

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3844 of 2016

FAIZ AHMED CHEEMA,

Vs.

FEDERATION OF PAKISTAN, THROUGH M/O INTERIOR, ETC.

PETITIONER BY:

**Barrister Jehangir Jadoon, M/s Inam-ur-Rahiem, Malik Muhammad Siddique Awan, Adil Aziz Qazi, Mir Farooq Sulehria, Ch. Naeem Ali Gujjar, Arshad Mehmood, Advocates for Petitioners in their respective Writ Petitions.
Abdur Rashid Sheikh, Advocate, petitioner in person.
Raja Zubair Hussain, Advocate and Syed Nauman Shah, Advocate, petitioners in W.P NO.3914/2016.
Mian Muhammad Faisal, Advocate, petitioner in W.P No.3931/2016.
Mr. Muhammad Nasir Shehzad, Advocate, petitioner in person.**

RESPONDENTS BY:

**Mian Abdul Rauf, Advocate General, ICT.
Mr. Afnan Karim Kundi, Ld. Addl. Attorney General.
M/s Arshad Mehmood Kiani, DAG, Arshad Jadoon, DAG, Fazal-ur-Rehman Khan Niazi, DAG and Ch. Abdul Khaliq Thind Standing Counsel.
Mr. Zulfikar Haider, Chief Commissioner, ICT, Islamabad, Cap. (R) Mushtaq Ahmed, District Magistrate/Deputy Commissioner.
Mr. Tariq Masood Yasin, IG, ICT, Islamabad.
M/s Sajid Mehmood Kiani, SSP Operation, Azhar Shah, DSP (Legal), Abdul Rauf, Inspector.
Haji Adam, D.G ((Monitoring), PEMRA.
Mr. Ali Zeshan Gondal, Incharge (Litigation) PEMRA.**

M/s S. Naeem Bukhari, Dr. Babar Awan ASC, Jalil Shah, Ajmal Ghaffar Toor, Mubashir Najib, Malik Naseem Abbas Nasir, Basharat Ullah, Raja Haider Ali, Saira Mehreen Abbasi, Ch. Zaheer Ahmad, Shoukat Mehmood Khan, Maqsood Ali Khan, Mirza Asim Baig, Ch. Asif Nasim Abbas and Niaz Ullah Khan Niazi, Advocates for Respondent No.4.

DATE OF HEARING: ***31.10.2016.***

SHAUKAT AZIZ SIDDIQUI, J: Petitioners through their respective writ petitions invoked the constitutional jurisdiction of this Court challenging the proposed lockdown of Islamabad Capital Territory by the Pakistan Tehreek-e-Insaf, divulged through several statements of Respondent No.4 wherein an intent/motivewas

expressed to lockdown and paralyze life in the Islamabad Capital Territory and obstruct the functioning of the Federal Government (hereinafter referred to as “the Lockdown”).

2. A general theme across all the writ petitions was that the Lockdown would result in the public of Islamabad in particular being held hostage to the whims and desires of a political party notwithstanding the merits/demerits of such political measures. The challenge was based on the impact, the Lockdown would have on the fundamental rights of the public at large, including Petitioners, enshrined in the Constitution of the Islamic Republic of Pakistan including *inter alia*.

- **Article 9** - *The right to life, which encompasses more than mere mortal existence and has been held to include the freedom to enjoy the amenities of life;*
- **Article 14** - *The right to dignity including prohibiting the encroachment of any person's fundamental rights by a unilateral decision or desire of another;*
- **Article 15** - *Freedom of movement which ostensibly would be compromised in the event of a Lockdown;*
- **Article 18** - *The right to engage in lawful trade, business or profession which too would be adversely affected upon the Lockdown of a city and the blockage of main arteries of the road network of a city leading to important governmental establishments;*
- **Article 25A** - *The right to education as yet again due a Lockdown of a city, it will become increasingly difficult for schools to remain open; and*
- **Article 26** - *Non-discrimination in respect of access to public places.*

3. Petitioners pleaded that the aforementioned constitutionally guaranteed rights would be stalled and trampled if Respondent No.4 was permitted to proceed with the Lockdown. As such, it was prayed that Respondent No.4 may be stopped in his tracks by ensuring that the protests were carried out at a designated place so that normalcy remained in rest of Islamabad. It was further submitted that a blatant threat was made to an elected Government that it will not be allowed to function, instead, will be paralysed bordered on the profane in the presence of a constitutional scheme.

4. In response to this Court's preliminary order dated 26th October, 2016, the Special Secretary (Ministry of Interior), Chief Commissioner and Deputy Commissioner (Islamabad Capital Territory) and Inspector General of Police appeared before this Court stating that all efforts shall be made to ensure the smooth running of life in Islamabad and no fundamental rights of any citizen residing in Islamabad/Rawalpindi and/or outskirts thereof may be infringed because of the Lockdown. It was also submitted that pursuant to an earlier order of this Court dated 06.11.2015 passed in Writ Petition No.3727/2014 (Syed Nadeem Mansoor Vs. Federation of Pakistan & others), a place adjacent to the Islamabad Expressway with the name of "Democracy Park & Speech Corner" had already been notified for lawful protests, etc.

5. Conversely, it was contended by the learned counsel for Respondent No.4 that the right to assemble and protest was within the parameters of the Constitution and, in fact, cognizance should be taken of the measures resorted to by the Government in *inter alia* blocking entry points to Islamabad by placing barricades/containers. The latter argument being based on the premise that the right under Article 16 of the Constitution imposes a positive obligation on public authorities to secure the effective enjoyment of this right.

