

JUDGMENT SHEET

**IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

Writ Petition No.1355 of 2021

Muhammad Umair **V/S** *Cantonment Board Rawalpindi and
others.*

JUDGMENT

Date of hearing	09.06.2021
Petitioner(s) by	M/s. Kashif Ali Malik, ASC Qaisar Abbas Gondal, Basit Hassan Sheikh, Muhammad Umair Khan, Gulsher Ali, Advocates.
Respondent(s) by	Mr. Waqar-ul-Haq Sheikh, ASC. Ch. Muhammad Yaqoob, Advocate/Legal Advisor for Rawalpindi Cantonment Board. Mr. Tahir Malik, Assistant Attorney General. Mr. Shaukat Rauf Siddiqui, Additional Advocate-General with Naveed Nawaz, Additional Executive Officer and Sajjad (S.I.) for City Traffic Officer, Rawalpindi. Mr. Ahmad Zia Ch. and Haimd-ur-Rehman Nasir, Research Officers, Lahore High Court, Research Centre.

What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both.

Lord Denning in Packer v. Packer [1954] P. 15 at 22

JAWAD HASSAN, J. Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “*Constitution*”), the Petitioner has called in question the conversion of a public way i.e. “**Hospital Road**” into “**Food Street**” from Haider

Road to Bank Road, Rawalpindi (the “*Food Street*”) and its closing for vehicular traffic during the peak hours of the evening from 7:00 P.M. to 12:00 A.M.

I. BRIEF BACKGROUND

2. Brief facts for the disposal of this petition are that the Petitioner, who is resident of Rawalpindi and an Advocate by profession, has filed this writ petition as public interest litigation for the enforcement of fundamental rights of general public. It is averred in the petition that he came to know that from Haider Road to Bank Road, Rawalpindi the road was blocked by the Respondents by establishing a *food street*. In the area, the commuters get stuck in long queues of traffic during the peak hours of the evening, which even creates difficulties for the rescue and emergency services vehicles to move towards the Cantonment General Hospital, Rawalpindi. During COVID-19 pandemic when the public gathering is being discouraged by the State, establishment of a *food street* by the Respondents ignoring all health and safety warnings is against law and the Constitution. Hence, this petition.

3. Pre-admission notice was issued to the Respondents on 21.04.2021, whereupon the Respondents filed their report and parawise comments on 27.04.2021. On 29.04.2021 this writ Petition was admitted for regular hearing with the direction to the Respondents to file their written statement, which was filed on 18.05.2021.

II. PETITIONER’S SUBMISSION

4. Mr. Kashif Ali Malik, ASC submits that Petitioner is an Advocate by profession and has challenged the closure of a section of Hospital Road by the Respondents during the peak hours of the evening for vehicular traffic and further converting it into a food street, which infringed his fundamental rights i.e. right of dignity, right to movement, right to life and Right to access to public places guaranteed under Articles 9, 14, 15 and 26 of the Constitution. Learned counsel in support of his contentions that an “**Advocate**” can bring Public Interest Litigation, relied on the judgments of this Court

cited as “Sheikh Asim Farooq Versus Federation of Pakistan, etc.” (PLD 2019 Lahore 664), “Muhammad Tahir Jamal v. Government of Pakistan, etc.” (PLD 2020 Lahore 407) and “Muhammad Ahmad Pansota and others Versus Federation of Pakistan and others” (PLD 2020 Lahore 229). Further submits that at a time when the third wave of COVID-19 pandemic has shaken the entire world, the Respondents instead of facilitating easy access to the hospital, have blocked a section of hospital road which leads to Cantonment General Hospital and other areas during the peak hours of the evening causing great inconvenience not only to the emergency and rescue services but also to those visiting Cantonment General Hospital. Adds that the site in question is a public road/street meant only for the collective use of the public and vehicular movement, therefore, the same cannot be put to any other use let alone commercial and no one can put stall, fence, launch a project and create obstruction or make encroachment of any kind on a public street. Further averred that Article 8(1) of the Constitution declares that “any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights,---shall, to the extent of such inconsistency, be void”. Furthermore, adds that Article 2A of the Constitution provides that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. Protection and advancement of the said principles is an integral objective and an essential feature of the Constitutional order. Learned counsel relied on “Workers’ Party Pakistan through Akhtar Hussain, Advocate, General Secretary, v. Federation of Pakistan” (2012 PLD 681 SC) and “Jurist Foundation through Chairman Vs Federal Government through Secretary, Ministry of Defence” (2020 PLD SC 1).

