

- ❖ NAME :- ASSADULLAH UNAR
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- ❖ SUBJECT:- CONSTITUTION OF PAKISTAN 1973
- ❖ PAPER:- MID TERM
- ❖ TEACHER:- JUSTICE (R) SIR SARMAD JALAL OSMANY
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QN01:- write short notes on the following:-

1) Article 4 of the constitution 1973

4. Right of individuals to be dealt with in accordance with law, etc

1)To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

2)In particular :-

a)no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

b)no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

c)no person shall be compelled to do that which the law does not require him to do.

2) article 10A of constitution 1973

10A. Right to fair trial:

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

fair trial': a fair and public hearing, both in civil and criminal cases, by an independent and impartial tribunal, within a reasonable time; announcement of the judgement in open court, though for a number of reasons restrictions may be placed on the press and public from attending all or part of a trial; presumption of innocence of the accused in a criminal offence

until he is shown to be guilty beyond reasonable doubt; availability of safeguards to a person charged with a criminal offence, including the right to be informed of the charge against him, to have adequate time and facilities to prepare his defence, to be defended through counsel or in person, to avail legal aid if required, to produce witnesses or have witnesses summoned and examined and to have an interpreter in case of a language problem.

3) 25 of constitution 1973

Article 25: Equality of citizens

All citizens are equal before the law and are entitled to equal protection by the law. Article 25 of the Constitution guarantees the equality of all citizens without any discrimination on the basis of gender. Despite that, keeping in view the state of women and children in the country, nothing in this article can prevent the state from making any special provision for the protection of women and children

QN02:- Discuss the important points of Objective Resolution 1949? What is its important in Constitution history of Pakistan?

Ans:- The Objectives Resolution(Article 2(A))

- Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust;
- This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan;
- Wherein the State shall exercise its powers and authority through the chosen representatives of the people;
- Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;
- Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah;
- Wherein adequate provision shall be made for the minorities to profess and practice their religions and develop their cultures;
- Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;
- Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of

thought, expression, belief, faith, worship and association, subject to law and public morality;

- Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;
- Wherein the independence of the Judiciary shall be fully secured
- Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded; So that the people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity.

❖ Importance of Objective resolution

Objectives Resolution 1949 has huge importance in the constitutional development of Pakistan. It had been more than two years after independence without its own framed constitution. A general perception had started to prevail whether a constitution would be framed in the near future. But the passage of Objectives Resolution 1949 gave people hope that a constituent assembly would frame a new constitution very soon.

Objectives Resolution acted as a framework and roadmap for future constitutions. Constitutions of 1956 and 1962 were based on this resolution. It was made the preamble of both constitutions. Pakistan's current constitution (1973 constitution) was also framed in light of Objectives Resolution 1949.

QN3:- enumerate the fundamental rights provided by constitution 1973. Can these rights be suspended?

Ans:- fundamental rights given in Pakistan constitution for the peaceful living According with mannered law abiding those rights given below,

8 Laws inconsistent with or in derogation of fundamental rights to be void.

Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void. The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

The provisions of this Article shall not apply to :-

any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

9 Security of person.

No person shall be deprived of life or liberty save in accordance with law.

10 Safeguards as to arrest and detention

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. 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, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

10A. Right to fair trial:

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

11 Slavery, forced labour, etc. prohibited

Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form. All forms of forced labour and traffic in human beings are prohibited. No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment. Nothing in this Article shall be deemed to affect compulsory service by any person undergoing punishment for an offence against any law; or required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.

12 Protection against retrospective punishment

No law shall authorize the punishment of a person:-for an act or omission 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.

13 Protection against double punishment and self incrimination.

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

14 Inviolability 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.

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.

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.

17. Freedom of association:

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

18 Freedom of trade, business or profession.

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:-

- the regulation of any trade or profession by a licensing system; or
- the regulation of trade, commerce or industry in the interest of free competition therein; or
- the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

19 Freedom of speech, etc.

Every citizen shall have the right to freedom of speech and expression, and 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 defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or incitement to an offence.

19A.Right to information:

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.

20Freedom to profess religion and to manage religious institutions.

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.

21Safeguard against taxation for purposes of any particular religion.

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

22Safeguards 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.

- In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.
- no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination;
- no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.
- Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

23 Provision as to property.

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24 Protection of property rights. No person shall be compulsorily deprived of his property save in accordance with law.

No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

- any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
- any law providing for the acquisition of any class of property for the purpose of
- providing education and medical aid to all or any specified class of citizens or
- 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; or
- providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves ; or
- any existing law or any law made in pursuance of Article 253.
- The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

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 35[] 35.

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

25A.Right to education:

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.

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.

- Nothing in clause shall prevent the State from making
- any special provision for women and children.

27.Safeguard against discrimination in services.

(1) 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:

Provided that, for a period not exceeding 40 years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Nothing in clause shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province. for a period not exceeding three years, prior to appointment under that Government or authority.

28 Preservation of language, script and culture.

Subject to 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

❖ Can these laws be Suspended

a national emergency, when the state is in itself in danger a many fundamental rights can be suspended because fundamental rights have no real meaning but the Right of Life and Personal Liberty can be suspended according , Although Article 233 of the Pakistani Constitution allows unchecked and discretionary suspension of Fundamental Rights by the President (subject to

Parliamentary approval within three months), there should be proper categorization of conditions of emergency in which only some of the rights, according to the need, can be suspended. Moreover, courts must be allowed to adjudicate upon the conditions of imposition of emergency and violation of Fundamental Rights. Emergency powers are granted to the executive for preserving national security which is not possible in normal circumstances, whereas the whole point of an emergency dies if it possesses greater danger to public life than what it protects it from. At the same time, there is a set of non-derogable rights 16, defined by International Covenant on Civil and Political rights