without any provision for formal inquiry and there is no provision under which the order may be challenged the restriction imposed by the Act is unreasonable and the operative provisions of the Act must be declared void. [PLD 1964 Dacca 795]

The only manner which the Courts themselves would regard as reasonable is that existence of the factual grounds of the restriction should have been established in the mode which the courts recognize as essential where a right to life or liberty or property is concerned, namely, after a proper hearing given to the person concerned. Any presumption that the authority in question has acted in accordance with justice or reason or equity, if made by the Courts in respect of such actions would, amount to a denial of the duty which the courts would be thus to apply the principles of reason and justice according to the procedures with which they are familiar, to ascertain the questions whether the restrictions in themselves are consistent with justice and reason. [PLD 1964 S.C. 673] The enjoyment of every right is subject to reasonable classification and restrictions as contained in Article 17. It is necessary to provide a yardstick or criterion to avoid discrimination in the application of law. [PLD 1992 Lah. 462]

**13.1 Right of association—Reasonable restriction—Test.** To test the reasonableness of such restrictions, no general standard exists. It will depend upon a variety of circumstances interest and urgency of the action proposed and the nature of the safeguard, if any, provided to prevent possibilities of abuse of power. The investment of arbitrary power in the executive to put to an end to the existence of political party on the basis of its own satisfaction which may or may not be capable of being proved in a Court of Law may well be an unreasonable restrict in having regard to the importance of the right of association guaranteed by the Constitution. The safeguard that such a declaration by the Executive will be subject to the decision of the Supreme Court is, however, a sufficient safeguard of the interests of the political party and adequately protects it from being dealt with arbitrarily or whimsically or out of political vengeance. This can, in no sense be considered to be an unreasonable restriction. [PLD 1976 S.C. 57 (p. 103)]

**14. Not a check against all violations of the Constitution.** Article 17(2) is not a check against all violations of the Constitution; the terms in which it is expressed set out the content of the right guaranteed by it; it relates to the formation, membership and legitimate functioning of the political parties. It does not concern itself with the rights of the citizens when they sit as members of a legislative body. The term of the National Assembly, its constitution and the manner of its dissolution are regulated by other Articles of the Constitution; Article 17(2) has nothing to do with these matters. If the National Assembly is dissolved illegally it will be violation of Articles 52 and 58. One cannot complain that by the dissolution of the Assembly his right under Article 17(2) has been impinged upon. He will no doubt have a remedy under Article 199 of the Constitution before the High Court; the jurisdiction conferred on this Court by Article 184(3) is, by the language in which it is couched, far too restricted to cover the petition. [PLD 1993 S.C. 473 (p. 643)]

**14.1 Unlawful.** Wagering contract is practically synonymous with the words betting and gambling and the terms are so used in common parlance. Such contract is unlawful and cannot be termed as lawful trade or business. [PLD 2001 Lah 129]



**15. Companies.** Right to form Associations does include the formation of the companies. However, the formation of companies can be controlled and a company can be asked to close its business where there are reasonable grounds for so doing. [PLD 1958 Lah. 887 (DB)] An illegal closure of an association is also covered by this Article. In *Dacca National Medical Institute v. Province of East Pakistan*, [PLD 1958 Dacca 560 + PLD 1993 Lah. 306] the order of the Government closing the Medical Institute was quashed as it had interfered with the Fundamental Right of citizen to form an association.

**16. Trade union.** The right to form trade union under the Trade Union Act is within constitutional limits. [AIR 1951 All. 674] The right to form a union or association cannot be made subject to the discretion of executive or administrative authority. [PLD 1993 Lah. 306] However, the right to strike is not a Fundamental Right and from the right to form a trade union the right to collective bargaining does not necessarily follow. [AIR 1962 S.C. 171] The carrying on of an illegal strike would not be a proper exercise of the right to freedom of association, and as a strike may raise questions of public order, it is more easily susceptible to regulation by the State. [AIR 1962 S.C. 171]

**17. Regulations.** What is prohibited by this constitutional provision is an unreasonable restriction on the right to freedom of association. But regulation is not restriction and it seems that the law governing the registration or incorporation of associations or statistical and administrative purposes are protected. [Const. 1962 by Mr. J. Munir p. 126]