5. Mr. Kashif Ali Malik, ASC further states that access of every citizen to all the roads constructed for general public to travel is fundamental right protected under Article 15 of the Constitution and no one can make any restraint. In this regard he relied on the

judgment of this Court reported as “Muhammad Tahir Jamal, Advocate v. Government of the Punjab etc.” (PLD 2020 Lahore 407), wherein it has been held that:

“19. Universally the freedom of movement envisages access of every citizen to all the roads constructed for public to travel including motorways subject to condition of toll tax or other taxes imposed by government under the law and any unreasonably protracted obstruction of the road or its prolonged non-functionality on the pretext of a construction work which is taken out in a sluggish manner tantamount to restriction and infringement of fundamental right to movement of commuters/passengers/travelers provided and protected under Article 15 of the Constitution.”

It was further held that:

“The Hon'ble Supreme Court of Pakistan in case law reported as "Moulvi Iqbal Haider v. Capital Development Authority " (PLD 2006 SC 394) has approved public places of entertainment and resorts as fundamental rights by elaborating Article 26 of the Constitution in the following manner:

"Under Article 26 of the Constitution, it is fundamental right of the citizens to have access to public places of entertainment or resorts.”

It was also observed in the said judgment in paragraph No.27, that:

“.....failure on the part of the State and Authorities acting on behalf of the State including local administration to provide the same is not only violative of Article 14, which provides right to dignity as well as pose obstruction in exercise of fundamental right of movement provided and guaranteed under Article 15 of the Constitution and of Article 26 of the Constitution, which provides that every citizen has a fundamental right to access to public place for entertaining and resort....”

6. Mr. Kashif Ali Malik, ASC on the point of establishment of Food Street/Outdoor Cafés states that the authority which is vested

with the function to maintain public street, does not become owner of the site or the soil over which the street existed. He adds that no public street, road, thoroughfare or footpath could be allowed by authorities to be used for any commercial or any other purpose because those were meant for the use and enjoyment of general public. He placed reliance on the judgment of this Court cited as “Begum Khurshida Shorish & another Versus Province of the Punjab” (PLD 2004 Lahore 744), whereby this Court has declared the action of the Respondent/Parks & Horticulture Authority for establishing a Food Street/Sit Out Cafe, to be without authority. The relevant paragraphs are reproduced as under:

“11. A word about the' aesthetic aspect. The project in hand is one of the several projects undertaken by respondent No. 3 to beautify Lahore. This project, however, strikes a discordant note. The argument being canvassed in its defence is that "a sit out cafe is a worldwide concept i.e. Europe and South East Asia", well, it is an enlightened approach to learn from abroad what is good in any field i.e. scientific, educational, architectural, aesthetic or cultural. But while doing so, we have to keep in mind the objective conditions and empirical realities of our own setting. In the context of the issue in hand, we have to bear in view, the climate, the public hygiene, and on top of it, the locale, where the project is sought to be established. It is right in front of the Lahore High Court building. I cannot recall such a sit out cafe on a service road in front of a Superior Court building anywhere i.e., in front of the Royal Courts of England or of the Supreme Court building Washington D.C. In the circumstances alluded to in the preceding lines, it would be affront to the people's aesthetic sense to say that such a sit out cafe, to be built by encroachment, would add to the beauty of the city.

12. The issue raised in these petitions have another dimension. The impugned project has the potential of being both a private and public nuisance. To establish a sit out cafe on a portion of the service lane of a thoroughfare (Shahrah-e-Quaid-e-Azam, Lahore), besides obstructing the way of pedestrians and residents of the area would

be a place where food and drinks would be served in open, exposed to the dust and to the injurious smoke of the vehicles passing nearby as also of the vehicles to which would be parked on the service lane in the event of establishment of such a "sit out cafe". Cars, Motorcycles, Vans and Rickshaws would be parked on the service lane, as there is no other parking space around. This parking would not only be a cause of annoyance for the residents but also for those who would like to use the service road for the purpose for which such roads are provided. An activity, which causes obstruction or injury to the right of entry to such service lane/road or causes inconvenience or discomfort is injurious to health, would be a nuisance.....

It was further observed in the said judgment by this Court that:

"A "public nuisance" could be of various types. In the content of the instant case an interference with the use of a public street resulting in annoyance to public would constitute a "public nuisance". As rightly observed, "the Public is entitled to the use of the full width of the public street, however wide it may be. Whoever appropriates any part of the street by building over it infringes the" right of the public quo ad the part built over. The act must necessarily cause obstruction to persons who may have occasion to use their-public right over the part encroached upon. Where the owners of houses or shops occupied by the applicants have built certain platforms in front of them to enable the shopkeepers to sit on them for selling their goods and the platforms cause any common injury, danger or annoyance to the public or to the people in general, the persons who built the platforms are guilty of an act which ex hypothesis amounts to a public nuisance". (page 804, Vol 1 of the commentary on the Pakistan Penal Code by Shaukat Mahmood). An individual has a right to pass along a public street. Prima facie, the proposed activity falls within the ambit of what is described as "anticipatory nuisance". The argument that proposed project would be a "sit out cafe" and not a food street, is of no avail because on account of the location the effect and consequence in either case would be the same.

