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**DOES THE IMPOSITION OF ROAD CLOSURES FOR VIPS/VVIPS' MOVEMENTS INFRINGE UPON THE FUNDAMENTAL RIGHTS OF FREEDOM OF MOVEMENT AND LIBERTY AS GUARANTEED BY THE CONSTITUTION OF PAKISTAN?**

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**RESEARCH CENTER, HIGH COURT OF BALUCHISTAN**

**COURT:** HON'BLE MR. JUSTICE

**SUBJECT:** CONSTITUTIONAL LAW

**DATE:** 09<sup>TH</sup> APRIL 2024

**BY:** WASEEM AHMED RESEARCH OFFICER RCBHC

**Query: Does the imposition of road closures for VIPs/VVIPs' movements infringe upon the fundamental rights of freedom of movement and liberty as guaranteed by the Constitution of Pakistan?**

**Keywords:-** Fundamental Rights, Freedom of Movement, Liberty, Constitution of Pakistan, VIP/VVIPs Road Closures, Security Protocols, Reasonable Restrictions, Public Interest, Judicial Review, Proportionality, Emergency Services, Traffic Management, Public Inconvenience, Government Authority, Law and Order **and** Security Threats

**Question No. 1:** Does the imposition of road closures for VIPs/VVIPs' movements infringe upon the fundamental rights of freedom of movement and liberty as guaranteed by the Constitution of Pakistan?

**Question No. 2:** Do security protocols such as road closures and traffic halts for the protection of constitutional functionaries, dignitaries, and high-ranking state officials constitute reasonable restrictions on the public's freedom of movement as required by the Constitution for impeding such rights?

**RESEARCH NOTE:-**

My lord, it is humbly submitted as under:-

**Q. No. 1: Does the imposition of road closures for VIPs/VVIPs' movements infringe upon the fundamental rights of freedom of movement and liberty as guaranteed by the Constitution of Pakistan?**

- ***Fundamentally***, democracy rests upon the idea of freedom. Being a Pakistani, a citizen is bestowed with right of life, liberty and freedom of movement throughout the nation's domain and territory without any discrimination, as ingrained under Articles 4, 9, and 15 the Constitution of Islamic Republic of Pakistan 1973. Article 15 of the Constitution, states that "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". The right to freedom of movement or right of locomotion has been interpreted by the courts to include the right to move freely within the country, the right to go abroad, and the right to re-enter the country from abroad. This right is considered a part of the liberty of the people. It has been also recognized by *the superior Courts that the right to free movement is a personal liberty within the meaning of Article 9 of the Constitution, which ensures that no person shall be deprived of life or liberty save in accordance with law. In Ms. Shehla Raza vs WAPDA (PLD 1994 SC 693)*, the Hon'ble Supreme Court of Pakistan was pleaded to hold as under: -

*"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbour-hood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case."*

- In the case of *Federation of Pakistan v. General (Retd.) Parvez Musharraf* (PLD 2016 SC 570), the Supreme Court of Pakistan emphasized that freedom of movement is a fundamental right that cannot be arbitrarily abridged or denied without lawful justification. The excerpt of the relevant paragraph is reproduced as under:

*“When considering the question of inclusion or retaining the name of accused in the Exit Control List, thereby restricting his freedom of movement, the court could not lose sight of the fact that under Article 15 of the Constitution freedom of movement was one of the fundamental rights guaranteed to every citizen of the country, which could not be abridged or denied arbitrarily on mere liking or disliking, without any lawful justification for such purpose.”*

- In *Government of Pakistan and another v. Dada Amir Haider Khan* (PLD 1987 SC 504) the Hon’ble Supreme Court held:

*“Article 15 guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to enter the country if he is leaving it or has gone abroad and his right to step out and step in the country are subject to reasonable restrictions imposed by law in the public interest. By reading the provisions of Articles 4, 9 and 15, it is manifest that every citizen has the liberty to go abroad and to re-enter Pakistan unless he is precluded from doing so under some law made in the public interest ... Moreover, a citizen’s right to travel abroad is an important aspect of the citizen’s liberty and is closely related to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon each other and foreign policy decisions have come to have greater impact upon the lives of citizens, the right to travel has become correspondingly more important.”*

