

DATE

2022
DAY M T W T F S S

Q.NO.08: What do you know about the concept of "fundamental rights" as provided in the constitution of Pakistan, 1973? Discuss in detail the newly inserted Fundamental Rights under 18th Amendment in the constitution of Pakistan, 1973. Do you think the procedure of amendment in the Constitution is similar to the Act of Parliament? How?

Q. NO. 08

THE CONCEPT OF FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF PAKISTAN - 1973

INTRODUCTION

Fundamental rights are the guaranteed liberties and freedoms provided to the citizens of Pakistan in Part-II, chapter 1 of the constitution of 1973. These rights have been mentioned in article 8 to 28. The constitution has been amended 26 times. In the 18th amendment, the scope of fundamental rights was further extended to include additional rights under articles 10-A, 19-A and 25-A. The constitution of 1973 also entails a procedure for any such amendment that needs to be done. All in all, the constitution of 1973 is a comprehensive instrument that safeguards the rights of the citizens of Pakistan.

UNDERSTANDING THE CONCEPT OF FUNDAMENTAL RIGHTS IN THE CONTEXT OF THE CONSTITUTION OF PAKISTAN OF 1973

The fundamental liberties and freedoms that have been guaranteed in the constitution of Pakistan of 1973 from article 8 to 28 are called the fundamental rights. These are the inalienable rights of the citizens of Pakistan enforced by the Supreme Court of Pakistan by virtue of being the custodian of the constitution.

The fundamental rights enshrined in the constitution aim to protect and safeguard the dignity, freedom and equality among all the citizens of Pakistan. These rights cannot be infringed by the state or any individual and the state cannot pass any laws that are repugnant to these rights, hence unconstitutional.

Fundamental Rights Secured By The Constitution Of Pakistan - 1973 are:

Right to life and
liberty under articles
9 and 10.

Right to fair
trial under article
10-A.

Safeguard against
slavery and forced
labor under article
11

Protection against
retrospective punish-
ment under article
12

Protection against
double jeopardy &
self-incrimination
of a person U/A
13

Freedom of move-
ment, assembly
and association
U/A 15, 16 & 17

Freedom of speech
& press U/A 19.

Right to religion,
property and
education U/A 20,
24 and 25-A.

Right to information
under article 19-A.

NEWLY INSERTED FUNDAMENTAL RIGHTS UNDER THE 18TH AMENDMENT ACT OF 2010

The 18th amendment was a landmark constitutional amendment that strengthened the provincial autonomy and expanded fundamental rights. The key fundamental rights inserted into the constitution by virtue of this comprehensive instrument include:

1. The Right to fair trial under article 10-A ,
2. The Right to information under article 19-A ,
3. Right to free and compulsory Education under article 25-A

Right to Free Trial Under Article 10-A:

The 18th amendment Act of 2010 inserted article 10-A into the constitution of 1973 stating that every accused person has the right to a fair trial ensuring transparency and compliance to due process of the law under article 4 of the constitution. This article ensures the compliance to the legal maxim that says;

"Every person is innocent until proven otherwise."

Beside this, the article also complies to the legal principle of:

"Audi alteram Partem" i.e:
"let the other side be"
heard.

Thus, the insertion of article 10-A ensures the compliance of the constitution to the universal principles of justice.

Right to Free Flow of Information under Article

19-A:

The amendment Act of 2010 also inserted article 19-A to the constitution of 1973 which elicits that each and every citizen of Pakistan has an inherent right to information of public records to ensure transparency and accountability. However the right poses certain restrictions:-

The right does not extend to the publicization of the matters of internal and external security of the country.

No information related to the nuclear programmes of the country could be claimed under this article.

Any such data or information that poses the threat to the interest of the country cannot be asked to be published.

Right To Free And Compulsory Education under Article 25-A

The amendment Act of 2010 also included the right to basic primary education for all Pakistani citizens as a fundamental right of all citizens. Article 25-A of the constitution makes it the responsibility of the state to ensure the provision of free and compulsory primary education to all children ~~under~~ ^{within} the age of 5 to 16 years.

The addition of these rights by the virtue of 18th amendment paved the way of the country towards strengthening the democratic values and increasing citizen participation in the country.

Comparing The Processes Of Constitutional Amendment and Act of Parliament

Constitutional Amendment's Process

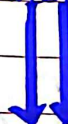
Approval of a Bill for amendment by two-thirds majority in both houses (National Assembly and Senate) respectively.



Presidential assent on the Bill that has been passed by the Parliament.

Passing An Ordinary Bill Of The Parliament

Introduction of the Bill in either house.



Approval of the Bill by simple majority.



Acquiring Presidential assent on the Bill.

Similarities In Both Processes

The basic procedure of passing an Act of a Parliament and passing a constitutional amendment are the same. However, the constitutional amendment requires two-thirds majority to pass from each house whereas an Act of Parliament can be approved by simple majority of the parliament. Furthermore, any Bills or amendments relating to the subject of economy or finances can only be introduced in the National Assembly.

CONCLUSION

Fundamental rights in Pakistan's constitution serve as a foundation for democracy and protect individual freedom. The 18th amendment further strengthened these rights by securing for its citizens the right to fair trial, right to free flow of information and the right to free compulsory education. Unlike ordinary legislation, amending the constitution calls for a more rigorous procedure making it more secure from arbitrary changes.