13. For what has been discussed above both the writ petitions, mentioned in para. 1 above, are

allowed, the impugned action of the respondent Parks & Horticulture Authority for establishing a Food Street/Sit Out Cafe, is declared to be without authority, with no order as to costs.”

7. Learned counsel Mr. Kashif Ali Malik, ASC lastly submits that even the Respondents have admitted in their report and parawise comments that the area including some portion of Hospital Road and some portion of Bank Road was marked and named it as *Food Street*. It was also admitted that only vehicular traffic has been restricted from sunset to late night. In support of his contentions learned counsel placed reliance on the judgments reported as “Muhammad Ashraf & another Versus Faisal Cantonment Board & another” (2017 YLR 2091), “Roshan Khan & 2 others Versus Karachi Cantonment Board & 3 others” (2007 CLC 693), “Sajjad Ullah Qureshi Versus Taluka Municipal Officer, Sukkar” (PLD 2012 Sindh 250), “Ch Muhammad Ishaque Advocate Versus Cantonment Executive Officer, Chunian, District Kasur & another” (PLD 2009 Lahore 240), “Madina Electric Market Versus City District Government, Karachi” (PLD 2009 Karachi 309) and “Ghulam Hussain Versus Government of Sindh” (2004 MLD 1936).

III. RESPONDENTS’ SUBMISSION

8. Conversely, Mr. Waqar-ul-Haq Shaikh, ASC at the outset objects to the maintainability of this petition on the ground that the Petitioner has no *locus standi* to file the same. The present petition has been filed on the basis of personal vendetta and to undo a *bonafide* esthetic effort of the Respondent/Cantonment Board (the “**Board**”) to recreate our cultural heritage. He adds that the areas consisting of Bank Road, Adam Jee and Haider Roads, Rawalpindi are the main business hub and these roads are interconnected with other roads namely Station Road, Police Station Road, Saddar Road, Kashmir Road, Canning Road and Murree Road, therefore, with the passage of time a small food street consists of small restaurants, ice cream parlors, juice corners, Bar-B-Q centers, etc. was established.

Further submits that gathering of general public in the Food Street caused blockage in smooth running of traffic, therefore, in order to facilitate the public at large, to avail the facility of good food in a cordial and to secure atmosphere with good sitting facility the flow of vehicle traffic was regularized and the food street was marked as “**Pedestrian Zone / Walking Street**” from sunset to midnight. Also states that the general public is appreciating and enjoying the food street. Adds that under Section 108 of the Cantonment Act, 1924 (the “*Act*”) all streets and the pavements appertaining to streets are provided and maintained by the Board, therefore the *food street* is under its management and control. He averred that under Section 116(e) of the Act, the Board is empowered to remove any undesirable obstructions from the roads and under Section 117 (c) of the Act the Board can reclaim unhealthy localities. Section 117(k) of the Act also empowers the Board to take any measures to promote safety/convenience of the inhabitants of the Cantonment. Mr. Waqar-ul-Haq Sheikh, ASC further states that the version of the Petitioner that the Board has closed/temporarily closed the *food street* is absolutely against the facts. For a short span of time the vehicles are restricted in the aforesaid street but the pedestrians are allowed and they have full freedom of movement, therefore, the Respondents have not violated any fundamental right of the general public.

9. Mr. Waqar-ul-Haq Shaikh, ASC further argued that the Board has never established a *food street* as claimed by the Petitioner as there is no Notification/Order regarding establishment of a *food street* rather vide Board Resolution No.210 dated 17.09.2014 a very small portion of Saddar Road lying in between the Bank Road and Haider Road has been declared as Pedestrian Street/walking street from sunset to midnight. Further averred that the Board neither named nor established any food street, however, due to eating cultural food in the said area the General Public named the area as “*Food Street*”.