6. Some of Respondent No.4's statements were a part of the Court record by virtue of newspaper clippings having been appended to the writ petitions whereas other contents of speeches were placed on the record by the Pakistan Electronic Media Regulatory Authority pursuant to this Court's order dated 27th October, 2016 requiring for the needful to be done. Accordingly, during the course of proceedings, recording of speeches of Respondent No.4 were played in this Court in presence of his learned counsel and relevant extracts of some of the speeches are reproduced verbatim for the purposes of context:

Clip 1

Date:06-10-2016

عمران خان: لیکن میں آپ کو یہ کہہ سکتا ہوں کہ حکومت نہیں چلنے دیں گے۔ ہم نواز شریف کی حکومت نہیں چلنے دیں گے۔
 ڈاکٹر شاہد مسعود: پیرالائز کریں گے اسلام آباد کو؟
 عمران خان: ہم جو بھی کریں گے، یہ حکومت نہیں چلا سکیں گے۔۔۔ یہ جلسہ نہیں ہے یہ،
 ڈاکٹر شاہد مسعود: یہ جلسہ نہیں ہے؟
 عمران خان: یہ حکومت،، نواز شریف کی حکومت کو بند کرنے کے لیے آرہے ہیں۔ اور ہم بند کریں گے ان کو۔
 ڈاکٹر شاہد مسعود: نہیں، گرانے نہیں آرہے، بند۔۔۔ یہ کیا چکر ہے، ڈبے میں بند کرنا ہے۔
 عمران خان: کام نہیں کرنے دیں گے۔
 ڈاکٹر شاہد مسعود: پیرالائز کریں گے؟
 عمران خان: پیرالائز کریں گے۔

Clip 2

Date:09-10-2016

ارشاد شریف: اس دن 30 اکتوبر کو یہ ایک دن کالا ڈاؤن گا؟
 عمران خان: نہیں جی لاگ ڈاؤن تو ہوگا جب تک ہمیں رزلٹ نہیں ملے گا۔

Clip 3

Date:22-10-2016

عمران خان: دیکھیں جی دھرنا تو ہوگا چاہے وہ آسمان بھی گر جائے ناں یہاں، تو دھرنا تو ہونا ہے۔

Clip 4

Date:24-10-2016

عمران خان: جس طرح کی پبلک آرہی ہے، اور جو نکل رہی ہے پنڈی اسلام آباد سے، یہ پولیس کے ذریعے نہیں اب کنٹرول ہوگی۔

Clip 5

Date:26-10-2016

عمران خان: لوگ سڑکوں پہ بھی نکلیں گے، ان کی سڑکیں بھی بند ہوگی، یہاں انتشار ہوگا، پولیس کے سامنے کھڑے ہونگے لوگ۔

Clip 1

Date:30-09-2016

Raiwind

عمران خان: ہم اسلام آباد کو بند کرنے جائیں گے۔ اور ہم تیار ہوں گے، میں آگے ہونگا آپکے۔ فکر نہ کریں، مجھے تو کوئی فکر ہی نہیں ہے۔ میں تو اگلے جہان میں جانے سے ڈرتا ہی نہیں ہوں۔

Clip 2

Date:30-09-2016

Raiwind

عمران خان: میں آپ کو ڈیٹ دوں گا محرم کے بعد۔ اس کے بعد ہم اسلام آباد کو بند کر دیں گے۔ جو بھی ہوگا ہم کریں گے اس کے بعد۔

Clip 3

Date:15-10-2016

Lahore

(نعرے: غازی یا شہید۔۔۔۔۔)

عمران خان: اچھا، اب،،، یہ دوسری بھی بات ٹھیک ہے، یا غازی یا شہید۔

Date:15-10-2016

نیوز کاسٹر: آگے بڑھتے ہیں آپ کو بتاتے ہیں عمران خان کا بڑا بیان آگیا ہے سامنے، لاک ڈاؤن کی تاریخ تبدیل، کپتان کہتے ہیں تاریخ تین دن آگے لے جا رہے ہیں باقاعدہ اعلان کریں گے اسی بارے میں بات کریں گے سماء کے نمائندے نعیم اشرف بٹ سے، نعیم اشرف بٹ بتائیے گا اعلان کب تک متوقع ہے۔

(نعیم اشرف بٹ نمائندہ سماء ٹی وی): اس میں جو انہوں نے خطاب کیا ہے اس میں کہا ہے کہ شہید اور غازی ہوں دونوں صورتوں میں کامیابی ہوگی، اور کوشش ان کی یہی ہے کہ شہادتیں نہ ہوں اور اگر انہیں روکا گیا، تنگ کیا گیا تو انہوں نے کہا ہے کہ ایک کمانڈ فورس کوئی انہوں نے پی ٹی آئی کی تیار کی ہے کہ اگر ان کے خلاف لاٹھی چارج یا ایسی کوئی بات حکومت کی جانب سے آئی تو وہ کمانڈ فورس جو ہے وہ اس کا سامنا کرے گی، ان کا مقابلہ کرے گی۔

Clip 4

Date:17-10-2016

Islamabad

صحافی: یہ بتائیے گا کہ 20 سال آپ نے پرامن پولیٹکس کی، پرامن پولیٹکس 20 سال آپ نے کی۔ لاہور میں آپ کا یہ کہنا تھا کہ کوشش کریں گے کہ شہادتیں نہ ہوں۔ خان صاحب آپ کے دھرنے میں فیملیز بھی آتی ہیں، آپکے اور نوجوان بھی آتے ہیں جن کو خود گھروں سے اجازت لے کے آنا پڑتی ہے۔ اس طرح کے بیانات سے آپ نہیں سمجھتے جو ہے وہ کہ آپ کے اپنے لوگوں میں بھی بے چینی پائی جا رہی ہے، کوئی وضاحت کریں گے ایسا کیوں آپ نے کہا۔

عمران خان: ایک منٹ ایک منٹ، سن لیں، پہلے تو اس کو ہر چیز کو اس کے context میں لیں۔ اس میں بات کی کہ دیکھیں، اس پہ ہم، میں اپنا بتا رہا ہوں، میں اپنی پارٹی کا بتا رہا ہوں، ہم ہر حد تک اب جائیں گے۔ یہ ہمارا آخری ہے، کوئی اس کے بعد دھرنا نہیں ہے، کوئی اس کے بعد جلسہ نہیں ہے، یہ آخر تک اب ہم جائیں گے۔