**18. Government servant.** Governments servants have as much right to form associations as other persons. Although there exist restrictions for taking part in political activities but there is no prohibition in forming a service association therefore any such prohibition is illegal as being in contravention of this right. Association of Government servants formed merely for the purpose of demonstrating against a common grievance is not unlawful. [AIR 1963 Bom. 171] In India, Section 16 of the Criminal Law Amendment Act, 1908 which authorizes the Provincial Government to declare an association unlawful, if in its opinion it has as its object interference with the maintenance of law and order, has been declared to be an unconstitutional interference with the right of freedom of association. [AIR 1952 S.C. 196] The superior Courts of Pakistan have the same view on the ground that the provision gives to the Provincial Government an arbitrary and unqualified power to declare an association unlawful, the making of the declaration depending upon the subjective satisfaction of that Government. [PLD 1964 S.C. 673 + PLD 1964 Dacca 795]

Non-payment of salary to a person would tantamount to violation of Fundamental Rights granted in Articles 2A, 3, 4, 9, 14 and 18 of Constitution of Pakistan, 1973. To enjoy life according to his own will and facilities provided under the law is also an inalienable right of a person and if a person served others and for his services no reward is given to him is not the practice of today's civilized world. To earn a livelihood is also Fundamental Right of a person which has also been recognized in Islam. [2001 PLC (CS) 1073]

**19. Raising of construction over own's property.** Every person has constitutional right to acquire or hold property in any area of Pakistan and use the same as per his need, subject to the law and, therefore, no prohibition could be placed on a citizen either in the rural or in the urban area not to use the property in a lawful manner. Prohibition on the construction of more than one unit on a plot of the size of four Kanals and non-



approval of site-plan for the construction of a house on a plot owned by a person less than a specified size of a plot in the Municipal area other than the scheme area being developed by the Municipal Committee would amount to deprive such person of a legitimate right of use of his property as guaranteed under Article 18 read with Article 25 of the Constitution. [2001 MLD 2033]

20. **Article 62 read with Article 8-A--Conduct of General Election Order, 2002 (Chief Executive Order, 2002).** Political parties as well as politicians challenged the vires of Article 8-A Chief Executive Order, 7 of 2002 on the ground that it is not only violative of the provisions of Articles 17 and 25 of the Constitution but also travels beyond the parameters set by this Court in *Syed Zafar Ali Shah's case* (PLD 2000 S.C. 869), it is unreasonable and irrational in view of the prevailing state of literacy in the country and tends to create an elitist class, curtail the choice and consent of the governed and take away the right of adult franchise and universal suffrage.

The Supreme Court up holding the condition of graduation prescribed for a member of National Assembly and Provincial Assembly, *held*, the establishment of a democratic order and the institutions therein require utmost responsibility on the part of the elected representatives of the people but the record of most of the elected representatives of the four dissolved National and Provincial Assemblies speaks volumes about their psyche, lack of education and sense of responsibility. It also shows that the political field was dominated by a coterie of individuals representing a special class of vested interests, which ensured that if not they, their kith and kin were elected as members of the Assemblies. Regardless of the ideal standards, their main effort was directed to have their hegemony in the political field. There are known cases where through manoeuvring and machination one faction deliberately went to the opposition and the other to the treasury benches.

In the light of what has been narrated above, it is crystal clear that the political scenario in Pakistan is a sad tale of failure on the part of the public representatives. Eleven years history of the Political events is an eye opener. Four National Assemblies in succession were dissolved on the ground of misdemeanour on the part of the Government and the party forming it. The grounds on which the Assemblies were dissolved and which were upheld by Supreme Court are sufficient for and necessitate a drastic change in the political culture of the country. No doubt it is the privilege of the public representatives to side with their party in power but it does not absolve them of their responsibility and look at the degree of responsibility that the 13<sup>th</sup> and 14<sup>th</sup> Amendments were bulldozed and nobody raised his little finger against the proposed legislation. These amendments pertained to the constitutional changes and were not germane to the ordinary law. A constitutional amendment requires sane thinking, deliberation and composition, which were totally absent and none took it seriously. In fact what was practised in those years was nothing but parliamentary dictatorship. A whim of the party leader in the House could not have become a substitute for the will of the people or their representatives in the Assemblies. Of course, it cannot be totally attributed to lack of education but nevertheless it was one of the most important factors owing to which the representatives had allowed themselves to be driven by their leaders. Supreme Court also owes a duty to the posterity. It is a matter of common knowledge that changes in the social, political and economic fields are not brought about at once with a magic wand but involve a journey of thousands miles, which requires a start with the first step. The Conduct of General Elections Order, 2002 deserves approval being the first step aimed at bringing about a change in the political culture. [PLD 2002 S.C. 994]