IV. MOOT POINTS

10. After hearing learned counsel for Parties on 02.06.2021, the following Constitutional moot points were framed:

1. *Whether the Respondent/Rawalpindi Cantonment Board (RCB) can invoke Section 117(k) of the Cantonments Act, 1924 (the "Act") for temporary restriction of the vehicle on the path in question?*
2. *Whether due to such restriction for temporary purpose, the right of movement of public at large is being infringed?*
3. *Whether this writ Petition is maintainable in the absence of any notification/order regarding establishment of Food Street?*

11. Arguments heard. Record perused.

V. DETERMINATION BY COURT UNDER ARTICLE 201 OF THE CONSTITUTION

12. After framing of issues on constitutional moot points, this Court has narrowed down the law points and determined the fundamental rights of the Petitioner but while rendering judgment, the constitutional petition filed under Article 199 of the Constitution, if the writ petition is admitted for regular hearing, and after perusing the record from the report and parawise comments, the Court has to render a decision strictly as per Articles 199 and 201 of the Constitution. The decision or order could be a judgment or an order passed on the constitutional petition filed under Article 199 of the Constitution but those decisions are made under the established law of precedent under Article 201 of the Constitution, to have a binding effect and its principles have to be followed later. Article 201 of the Constitution states that a decision of High Court if (i) it decides a question of law or is (ii) based upon or (iii) enunciates a principle of law be binding on subordinate Courts. In this case, writ petition was filed on 21.04.2021 and after hearing the parties on 28.04.2021, the Court while admitting the writ petition directed the parties to file

written statement. Thereafter, written statement was filed by the Respondents and perused by this Court, hence, before proceedings further, the Court framed moot points in order to render a judgment under Article 201 of the Constitution. It is a settled norm that the decision on a question of law can only be made if question of law is framed and highlighted from the pleadings. In this case the Court on 02.06.2021 framed the constitutional moot points, mentioned above, in order to render a judgment, while keeping in mind the principles of law already established by the Superior Court, relied by both the counsel for the parties, then passed its decision on it to be called a decision or a judgment. Accordingly, the judgment then passed will consists of *ratio decidendi*, facts, arguments of the parties, moot points involved, and *stare decisis* and *obiter dicta*. The Constitution clearly empowers the Courts in Pakistan to render on these parameters regarding the question of law or based on question enunciated a principle of law. As every judgment of the Supreme Court is binding on all Courts under Article 189 of the Constitution, the same words are used in Article 201 of the Constitution but subject to Article 189 to follow its principle for consistency.

(i) Maintainability of pro bono public interest litigation

13. The Petitioner, an Advocate by profession, brought before the Court a common grievance relating to alleged violation of fundamental rights provided under Chapter I of Part II of the Constitution particularly of those provided under Article 9, 14, 15 and 26, and sought a curable intervention of the Court under Article 199 of the Constitution for the enforcement thereof. In order to vindicate his *locus standi* to file instant Petition, he relied upon various judgments of this Court wherein it has been ruled that an Advocate can bring Public Interest Litigation on behalf of the community. The concept of pro bono litigation has gained much significance over the decades and oftentimes it brought forward many climacteric issues of public importance before the

Constitutional Courts which resulted in pronouncement of some of the notable judgments of far reaching implications regarding enforcement of fundamental rights in the Country. The Honorable Supreme Court of Pakistan in “MOULVI IQBAL HAIDER Versus CAPITAL DEVELOPMENT AUTHORITY AND OTHERS” (PLD 2006 SC 394) elaborated the notion of *pro bono publico* as follows:

“The word ‘pro bono publico’ as defined in Blacks Law Dictionary, Chambers Dictionary and Oxford Dictionary generally means ‘for the public good’ or ‘for -welfare of the whole’ being or involving uncompensated legal services performed especially for the public good. ‘Public interest’ in the Black Law Dictionary, has been defined as the general welfare of the public that, warrants recognition and protection. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation. It thus signifies that in case of public interest litigation, one can agitate the relief on his own behalf and also on behalf of the general public against various public functionaries, where they have failed to perform their duties relating to the welfare of public at large, which they are bound to provide under the relevant laws.”

14. This Court in “STATE Versus M.D., WASA AND OTHERS” (2000 CLC 471), commented upon the genesis of public interest litigation in the developing world by observing that:- *“the rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficiency and corruption at various levels. In such a socio-economic and political milieu, the non-intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority.”* In the case of “GOVERNMENT OF THE PUNJAB THROUGH SECRETARY FOOD, PUNJAB SECRETARIAT, LAHORE AND 4 OTHERS Versus NAEEM

SARWAR” (2011 YLR 3087) a Division Bench of this Court held that:—*“In case of the litigation, pro bono publico, a very strict interpretation of the term, an aggrieved person is not appreciated. Any person interested in performance of the functions by the concerned authorities in a lawful manner, may move the Court.”* Moreover, the August Supreme Court in “JAVED IBRAHIM PARACHA Versus FEDERATION OF PAKISTAN and others” (PLD 2004 SC 482) categorically held that a pro bono petition before the superior courts is maintainable subject to establishing the fact that it is in the public interest, public good and for the welfare of the general public. It was held by the Court:—*“a person can invoke the Constitutional jurisdiction of the superior Courts as pro bono publico but while exercising this jurisdiction, he has to show that he is litigating, firstly, in the public interest and, secondly, for the public good or for the welfare of the general public.”*