Clip 5

Date:06-10-2016

Islamabad

عمران خان: 30 اکتوبر آپ کی، یہ آپ کی ایک ایسی، یہ ایک ایسا ایک آپ کا ایک موقع ہے کہ ہم اس سارے status quo کو ایک دفعہ ہی فارغ کریں۔ دیکھیں جی آپ یہ کہتے ہیں نہ کہ لوگوں کو مشکل پڑے گی، بالکل لوگوں کو مشکل پڑے گی۔ اگر آپ اس ملک میں ایک کرپٹ نظام کو ہٹانا چاہتے ہیں تو آپ کو مشکلیں پڑنی پڑیں گی، آپ کو قربانیاں دینی پڑیں گی۔

Clip 6

Date:15-10-2016

Lahore

عمران خان: اس باری ہم سڑکوں کے اوپر بیٹھیں گے جو کہ گورنمنٹ آفسز میں جاتی ہیں، گورنمنٹ آفسز نہیں چلنے دیں گے۔ اسلام آباد میں جو بھی گورنمنٹ آفسز کو سڑکیں جاتی ہیں وہ بند ہوگی۔

Clip 7

Date:15-10-2016

Lahore

عمران خان: اس باری ڈی چوک میں نہیں بیٹھیں گے۔ ہم ان سڑکوں پہ بیٹھیں گے جو ان کے آفسز بند کریں گی گورنمنٹ کے آفسز۔ ان کو گورنمنٹ نہیں کرنے دیں گے۔

Clip 8

Date:23-10-2016

D.I. Khan

عمران خان: ان کو دقت ہوگی۔ اور انشاء اللہ ان کو میں اور دکھ پہنچاؤں گا، اور دکھ پہنچاؤں گا۔ جو بے حس لوگ ہیں، جو خود غرض لوگ ہیں کیونکہ ان کے اچھے گھروں میں بڑی بڑی گاڑیاں ہیں انکے بچے اچھے اچھے سکولوں میں پڑھتے ہیں اچھا بھلا پیسہ بنا رہے ہیں کرپٹ نظام سے ہمیں جی تکلیف ہوگی تم کو میں اور بھی تکلیف پہنچاؤں گا، اور تکلیف پہنچاؤں گا۔

Clip 9

Date:24-10-2016

Malakand

عمران خان: وقت آ گیا ہے کہ ہم سب مل کے اسلام آباد آئیں اور ان کو بتائیں کہ ہم انسان ہیں جانور نہیں ہیں۔ انسانوں کے حقوق ہوتے ہیں، جانوروں کے حقوق نہیں ہوتے۔

Clip 10

Date:25-10-2016

Islamabad

عمران خان: یہ سارے کان کھول کے سن لو، 2 نومبر کسی صورت نہ delay ہوگا، کوئی چیز اس کو روکے گی نہیں۔ جو مرضی آپ کر لیں 2 نومبر میں 10 لاکھ لوگ انشاء اللہ اسلام آباد پہنچیں گے۔

7. Neither the Petitioners have argued nor is it their contention that Respondent No.4 should not exercise his constitutional rights and be restrained from holding protests against the incumbent government, however, within the parameters of the law and the Constitution. The standpoint, hence, is narrowed to the following questions:

- a) *whether an individual or a political party's right to assemble and protest, supersede the constitutionally guaranteed fundamental rights of other citizens of the state and, in particular, the residents of Islamabad and adjoining areas?*
- b) *whether any action whose stated object is to halt the functioning of an elected government – an offence on its own – be deemed to be the exercise of a democratic and fundamental right?*
- c) *whether a protest for which a designated place was duly earmarked by the local administration be allowed to transcend into a Lockdown of the city with the stated aim and aspiration to paralyze the functioning of the government?*

8. Since the entire superstructure of the Lockdown revolved around Article 16 of the Constitution, therefore, it is pertinent that the same be reproduced herein for context:

“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.”

[Emphasis added]

Besides Article 16 of the Constitution, Article 21 of the **International Covenant on Civil and Political Rights** recognizes the right of peaceful assembly in the following terms:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

[Emphasis added]

9. A similar provision is also contained in Article 12 of the **Charter of Fundamental rights of the European Union** which reads as under:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests...”

In addition to the above, the right of assembly is recognised in the following terms in the United States:

“Article 15 - American convention on human rights:

*The right of peaceful assembly, without arms, is recognized. **No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.***

[Emphasis added]

10. There is no cavil to the proposition that international and European conventions and Article 16 of the Constitution alike provide the right to assemble, however, subject to reasonable restrictions. It is ironic that those championing the cause of democratic rights and the Constitution tend to read it in isolation only to the extent of what supports their point of view and conveniently ignore the rest. It can be logically deduced that rights have to be regulated to ensure their consonant existence with other such rights as given in the Constitution and/or are necessary for smooth functioning of the state. Admittedly, the right to assemble and demonstration has been judicially acknowledged, recently by the honourable Lahore High Court in the judgment reported as **2014 CLC 1558** (*Gohar Nawaz Sindhu vs. Province of Punjab & others*) wherein it was held that:

“23. In view of the discussion made above, we hold as under:

...