- In the case of *Ali Muhammad Turab v. Federation of Pakistan & 2 others*, (PLD 2020 Islamabad 454) it has been held as follows:

*“The right of free movement whether within the country or across its frontiers, either in going out or in coming in, is a personal liberty*

*within the meaning of Article 9 of the Constitution, which says that, "No person shall be deprived of life or liberty save in accordance with law." Freedom of movement is stated to be the essence of personal liberty. A citizen cannot be deprived of his fundamental right to travel abroad except according to the procedure established by law."*

- The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948, voted for by the Pakistan, includes several provisions related to the right to movement. Article 13 of the UDHR specifically addresses this right. Here is a detailed note on what the Universal Declaration says about the right of movement:

#### **Article 13 of the UDHR:**

- **Freedom of Movement within the Country:** *Article 13(1) of the UDHR states that "Everyone has the right to freedom of movement and residence within the borders of each state." This means that individuals have the right to move freely within their own country, including the right to choose where to live and work without any restrictions.*
- **Right to Leave and Return to the Country:** *Article 13(2) of the UDHR states that "Everyone has the right to leave any country, including his own, and to return to his country." This means that individuals have the right to travel abroad and return to their own country without any restrictions, such as arbitrary denial of exit or entry.*
- **Limitations and Restrictions:** *While the UDHR recognizes the right to freedom of movement, it also acknowledges that this right can be subject to limitations and restrictions. Article 13(2) states that these limitations must be "provided by law" and necessary "to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others."*

The Universal Declaration of Human Rights affirms the right of individuals to freedom of movement within their own country, as well as the right to leave and return to their country. *While this right is not absolute and can be subject to limitations, any restrictions must be in accordance with the law and necessary to protect certain specified interests.*

- In recent years, the issue of VIPs movement, its menace on traffic and impact on the general public has become a topic of significant concern in Pakistan. The practice of

halting traffic to pave the way and facilitate the VIPs movement not only causes inconvenience to citizens but also serious raises questions about the violation of fundamental rights. The inconvenience caused by VIPs movement is not a trivial matter. It disrupts the daily lives of people, leading to missed appointments, delayed emergency services, economic impact, air pollution, safety hazard and negative public perception of the authorities involved, as it ensure smooth passage for VIPs which often result in long queues of vehicles, with citizens stuck for hours without any recourse. The situation becomes even more critical when schools, located on the routes, are made closed and ambulances and emergency services are caught in these traffic halts. The delay in reaching hospitals can be a matter of life and death for some, highlighting the severe implications of prioritizing VIP movement over public welfare. Consequentially, ***such closure of roads and educational institution infringe upon the fundamental rights of the people as enshrined in article referred hereinabove.***

- Nevertheless, every fundamental rights, guaranteed by the Constitution of Pakistan, are not absolute and on certain rights, there are some restrictions which can be imposed by the state according to the law. The Hon'ble Supreme Court in case of Pakistan Muslim League (N) through Khawaja Muhammad Asif M.N.A and others vs. Federation of Pakistan, through Secretary Minister and others (PLD 2007 642) held that "*Absolute and unrestricted individual rights do not exist in X any modern State and there is no such thing as absolute and uncontrolled liberty. The collective interests of the society, peace and security of the State and the maintenance of public order are of vital importance in any organized society. Fundamental Rights have no real meaning if the State itself is in danger and disorganized. If the State is in danger, the liberties of the subjects are themselves in danger. It is for these reasons of State that an equilibriums has to be maintained between the two contending interest at stake; one, the individual liberties and the positive rights of the citizen which are declared by the Constitution to be Fundamental, and the other, the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of the society. "(AIR 1951 All. 257, ILR (1951)1 All. 269 (FB), (AIR 1950 SC 27,, 1950 SCR 88), AIR 1952 Mad. 613 (DB), PLD 1965 Lah. 642(FB) "*. It is important to note that the fundamental rights involved in this matter are also not immune from restrictions, imposable by the state but ***in accordance with law*** and/or ***in the public interest***. The collective interest of the society, such as peace and security of the state and the maintenance of public order, are considered



vital in any organized society. Therefore, fundamental rights may be subject to social control and reasonable limitations in the interest of the collective good of society.