15. This Court in the case of “SHEIKH ASIM FAROOQ Versus FEDERATION OF PAKISTAN and others” (PLD 2019 Lahore 664) also laid down that if public interest is brought forward before the Court with bona fide intention, free from personal vested interests, then principles of locus standi/aggrieved person are to be interpreted liberally by the Courts. It was held:— *“Public Interest Litigation (“PIL”) is a powerful tool for individuals and groups for combating illegalities, injustice and social ills which promotes and protects the larger public interest in case of violation of any fundamental rights. As long as the public interest prayed for is bona fide and not based on any vested interests, the principles of locus standi /aggrieved person are to be interpreted liberally by the Courts.”*

16. In view of above, the Instant Petition being filed pro bono publico by the Petitioner to raise an issue relating to violation and enforcement of fundamental rights of the public is thus

maintainable. Further reliance can also be placed on “Muhammad Tahir Jamal Versus Government of Pakistan, etc.” (PLD 2020 Lahore 407), “Muhammad Ahmad Pansota and others Versus Federation of Pakistan and others” (PLD 2020 Lahore 229), “PROVINCE OF SINDH and others Versus LAL KHAN CHANDIO and others” (2016 SCMR 48), “Messrs AL-RAHAM TRAVELS AND TOURS (PVT.) LTD. and others Versus MINISTRY OF RELIGIOUS AFFAIRS, HAJJ, ZAKAT AND USHR through Secretary and others” (2011 SCMR 1621), “ARDESHIR COWASJEE and 10 others Versus KARACHI BUILDING CONTROL AUTHORITY (KMC), KARACHI and 4 others” (1999 SCMR 2883), “Mian SHABIR ASMAIL Versus CHIEF MINISTER OF PUNJAB and others” (PLD 2017 Lahore 597), “DISTRICT BAR ASSOCIATION, RAWALPINDI Versus FEDERATION OF PAKISTAN and others” (PLD 2015 SC 401), “Ms. IMRANA TIWANA and others Versus PROVINCE OF PUNJAB and others” (PLD 2015 Lahore 522), “HABIBULLAH ENERGY LIMITED and another Versus WAPDA through Chairman and others” (PLD 2014 SC 47), “SALAHUDDIN DHARAJ Versus PROVINCE OF SINDH through Secretary, Local Government Department and 4 others” (PLD 2013 Sindh 236), “IQBAL AHMAD DHUDHI Versus FEDERATION OF PAKISTAN and 5 others” (2014 CLC 1348) and “MUHAMMAD QAHIR SHAH and others Versus FEDERATION OF PAKISTAN, MINISTRY OF RAILWAYS, through Secretary, Islamabad and others” (2014 YLR 2571).

17. Now, advertent to the main point of controversy, raised and sought to be resolved by the Petitioner on the touchstone of indispensable guarantees provided as fundamental rights under the Constitution. According to the Petitioner, the closure of a section of Hospital Road by the Respondents during the peak hours of the evening for vehicular traffic and further converting it into a food street, infringed his fundamental rights i.e. right of dignity, right to

movement, right to life and Right to access to public places guaranteed under Articles 9, 14, 15 and 26 of the Constitution. Article 9 deals with the fundamental guarantee of life and liberty whereas Article 14 provides inviolability of dignity of man and article 26 postulates non-discrimination in respect of access to places of public entertainment and resort. However, the most vital aspect of the question raised through instant Petition is pertaining to Article 15, which provides for freedom of movement. It is thus imperative for determination of the matter in hand, to understand the nature and extent of right of way and fundamental guarantee provided under Article 15. It is more important to analyze and understand if the fundamental right so provided is absolute or qualified and whether the action of the Respondents regarding regulating the said portion of Hospital Road and to limit it for the use of Pedestrian only for a specified period of time amounts to infringement of right of the Petitioner or not.

(a) **Right of way, its extent and limitation**

18. The concept of 'Right of Way', before transforming into legal and constitutionally protected right of movement, was still an established practice deep rooted in longstanding accepted custom and usage, which was not confined or specific to a particular demography or region but was exercised throughout different cultures of the world. It was classified into 'private right of way' and 'public right of way'. According to the definition provided in **Black's Law Dictionary (Tenth Edition, page 1522)** 'Right of Way' is defined as '*the right to pass through property owned by another. A right of way may be established by contract, by longstanding usage, or by public authority (as with a highway).*' Whereas the expression 'Public right of way' is defined as '*The right of passage held by the public in general to travel on roads, freeways, and other thoroughfares*'