- (b) *Peaceful protests and taking out processions, without carrying arms, by the disgruntled to voice their grievances are inherent in democracy. Unreasonable restrictions imposed by the Government such as blocking all roads, routes, highways, motorways by putting up barriers and placing containers are tantamount to denying, curtailing and abridging the fundamental rights enshrined in Articles 15 and 16 of the Islamic Republic of Pakistan, 1973. The wholesale blockades on roads, highways, motorways are unwarranted, unlawful and unconstitutional.*
- (c) *Locking down a whole province and/or restricting the movements of the public at large, bordering on their confinement is contrary to the Constitutional guarantee contained in Article 15, besides being offensive to Article 9 of the Constitution, guaranteeing that “no person shall be deprived of life or liberty save in accordance with law”.*

[Emphasis added]

11. Judicial dicta in Pakistan generally emphasises on the need for regulation of the right to assembly. Such a view has been expounded by various judicial fora from across the globe who, whilst recognizing the right to protest in a democracy, have attached equal significance to such protests being within the contours of the law to ensure that the public does not suffer. The field cannot be left open to a group of protestors, especially in the prevalent security environment, to do as they may please sans any legal restriction. At this stage reference to the following case law on the subject would be appropriate:

- In the case of *Wattan Party & others Vs. Federation of Pakistan & others* reported as **PLD 2012 SC 292**, the honourable Supreme Court of Pakistan held that:

“Security of person is one of the most important fundamental rights. It is inextricably linked with the security of the State. If and when a person performing functions in connection with the affairs of the Federation act in a

manner which imperils the very existence of the State a writ of prohibition nor any other appropriate writ, according to the circumstances of the case could be issued against him. A petition filed by a citizen asking for the issuance of an appropriate writ cannot be declined simply because his fundamental right has not yet been infringed. A narrow and pedantic interpretation may lend support to the argument that security of person is not imperilled or infringed by a mere threat to the security of the State, but actually it is otherwise. Security of person in the absence of a strong, secure and stable State would be inconceivable. It would be as imaginary as drinking water from a mirage. Therefore, fundamental right of person would stand infringed the moment something tending to imperil the security of State is done...

Consent to connivance at or complicity in the infringement of security of person may not be so criminal, as an act, an omission or an attitude evincing the aforesaid attributes in the infringement of security of State. It is rather pedantic, perverse and preposterous to detach or disassociate security, solidarity and sovereignty of the State from fundamental rights.... Security of the State is like a ship. One cannot have a safe and smooth sailing into the ship by permitting others to drive a hole into that....”

- In the case of *D.G. Khan Cement Company Ltd. vs. Federation of Pakistan & others* reported as **PLD 2013 Lahore 693**, the honourable Lahore High Court held:

“17. Fundamental rights and their protection is essential to a modern democracy. Take human rights out of democracy, and democracy has lost its soul ...However, even in a democracy fundamental rights have limitations, this is because “in a democratic society, a human right may be limited to ensure the very existence of the state; to ensure its continued existence as a democracy; to ensure public health; to ensure public education as well as other national causes...”

19. “Laws could restrict human rights, but only in order to make conflicting rights compatible or to protect the rights of other persons or important community interests...”

[Emphasis added]

- The Indian Supreme Court in its verdict reported as **(2012) 5 SCC 1**(*Ramlila Maidan Incident, In Re*) held that the freedom of speech, right to assemble and demonstrate by holding *dharnas* and peaceful agitations are the basic features of democratic system. The Indian Supreme Court, however, proceeded to observe that it is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order.
- In the case of *Rama. Muthuramalingam vs. The Deputy Superintendent Of Mannargudi, Tirunavur District etc.*, the Madras High Court held as under:
“... It may be mentioned here that Article 19(1)(a) of the Constitution, which guarantees to all citizens the right to freedom of speech and expression is subject to Article 19(2), which states: Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly, the right under Article 19(1)(b) to assemble peaceably and without arms is subject to Article 19(3) of the Constitution, which reads as follows:

...

Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause. Thus, both the rights of freedom of speech and expression and the right to assemble peaceably are subject to reasonable restrictions from the point of view of public order, security of State, etc., and they are not absolute rights. The expression public order was added in Article 19(2) by the Constitution (First Amendment) Act, 1951, in order to meet the situation arising from the Supreme Court decision in Romesh Thappar Vs. State of Madras (AIR 1950 SC 124). After this amendment reasonable restrictions from the point of view of public order can be placed on the right to freedom of speech and expression and to assemble peaceably. The term public order is synonymous with the public peace, safety and tranquility, vide Superintendent, Central Prison, Fategarh Vs., Ram Manohar (AIR 1960 SC 633), Madhu Limaye Vs. Sub Divisional Magistrate, Monghyr (AIR 1971 SC 2486), etc., It is thus evident that the right to freedom of speech and expression and to assemble peaceably without arms is subject to reasonable restrictions from the point of view of Public Order.”

- In *Appleby and Others vs. The United Kingdom* (Application No.44306/98) reported as **2003 ECHR 222**, it was held that everyone has the right to freedom of peaceful assembly and to freedom of association with others and no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The relevant extract is reproduced verbatim hereunder:

“51. The relevant parts of Article 11 of the Convention provide:

1. Everyone has the right to freedom of peaceful assembly and to freedom of

association with others;

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”*
- The issue of reasonable restriction was further deliberated by the European Court of Human Rights which in the case of *Austin & others vs. The United Kingdom* (Application Nos.39692/09, 40713/09 and 41008/09), held as under:

“55. Given the context in which this containment measure took place in the instant case, the Court considers it appropriate to recall, for the sake of completeness, that Article 2 of Protocol No. 4 to the Convention guarantees the right to liberty of movement. It is true that the applicants did not invoke this provision, since the United Kingdom has not ratified Protocol No. 4 and is thus not bound by it. In the Court’s view, however, taking into account the importance and purport of the distinct provisions of Article 5 and of Article 2 of Protocol No. 4, it is helpful to make the following reflections. First, Article 5 should not, in principle, be interpreted in such a way as to incorporate the requirements of Protocol No. 4 in respect of States which have not ratified it, including the United Kingdom. At the same time, Article 2 and 3 of the said Protocol permits restrictions to be placed on the right to liberty of movement where necessary, *inter alia*, for the maintenance of public order, the prevention of crime or the protection of the rights and freedoms of others. In connection with Article 11 of the Convention, the Court has held that interferences with the right of freedom of assembly are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where demonstrators engage in acts of violence (*Giuliani and Gaggio v. Italy* [GC], No.23458/02, § 251, ECHR 2011). It has also held that, in certain well-defined circumstances, Articles 2 and 3 may imply positive obligations on the authorities to take

preventive operational measures to protect individuals at risk of serious harm from the criminal acts of other individuals (Giuliani and Gaggio, cited above, § 244; P.F. and E.F. v. the United Kingdom, (dec.), no. 28326/09, § 36, 23 November 2010). When considering whether the domestic authorities have complied with such positive obligations, the Court has held that account must be taken of the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (Giuliani and Gaggio, cited above, 245; P.F. and E.F. v. the United Kingdom, cited above, 40).”