- It is however noteworthy that in order to impose restrictions on such fundamental rights, it is imperative that such restrictions must be “***reasonable restriction***” backed by the authority of law but the word reasonableness is not defined in statute books. So what exactly is the test and method of defining ‘***reasonableness***’ of restriction within the ambit of freedom of expression? This is an important and pertinent question before proceeding to decide query to see that ***if the restriction for halting the traffic for VIPs movement is reasonable or not?***
- In case of **All Pakistan Muslim League vs Govt of Sindh (2012 CLC 714)**. It was held by the Hon’ble High Court of Sindh that State when wishes to deny to its citizens the enjoyment of fundamental rights enshrined under the constitution, three significant features must be accomplished: ***i. the restriction on freedom can only be levied by the power of law, executive is not empowered to impose any restrictions. ii. Each and every restriction should be a reasonable restriction. iii. Restriction must be correlated to the purposes declared in article.*** And these questions are to be determined finally by the Courts, when any restriction is challenged as **unconstitutional**.
- Indian Court in case **Chintaman Rao v. State of M.P. (1951) AIR 1951 SC. 118** it opined that it is the authority of Superior Courts of state to adjudicate whether a restriction is reasonable or not reasonable. The relevant observations are reproduced for ease of reference as under: -  

***"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."***
- It requires due emphasis here that the reasonable restrictions impairing fundamental rights should not be arbitrary or excessive beyond the required interest of the public and such restriction is subject to judicial scrutiny by the Superior Court of the country and if any such restriction is found unreasonable, arbitrary or excessive, the

Courts are not denuded of the powers to undo any such imposition to uphold the rule of the law in the country. In **All Pakistan Muslim League vs Govt of Sindh** (*supra*) the Court declared that a restriction will be declared as unreasonable if it is disproportionate to the mischief sought to be prevented or if the law imposing the restriction has not provided any safeguard all against arbitrary exercise of power. Chief Justice of Pakistan Justice Cornelius, in a significant case of **“Abul Ala Maudoodi vs Government of West Pakistan”** (1964 PLD 1964 SC 673) on the subject of reasonableness of restriction observed that ***“the constitution expressly gave the court power of judicial review of legislation and reason in such affairs being peculiarly the province of the judiciary.***

- In summary, the Constitution of Pakistan guarantees fundamental rights, but these rights are not absolute and can be subject to reasonable restrictions imposed by law, which must not be arbitrary. The concept of 'reasonable restriction' is pivotal when considering the legality of actions which must be justified legally and cause minimal public inconvenience. The term 'reasonable' is not explicitly defined in the Constitution, leading to the question of how 'reasonableness' is determined. Undeniably, ***closing of roads for VIPs movements is a complex issue, as it involves balancing the security needs of constitutional functionaries and state officials, with the rights of public.*** Therefore, any road closure or stopping of traffic for VIP movements would need to be justified under the law and engineered in a way which should cause minimum inconvenience to the public, attracting the “saving” and “dominant clauses” of ***“in accordance with law”*** and ***“reasonableness”*** in order to bring any such action, which impedes the fundamental rights of the citizen, within the ambit of the Constitution. Yet, in the light of above referred authorities, the Courts have the ***final authority to decide on the reasonableness of restrictions***, and this judicial review is essential to ensure that any denial of fundamental rights by the state adheres to the law, is reasonable, and is related to the purposes declared in the relevant constitutional article.