(b) **Freedom of movement-a fundamental right**

19. History of the right to movement dates back to ancient times. However, Magna Carta, 1215, is the first known document which formally acknowledged this right of the people. Clause 42 of the Charter laid down that it shall be lawful for any man to leave and return to his kingdom unharmed and without fear. Now this right is not only acknowledged by the International Law but it is also vindicated by the domestic legislation of almost every country of the world. Article 13 of the Universal Declaration of Human Rights (1948), Article 12 of the International Covenant on Civil and Political Rights, 1966, Article 19(1)(d) of the Constitution of India, 1949, Article 11 of the Constitution of Germany 1949, Article 22 of Japan's Constitution of 1946, Section 6 of Canadian Constitution Act, 1982, Sec 19 of Australia's Human Rights Act, 2019, Article 27 of the Russian Constitution, 1993, Article 23 of the Turkish Constitution, 1982, and Article 16 of the Constitution of the Italian Republic, 1947, ensure the right of free movement within their respective jurisdictions. This right was so fundamentally basic to the framers of US constitution that they did not feel the need to expressly enumerate it in the constitution. Nevertheless, one can invoke this right on the strength of international conventions stated earlier. In Pakistan right to movement is provided and protected by Article 15 of the Constitution, which postulates that subject to reasonable restriction imposed by law in the public interest, every citizen shall have the right to enter and move freely throughout Pakistan.

20. It is thus definitive and undeniable that right of free movement is recognized, provided and protected under almost every basic legal instrument of most of the countries and international organizations. However, for determination of the question raised through instant petition, declaration of right to movement as fundamental right is not essential and critical but the most imperative question is to examine

and unearth the scope of such fundamental right. It rather requires dissection of this fundamental pledge to discern its nature and extent within the contemplation of constitutional guarantee of Article 15 in order to understand whether this right, which is available to the Petitioner being a citizen of Pakistan, is absolute or qualified and whether there is any limitation and conditionality attached with the exercise of such fundamental guarantee or the same is exercisable without any limitation or constraint.

(c) Limitation on right of way

21. To begin with, general right of way in all its forms whether being an outcome of custom, a product of easement, of a contract or as a creation of legislative instrument has always been subjected to certain limits and bounds. Seeking aid from various judgments, the nature, extent and restrictions upon general right of way was eloquently summed up in **Halsbury's Laws of England (Volume 87, Para 949, page 656)** as follows:-

“The true significance of the term ‘general right of way’ lies in its use in contradiction to the special limitations expressed of inferred upon it of any particular right of way over and above the limitations thus imposed by the general law. Thu, special limitation may be placed upon the use in respect of time; for instance, the use may be limited to certain times in the day, to certain seasons or periods or to the duration of the purposes for which it was created. It may be limited also in respect of the part of the area of the servient tenement over which it may be exercised. Another and the most common form of limitation is in respect of the mode in which the way may be used, that is to say, in respect of the nature of the traffic. In this respect it may be limited to foot passengers, to motor traffic, to carriages and wheeled traffic, excluding cattle and other animals, to agricultural traffic, to persons driving cattle and other animals, or to traffic of some other particular nature. The use of the way may also be limited to special purposes or in terms of the persons who are entitled to use it.” (underlined for emphasis)

(d) Limitation on right of movement

22. Eminent Jurist John Salmond defined a legal right as an interest, recognized and protected by the rule of legal justice. Fundamental rights are those rights which are recognized, provided and pledged by the State to its citizens regardless of their color or creed and belief or believes. However, each fundamental right is attached to a corresponding responsibility i.e., the right to be recognized equally before the law implies the responsibility to abide by the laws. Article 15 of the Constitution, which postulates as under:-

Freedom of movement, etc.

15. 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.
(Emphasis placed)

23. A plain reading of the referred Article made it abundantly clear that it is a fundamental right of every citizen to move freely throughout Pakistan. However, reasonable restriction can be imposed to further the public interest by law on the exercise of such right of free movement. Now the question arises, what amounts to 'reasonable restriction'. According to **Advance Law Lexicon, 4th Edition, Volume 4, Page 4070** the term has been defined as follows:-

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 interest of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reasons dictates.---

24. The Honorable Supreme Court in "MESSRS ELAHI COTTON MILLS LTD AND AOTHERS Versus FEDERATION OF PAKISTAN THROUGH SECRETARY M/O FINANCE, ISLAMABAD and 6 others" (PLD 1997 SC 582) expounded the concept of the term

“reasonable restriction” through the medium of literal interpretation.

It was observed by the Court:-

ii) Corpus Juris Secundum, Volume LXXV, page 634; wherein the word "reasonable" has been defined as under:---

"The word 'reasonable' is a relative generic term difficult of adequate definition. While it has been said that it is an ordinary word in common use and familiar to the average person, in fact the dictionaries give a number of meanings for the word, and it has various shades of meaning, and the particular shade is to be determined according to the context and circumstances of each particular case.