- In the case of Oya Ataman Vs. Turkey (Application No.74552/01), the European Court of Human Rights held as follows:

“30. The Court notes at the outset that there is no dispute as to the existence of an interference in the applicant’s right of assembly. This interference had a legal basis, namely section 22 of Law No.2911 on assemblies and marches, and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. There remains the question whether the interference pursued a legitimate aim and was necessary in a democratic society...

1. Legitimate aim.

31. The Government submitted that the interference pursued legitimate aims, including the prevention of disorder and protection of the rights of others.

32. The Court considers that the disputed measure may be regarded as having pursued at least two of the legitimate aims set out in paragraph 2 of Article 11, namely the prevention of disorder and the protection of the rights of others, specifically the right to move freely in public without restriction.

2. Necessary in a democratic society

33. ... In those circumstances, and taking into account the margin of appreciation afforded to States in this sphere, the Government considered that the risk of disruption to civilians who were in the park at a busy time of day and the demonstrators’ resistance justified the dispersal of the

gathering in question...

38. ... *It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility; this being so, it is important that associations and other organizing demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force...*

- In *Kivenmaa Vs. Finland* (Communication No.412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994), the United Nations Human Rights Committee held as follows:
“9.2 ... A requirement to pre-notify a demonstration would normally be for reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others...”

12. Hence, there is no doubt that the imposition of reasonable and lawful restrictions are an embedded feature of the right to assemble. More so, jurisdictions across the world have emphasised that demonstrations must be within the ambit of the law not reeking of hostility and being time, place and manner specific.

13. Considering Petitioners vide the titled writ petitions have apprehended the violation of rights guaranteed under the Constitution, this Court has a duty to strike a proper balance between the freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. This balance should ensure that other activities taking place in the same city/region may remain unaffected if they themselves do not impose unreasonable burdens.

14. It is an admitted fact – duly corroborated from Respondent No.4’s statements – that some of the public’s constitutional rights would be obstructed on account of the Lockdown although the afore-stated obstruction has been referred to by Respondent No.4 as a “**sacrifice**” made in the purportedly larger interest of the country.

15. It is apparent that by hoarding political workers and supporters from across the country in Islamabad for the purposes of the Lockdown, Respondent No.4's protest bordered on infringing the rights of the public residing in Islamabad and surrounding areas (at least of those disagreeing with the agenda of the Lockdown) entailed in the Constitution in general and Article 9 (*Right to life*) in particular, which was the first fundamental right likely to be stymied by the Lockdown.

16. It is judicially acknowledged that Article 9 does not merely constitute vegetative life, in fact, has to be construed widely. Reference is drawn to the judgment of the august Supreme Court of Pakistan rendered in the case of *Shehla Zia & others vs. WAPDA* reported as **PLD 1994 SC 693** wherein it was held that:

“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 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...”

17. Interestingly so, some of the statements of Respondent No.4 also fall within the scope of the provisions of section 6 of the Anti-Terrorism Act, 1997 which elaborates on the definition of terrorism and includes actions the purpose of which is designed to coerce and intimidate or overawe the Government. The statements of Respondent No.4 which have been reproduced herein verbatim clearly reflect the intent which was to intimate the duly elected sitting government. Thus, whilst restraining myself from declaring it an act of terrorism as no such contention was put forth by the parties, it is observed that coercion of an elected government cannot be condoned and the Federal Government should formulate a coherent policy to ensure the interest of the state is not compromised or cajoled.

18. Further, from the very outset, it is evident that the right to freedom of movement of the public contained in Article 15 of the Constitution will be severely

hindered by the Lockdown. This right besides being enshrined in the Constitution is also duly acknowledged in the **Universal Declaration of Human Rights** as proclaimed by the United Nations General Assembly (Resolution 217A), article 13 (1) whereof reads as:

“Everyone has the right to freedom of movement and residence within the borders of each state.”

19. By locking down or even intending to lock down a city or a part thereof contravenes the fundamental rights of the public who are likely to be affected by such a move. As such, it can be deduced that the intent and motive of the Lockdown ran afoul of the provisions of the Constitution. I am fortified by the view taken by the Hon’ble Peshawar High Court in the judgment reported as **PLD 2014 Peshawar 199** (*Haji Lal Muhammad vs. Federation of Pakistan & others*) wherein it was observed that:

“15. In England, the right to use a highway and the obstruction thereon is dealt with, as “trespass”, “public nuisance” and “private nuisance” under the Law of Tort.”

20. In the same judgment, the Hon’ble Peshawar High Court referred to and relied upon the following extract from Lord Scarman’s Report on the Red Lion Square Disorders:

“English law recognizes as paramount the right of passage; a demonstration which obstructs passing along the highway is unlawful. The paramount right of passage is, however, subject to the reasonable use of the highway by others. A procession, therefore, which allows room for others to go on their way is lawful, but it is open to question whether a public meeting held on a highway could be lawful for it is not in any way incidental to the exercise of the right of passage ... I think the priority that the law gives to the right of passage is sound.”