***Q. No. 2: Do security protocols such as road closures and traffic halts for the protection of constitutional functionaries, dignitaries, and high-ranking state officials constitute reasonable restrictions on the public's freedom of movement as required by the Constitution for impeding such rights?***

- The legality of road closure for VIPs movement in Pakistan is not explicitly addressed in any law, however, the Government’s authorities, under section 8 and 9 of the ***Balochistan (Traffic Engineering) Act 2022*** may close the roads temporarily



or permanently for the purpose mentioned therein. In the same vein, the judicial decisions also do touch upon the broader issue of traffic management and impact of VIPs movement on traffic congestion. In case *Suo Motu Case No. 25 of 2009*, decided on 15th September, 2011 and cited as **2011 SCMR 1743**, the Supreme Court of Pakistan, considered various alternatives to alleviate traffic congestion, including VIP traffic congestion. This *suggests that the Court was aware of the impact of VIP movement which can have on traffic flow and considered it within the contest of urban planning and environmental impact*. The government's basic duty is to protect the lives of every citizens irrespective of his social, economic, political status. Be it a laborer or a billionaire or a person holding high public office. The lives of all the citizens are equally precious and the state must endeavor to protect their lives with same vigor. Entire Pakistan in general, and province of Balochistan in particular, have faced terrorism and worst law and order situation for last two decades, claiming hundreds of lives of common citizens, armed personnel, policemen, academicians, religious scholars, government functionaries and politicians. There is always a real threat perception for every citizen; however, the politicians, constitutional functionaries, state-men and high rank officials are always under threat. In order to ensure the security and duck the risk of any mishap, which, god-forbid, if happens, will not only be a loss of priceless lives, but will relay a negative message to the entire world that the state of Pakistan has no capacity to protect its dignitaries, let alone its common citizen. This would have grave negative impact on the economy of the state and finally the state would start cruising towards destabilization. Therefore, a restriction on the part of the state on such fundamental rights in the interest of public and state is indispensable but such restriction must qualify the test of reasonableness, and should be for minimum possible duration and as far as possible providing access to the public alternative routes or open portion of the roads from the adjoining areas who have been deprived of access by such closure.

- Viewed in the above light, avowedly, the closure of road for traffic for VIPs' security protocols militates against the fundamental rights of the citizen, however, it is justified and qualified to "reasonable restrictions" if it is proportionate to the threat under the prevailing law and order situation and for shortest possible duration and balanced with the fundamental the rights of citizens. Government, in order to maintain a balance between the security measures of VIPs with rights of free movements of the citizens and may be directed to adopt the following instructions;

- *Establish clear protocols for road closure based on threat levels and VIP importance;*
- *Publicly communicate these protocols, including estimated closure durations and in this regard adopt a notification procedure;*
- *Regularly review and update protocols based on best practices and evolving security threats;*
- *Utilize designated routes for VIP movements whenever possible, minimizing impact on the public roads;*
- *Explore alternative methods like staggered conveys to allow some traffic flow;*
- *Implement intelligent traffic management systems to reroute traffic during closure and minimize delays;*
- *Invest in advanced security measures to reduce reliance on road closure;*
- *Use technology to manage the traffic;*
- *Regularly engage with the public to explain the rationale behind security measures and closure;*
- *Make sure that the security measures should be proportionate to the threat level;*
- *Ensure emergency vehicles and essential services have unimpeded access during closure; and,*
- *Devise a mechanism for review of implementation of security protocols and ensure they balance security of VIPs with public rights.*

## **Conclusion.**

- In conclusion, in the light of above precedents, imposition of road closure for VIPs/VVIPs movements in Pakistan raises significant questions regarding the infringement of fundamental rights but if such restriction is imposed with reasonability for high dignitaries, for a short time, without catching the emergency service and affecting office and school goer. Although security protocols are necessary for the protections of VIPs (high dignitaries), however, they must be reasonable, proportionate to the threat level, and cause minimal public inconvenience. **It is essential for the government to balance the security needs of VIPs with the rights of citizens and ensure that any restrictions imposed are in accordance with the law and are justified.**

RCBHC