"Reasonable" is defined as meaning agreeable to reason; conformable to reason; governed by reason; having the faculty of reason; rational; thinking, speaking, or acting rationally, or according to the dictates of reason; sensible.

It is also defined as meaning just; proper; fair; equitable; and, in addition, the term has been construed as meaning honest. "Reasonable" is further defined as meaning ordinary or usual; not immoderate or excessive; not capricious, arbitrary, or confiscatory."

25. The Hon'ble Supreme Court in case reported as “PAKISTAN MUSLIM LEAGUE (N) THROUGH KHAWAJA MUHAMMAD ASIF, M.N.A. AND OTHERS Versus FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF INTERIOR and others” (PLD 2007 SC 642) eloquently described as to what constitutes an unreasonable restriction. The Court held:

A restriction is unreasonable if it is for an indefinite or an unlimited period or a disproportionate to the mischief sought to be prevented or if the law imposing the restrictions has not provided any safeguard at all against arbitrary exercise of power.

26. This Court in “D.G. KHAN CEMENT COMPANY LTD. THROUGH CHIEF FINANCIAL OFFICER Versus FEDERATION

OF PAKISTAN THROUGH SECRETARY MINISTRY OF LAW and 3 others” (PLD 2013 Lahore 693) has also embarked upon the concept of reasonable restriction from the spectrum of limitation and constraint on fundamental rights. It was observed by the Court:-

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. Any restriction of human rights not only needs a constitutionally valid reason but also to be proportional to the rank and importance of the right at stake.⁴" "Reasonable restriction" or any sub-constitutional limitation ('law') on a constitutional fundamental right must also flow from the Constitution to protect lawful rights and interests of the others or the society at large. The "law" or "reasonable restrictions" in pith and substance must promote and advance fundamental rights of the community at large in order to qualify as a limitation to override the fundamental rights guaranteed to an individual under the Constitution. The "law" or the "reasonable restrictions" must be fashioned to uphold the constitutional themes of democracy, freedom, equality, tolerance, social justice and advance the principles of policy under the Constitution. The roots of sub-constitutional limitation ("law" or "reasonable restrictions") must be grounded in the Constitution itself, only then can they possess the constitutional character and strength to take away the fundamental rights of an individual.*

It was further held:-

21. *Comparative international jurisprudence has moved on from the generic public interest argument to a more structured approach in assessing the impact of sub-constitutional limitation on the constitutional right by applying the principle of proportionality to balance and weigh the competing interests of an individual and the society, in order to maintain constitutional equilibrium.*

Article 36 of the Constitution of the Republic of South Africa states:

*"(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that **the limitation is reasonable and justifiable** in an open and democratic society based on human dignity,*

equality and freedom, taking into account all relevant factors, including

- (a) The nature of the right;*
 - (b) The importance of the purpose of the limitation;*
 - (c) The nature and extent of the limitation;*
 - (d) The relation between the limitation and its purpose; and*
 - (e) Less restrictive means to achieve the purpose.*
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights." (emphasis supplied)*

27. It is thus evident that the word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reasons dictates. In other words, the concept of reasonableness is nothing but that of harmonizing individual right with collective interest. However, for the sake of determining reasonableness of a restriction so imposed, the basic principle must be kept in mind that the power to impose restriction granted under the Constitution does not mean or include the power to destroy the very right, which is the subject matter of such regulatory dominion because the existence of right cannot be undone to nihility by way of authority to administrate its exercise. The right is basic and fundamental whereas the power to administer the same is auxiliary and supplemental. A right is independent whereas the power to regulate the same does not exist independently, and always dependent and contingent to the right so attached with.

28. This aspect has also got mentioning in the book of Justice Fazal Karim titled as **Judicial Review of Public Actions, Second Edition, at Page 1123-1124**, in the following manner:-

Power to impose Restrictions is not the Power to Destroy
Ordinarily, the power to impose restrictions is not a power to kill or destroy. The right subject to restrictions must continue to exist and to be reasonable exercised. The power to impose restrictions is not therefore a power to legislate the very entrenched fundamental right out of existence.

When a fundamental right is subject to reasonable restrictions imposed by law, for example, the rights

guaranteed by Article 19 of the Indian Constitution and the rights guaranteed by Articles 15, 16, 17, 19 and 23 of the Constitution of Pakistan, it is, as we have seen, for the court to determine whether the restriction in question is reasonable.