21. Parliamentarians being the custodians of the mandate of the people’s will are arguably expected to act within the four contours of the Constitution, conceivably agitate their agenda within the parliament and/or act for furtherance of the rights enshrined in the Constitution. Although the right to assembly remains a constitutional option besides being indicative of a working democracy, reasonable and legal

restrictions are an inherent omnipresence thereof. In advancing an agenda, no one, including Respondent No.4, ought to circumvent the constitutional rights of others, which was apparently the intended end-product of the Lockdown, whereby the public would become hostage to a political agenda and have their guaranteed constitutional rights under the Constitution trampled. The quest for a political agenda - without prejudice to the merits thereof - does not confer the right on any individual or a political party to disembark the constitutional rights of unsuspecting citizens. Much like the right of protest and assembly, the right not to protest and the choice to continue life in accordance with the Constitution and without any forced deviations/hindrances should also be respected. It was in this context that this Court observed that a designated place be marked (which was accordingly done) where political parties, rights' activists, etc. can assemble and register their protests. However, as has been noted in preceding paragraphs, Respondent No.4 was steadfast in the use of the word ‘**Lockdown**’ with the intent and motive of paralyzing the system and the city. In no way can Respondent No.4’s right to assemble his supporters and protest be given preference over another citizen’s right to freedom of movement, trade, education etc..

22. Even the Constitution recognises equality of citizens as a fundamental right pursuant to Article 25 thereof. Therefore, it is only legal as also logical that Respondent No.4’s right to assemble and protest cannot be preferred or held sacrosanct vis-à-vis the fundamental rights of other citizens. I deem it apt to refer to the judgement of the hon’ble Lahore High Court reported as PLD 2011 Lahore 120 (*Shabeen Cotton Mills, Lahore vs. Federation of Pakistan & others*) wherein it was held as under:

“29. However, limitation may be imposed by law on the right to undertake any trade or business in order to harmonize the said right with a competing fundamental right or another person also guaranteed by the Constitution or to fulfil a positive command

of the Constitution, say to give effect to Article 3 or in an endeavour to achieve the high goals and aspirations of the people of Pakistan as mentioned in the Constitution including the Principle of Policy or for public security and safety or for the advancement of public health or morality and for the welfare of the people or to create a balance between the rights of individuals and the interest of the community and the State. Needless to say that such limitations must be rational and proportionate to the end sought to be achieved.”

23. Thus, in conclusion, it is held that that though Respondent No.4 had the right to assemble and protest, however, that right was subject to legal restrictions which included the prerogative of the District Administration to earmark a particular place for a protest and ensure that life of the public remains unaffected. So much so, it was mandatory upon Respondent No.1 to give prior notice to the District Administration specifying the details (time, date and duration) of the proposed rally/protest and ensure that it was conducted within the parameters of the law. On the threshold of equality, the fundamental rights of a particular person/party cannot supersede the rights of the rest of the populace.

24. Therefore, in view of the foregoing, the Federal Government is directed to formulate a comprehensive policy outlining restrictions based on public policy on the right to assemble. Such restrictions should keep paramount the fundamental rights of the public at large whilst pursuing the broader aims of national security and public safety.

25. Moreover, in the future, all political and/or religious protests/rallies etc. in Islamabad should be confined to the “**Democracy Park & Speech Corner**” without any discrimination, fear or favour. Such an action would enable those willing to join such calls to be a part thereof whilst also protecting the fundamental rights of those who disagree with such protests/rallies. If protesting is a choice so is the option not to protest, which must be equally protected with no one having the right to

impose their will of protesting onto another. Civic agency i.e CDA is directed to develop the notified place by providing basic necessities like toilets, water filtration plants etc. and plantation of different plants/trees.

26. Needless to state, this would ensure protection and enforcement of the constitutional rights of the public of Islamabad who have already suffered immensely in the recent past on account of political activities in the midriff of the city. A blanket policy will help to regulate the right to assemble indiscriminately and in a more cohesive manner leaving little room for exercise of discretion based at the desires, likes and whims of those in the corridors of power.

27. Before parting with this judgment, I deem it appropriate to mention that during the course of proceedings, an objection at this particular Bench being seized of the matter was raised by Syed Naeem Bukhari, Senior ASC– the learned Counsel for Respondent No.4. It was pleaded that I recuse myself from hearing these writ petitions, which objection, however, was resisted by the learned Advocate General, Mian Abdul Rauf, and the learned Additional Attorney General, Afnan Karim Kundi, as well as the learned counsel for Petitioners. Since the objection was based merely on an apprehension, thus, the same was overruled.

28. It goes without saying that justice has to be dispensed in absolute consonance with the law without fear or favour. It is emphasised that the practice of objecting to a particular bench should be based on cogent reasoning rather than mere apprehensions or the personal choices of a particular party to the *lis*.

29. In the case of *The Federal Government of Islamic Republic of Pakistan vs. General (R) Pervez Musharraf* reported as **2014 PCrLJ 684**, a similar objection was raised to one of the honourable Judges who formed part of the Special Court seized of the *lis*. Certain cardinal principles were laid in the *supra* judgment where a judge should recuse himself from hearing the case, which did not arise herein. Neither did any legal, constitutional or statutory bar exist for this Court to recuse from hearing the matter.

30. In fact, in terms of the *supra* judgment, a judge is duty bounden to adjudicate upon a matter before him if there is no real apprehension of bias. By merely passing the buck on to another Bench in the midst of a hollow objection, this Court would be failing in its duty to discharge the sacred trust of justice entrusted by the oath of office of a judge.

31. These are the detailed reasons based whereon the short order dated 31st October, 2016 was passed by this Court the operative part whereof held as under:

“In this view of the matter, for the reasons to be recorded later on, instant petition with all connected Writ Petitions i.e W.P Nos.3845, 3846, 3847, 3860, 3909, 3910, 3914, 3926, 3927, 3930, 3931, 3932, 3937, 3938, 3939, 3940, 3948, 3972 and 3919 are disposed of with the following declaration and direction:-

- (i) That freedom of assembly, movement and expression is right of every citizen guaranteed by the organic law of the country i.e. Constitution of Islamic Republic of Pakistan as enshrined under Part-II, Chapter I thereof. But these rights are not unbridled. If to lodge a protest is right of any citizen, not to lodge or partake a protest is also the right of every citizen. Nobody can be compelled to do which is not permissible under the law and no one can be deprived to do which is permissible under the law. All these Petitioners apprehend(ed) serious threat to their fundamental rights guaranteed by the Constitution under Articles 9, 14, 15, 16, 18 and 19 of the Constitution of Islamic Republic of Pakistan. The speeches of the Respondent No.4, Mr. Imran Khan, Chairman, Pakistan Tehreek-e-Insaaf played in Court clearly suggest that intent and object is not merely lodging of protest but apparently a move to stop the elected Government from functioning and performing its day to day affairs and also to keep away the citizens from enjoying their fundamental rights, which obviously is tantamount to abridgment of the constitutional rights of citizens.
- (ii) In light of order passed by this Court, finally decided on 6th November, 2015, a place with the name of “**Democracy Park and Speech Corner**” is a notified place for these type of activities,

therefore, District Magistrate in compliance of the order of this Court dated 27th October, 2016 informed Respondent No.4 (of the same). Copy of the letter addressed to Respondent No.4 has been placed on record and according to the District Magistrate the letter has not been responded to. It is directed that if Respondent No.4, Mr. Imran Khan, shows his willingness to stage the protest or hold sit-in at designated place, the Federal Government and District Administration may allow such activity.

- (iii) In order to ensure the protection of life, security of person, property and other fundamental rights of the citizens of ICT, the State is dutybound to protect these rights and take all remedial steps in accordance with the law. If any attempt is made to block or lock down the ICT or any effort is made to disrupt the normal life of the city, the Administration has the authority to deal with the situation as per mandate of law.

32. Let copies of this judgement be remitted to the Secretaries, Ministry of Interior, Ministry of Law and Parliamentary Affairs, Cabinet Division and Chief Commissioner ICT as well as Chairman CDA.

33. The office is directed to place attested copy of instant judgment in all the connected files mentioned in para-6 of short order (reproduced above) and disposed of.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

APPROVED FOR REPORTING
BLUE SLIP ADDED.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.3844/2016

FAIZ AHMED CHEEMA

**APPELLANT
PETITIONER**

VERSUS

FEDERATION OF PAKISTAN THROUG M/O INTERIOR, ETC.

**RESPONDENTS
DEFENDANT**

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

03.31.10.2016

Barrister Jehangir Jadoon, M/s Inam-ur-Rahiem, Malik Muhammad Siddique Awan, Adil Aziz Qazi, Mir Farooq Sulehria, Ch. Naeem Ali Gujjar, Arshad Mehmood, Advocates for Petitioners in their respective Writ Petitions.
Abdul Rashid Sheikh, Advocate, petitioner in person
Raja Zubair Hussain, Advocate and Syed Nauman Shah, Advocate, petitioners in W.P NO.3914/2016.
Mian Muhammad Faisal, Advocate, petitioner in W.P No.3931/2016.
Mr. Muhammad Nasir Shehzad, Advocate, petitioner in person.
Mian Abdul Rauf, Advocate General, ICT.
Mr. Afnan Karim Kundi, Ld. Addl. Attorney General.
M/s Arshad Mehmood Kiani, DAG, Arshad Jadoon, DAG, Fazal-ur-Rehman Khan Niazi, DAG and Ch. Abdul Khaliq Thind Standing Counsel.
Mr. Zulfiqar Haider, Chief Commissioner, ICT, Islamabad, Cap. (R) Mushtaq Ahmed, District Magistrate/Deputy Commissioner.
Mr. Tariq Masood Yasin, IG, ICT, Islamabad.
M/s Sajid Mehmood Kiani, SSP Operation, Azhar Shah, DSP (Legal), Abdul Rauf, Inspector.
Haji Adam D.G ((Monitoring), PEMRA
Mr. Ali Zeshan Gondal, Incharge (Litigation) PEMRA
M/s S. Naeem Bukhari, Dr. Babar Awan ASC, Jalil Shah, Ajmal Ghaffar Toor, Mubashir Najib, Malik Naseem Abbas Nasir, Basharat Ullah, Raja Haider Ali, Saira Mehreen Abbasi, Ch. Zaheer Ahmad, Shoukat Mehmood Khan, Maqsood Ali Khan, Mirza Asim Baig, Ch. Asif Nasim Abbas and Niaz Ullah Khan Niazi, Advocates for Respondent No.4.

M/s S Naeem Bukhari & Dr. Babar Awan, ASCs put appearance on behalf of Respondent No.4.

2. At the very outset, Court enquired from the District Magistrate that as to whether in compliance of order dated 27.10.2016; Respondent No.4 has been intimated about the designated place? District Magistrate answered in affirmative and also placed copy of the letter addressed and duly served

upon, respondent No.4. When asked from Mr. S. Naeem Bukhari, ASC about the response of respondent No.4, he submitted that as per instructions, people will be invited to assemble at the designated place but thereaftershall proceed towards, Islamabad City. When asked that why not to remain at a designated place as offered by the District Administration? learned counsel sought 10 minutes time to make a statement. The request of learned counsel was acceded to. After the break of 20 minutes, court took up the matter again and M/s S. Naeem Bukhari and Dr. Babar Awan, ASCs submitted that Respondent No.4 has no confidence in this court, therefore, I may recues myself from hearing the instant matter. Petitioners and their learned counsel as well as Additional Attorney General, Advocate General seriously opposed the request.

3. I am totally convinced that there is no reason for me to recues myself from hearing this case as being custodian of the fundamental rights of the people; it is my responsibility to dispense justice without fear and favour, affection or ill-will. I am answerable to Almighty Allah and my loyalty is with Pakistan and the Constitution not with any litigant.

4. The Inspector General of Police, ICT also submitted report about the persons in arrest. All persons arrested are vide following registered cases, therefore, remedy under the law may be availed. The detail of registered cases is as under:-

Sr. No.	CASE FIR NO.	DATED	OFFENCE	PS
1.	313	28.10.2016	188 PPC	Golra, Islamabad
2.	163	28.10.2016	440/353/186/149/143/145 PPC	Bani Gala
3.	164	28.10.2016	186/188/143/145 PPC	Bani Gala
4.	314	28.10.2016	188 PPC	Golra
5.	181	29.10.2016	188 PPC	Shehzad Town
6.	394	29.10.2016	188 PPC	Koral
7.	165	23.10.2016	188 PPC	Bani Gala

8.	315	30.10.2016	440/511/34 PPC	Golra
9.	407	30.10.2016	188/134/145/440 353/185/148/49 PPC	Industrial Area I-9
10.	392	30.10.2016	188 PPC	Bhara Kahu
11.	407	30.10.2016	440/353/186/188/ 148/149/143/144/ 145/109 PPC. <u>Total 08 persons were arrested under FIR No.407, dated 30.10.2016.</u>	Industrial Area, I-9

5. The District Magistrate pointed out the incident of yesterday in which large number of weapons allegedly recovered from one of the MPA of PTL. The different speeches addressed by Chairman Pakistan Tehreek-e-Insaf, telecasted by different T.V News Channels were also played through multimedia in the court in presence of Mr. S. Naeem Bukhari, Dr. Babar Awan and all other learned counsel for the parties. PEMRA authorities also produced CDs of the scripts of Speeches. The Court also enquired from I.G and SSP Operations as to whether any container is installed within the territory of Islamabad; they submitted that no container is installed within the ICT. Following two contents of the Speeches/statements of Mr. Imran Khan, dated 15.10.2016 and 23.10.2016 are reproduced herein below:-

Date: 15-10-2016

Lahore

عمران خان: اس باری ہم سڑکوں کے اوپر بیٹھیں گے جو کہ گورنمنٹ آفسز میں جاتی ہیں، گورنمنٹ آفسز نہیں چلنے دیں گے۔ اسلام آباد میں جو بھی گورنمنٹ آفسز کو سڑکیں جاتی ہیں وہ بند ہو گئی۔

Date: 23-10-2016

D.I. Khan

عمران خان: ان کو دقت ہوگی۔ اور انشاء اللہ ان کو میں اور دکھ پہنچاؤں گا، اور دکھ پہنچاؤں گا۔ جو بے حس لوگ ہیں، جو خود غرض لوگ ہیں کیونکہ ان کے اچھے گھروں میں بڑی بڑی گاڑیاں ہیں انکے بچے اچھے اچھے سکولوں میں پڑھتے ہیں اچھا بھلا پیسہ بنا رہے ہیں کرپٹ نظام سے ہمیں جی تکلیف ہوگی تم کو میں اور بھی تکلیف پہنچاؤں گا، اور تکلیف پہنچاؤں گا۔

5. In this view of the matter, for the reasons to be recorded later on, instant petition with all connected Writ Petitions i.e W.P Nos.3845, 3846, 3847, 3860, 3909, 3910, 3914, 3926, 3927, 3930, 3931, 3932, 3937, 3938, 3939,

3940,3948 and 3919 are disposed of with the following declaration and direction:-

- “(i). That freedom of Assembly, movement and expression is right of every citizen guaranteed by the organic law of the country i.e Constitution of Islamic Republic of Pakistan as enshrined under Par-II, Chapter-1. But these rights are not unbridled. If to lodge a protest is right of any citizen, not to lodge a protest is also right of every citizen. Nobody can be compelled to do which is not permissible under the law and no one can be deprived to do which is permissible under the law. All these petitioners apprehend serious threat to their fundamental rights guaranteed by the Constitution under Article 9, 14, 15, 16, 18 and 19 of the Constitution of Islamic Republic of Pakistan. The speeches of the Respondent No.4, Mr. Imran Khan, Chairman, Pakistan Tehreek-e-Insaf played in Court clearly suggest that intent and object is not merely lodging of protest but apparently a move to stop the elected Government from functioning and performing its day to day affairs and also to keep away the citizens from enjoying their fundamental rights, which obviously tantamounts to abridgment of the constitutional rights of citizens.
- (ii) In this light of order passed by this court, finally decided on 6th of Nov. 2015 a place with the name of “Democracy and Speech Corner” is a notified place for these type of activities, therefore, District Magistrate in compliance of the order of this court dated 27.10.2016 informed, Respondent No.4. Copy of the letter addressed to Respondent No.4 has been placed on record, according to District Magistrate the letter has not been responded too. It is directed that, If, Respondent No.4, Mr. Imran

Khan, shows his willingness to stage the protest or hold Sit in at designated place, the Federal Government and District Administration may allow such activity.

- (iii) In order to ensure the protection to life, security, person, property and other fundamental rights of the Citizens of ICT, the State is duty bound to protect these rights and take all remedial steps in accordance with law. And if any attempt is made to block or lock down the ICT or any effort is made to disrupt the normal life of the city, the Administration has the authority to deal with the situation as per mandate of law.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

“Waqar/-”

Uploaded By: Zulqamain Shah

Through this Single Judgment, I intend to dispose of Writ Petition Nos.3845, 3846, 3847, 3860, 3909, 3910, 3914, 3926, 3927, 3931, 3932, 3937, 3938, 3939, 3940, 3948, 3772 and 3919 of 2016 as through all these Writ Petitions similar questions of law and facts are involved.