29. This conclusion gets further support from the provision of different Constitutions and international charters/conventions wherein it has also been provided that the Right of movement is not absolute but conditional and subject to restriction and limitations, which can be imposed by law. Article 12 of International Convention on Civil and Political Right, 1966 read as under:-

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the **right to liberty of movement** and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the **rights and freedoms of others**, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

(bold and underlined for emphasis)

30. Similarly **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, which was adopted by General Assembly through resolution 53/144 of 9 December 1998 laid down that rights and freedoms recognized and referred by such Declaration of International Character can also be subject to limitation. It further shed light on the nature and extent of such limitation and provides criteria that it can be in accordance with applicable international obligation and law enacted for the purpose of recognizing and securing rights and freedoms of others. Article 17 is provided hereinbelow:-

Article 17

*In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject **only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.***

(highlighted for emphasis)

31. The Constitution of India, 1950 also recognized free movement as fundamental right, however, this right is also conditional and subject to reasonable restriction imposed by the law to secure the interests of general public or for the protection of the interests of any Scheduled Tribe. Relevant portion of Article 19 is reproduced hereunder as ready reference:-

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(d) to move freely throughout the territory of India;

*(5) Nothing in 1[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, **reasonable restrictions** on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.*

32. It is therefore inferred, deduced and held on the strength of logical analysis discussed above that freedom of movement of a citizen of Pakistan or any other person who is within Pakistan for the time being within the territorial bound of the country is his fundamental right as provided under Article 15 of the Constitution. Nevertheless, this fundamental right is not absolute rather it is qualified and reasonable restriction can be imposed in the exercise of this right through law in public interest. However, it is the duty of the Court to examine, that if any restriction is imposed by law or by an

authority established under the law, whether such restrictions advances the public interest, is within the judicious bound of 'reasonableness' or not and whether the imposed restriction only regulates and not totally negates the freedom of movement on the touchstone and pretext of public interest.

33. The main ground of agitation taken by the Petitioner is that the site in question is a public road and is meant for the collective use of the public, therefore the same cannot be infringed upon or subjected to any limitation as the same will be tantamount to violation of his fundamental right to free movement guaranteed under Article 15 of the Constitution. Another ground raised by the Petitioner is with respect to establishment of Food Street for particular amount of time on the said road, which resulted in denial of vehicular access to the travelers who wanted to use that part of the road on that particular time is in violation of Article 15 and 26 of the Constitution. That even the Respondent Cantonment Board under the Cantonment Act, 1924 is not empowered to close a road for the purposes of converting it to Food Street and even Section 117(K) of the Cantonment Act, does not provide such a wide and unguarded discretion to undo fundamental guarantee of freedom of movement. Another arguments of the Petitioner was that when due to rampant COVID-19 threats, all sorts of public gatherings are discouraged and banned by the Government, the action of the respondent has seriously jeopardized the government's efforts to minimize public gathering and provided a platform to the public to assemble in large numbers and expose themselves and to others to the potential threats of COVID-19, so the establishment of Food Street is also hazardous to public health and thus be put to an end.

VI. LEGAL ANTHROPOLOGY OF FOOD STREET

34. As learned counsel for the Respondent Mr. Waqar-ul-Haq Sheikh, ASC stated that it is not an established Food Street, however, with increased customary growth in the culture of eating in the particular area, it has become like one of a part time food street

which only remained operational from 7:00 P.M. to 12:00 A.M. Learned counsel for the Petitioner has emphasized that it is a food street. It is not out of place to have a glance on the legal anthropology of the Food Street, concept and culture of which indicates that this concept was not alien to Pakistan.

(i) **Food Street**

A **food street** is usually referred to a pedestrianised area that has been designated or allowed to be used for restaurants and cafes. It usually provides out-door sitting and food is served to be taken in open air. Food Streets are found in several major Pakistani cities. It is lined with food stalls, restaurants, and other food shops, and is typically accessible to pedestrians. Food streets, and food parks, exist in several metropolitan cities in the country, and attending them has become a social norm, with people using them as both formal and informal meeting areas. Some examples can be given from the Food Street in Gawalmandi, Anarkali and Fort Road Lahore, which is near Badshahi Mosque and Lahore Fort. Some other examples can also be quoted from Melody Food Street and the food street in Blue Area Islamabad, Burns Road in Karachi and the others near Ghanta Ghar in Peshawar and Qissa Khawani Bazar Peshawar.

(ii) **Judicial Restraint**

In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any initiative taken by government or any Statutory Body/Board to encourage and promote the business activities and to ensure the provision of places of public entertainment for the general public as mandated by Article 26 of the Constitution. This Court in the case of “MUHAMMAD TAHIR JAMAL, ADVOCATE Versus GOVERNMENT OF THE PUNJAB and others” (PLD 2020 Lahore 407) defined the meaning and scope of the term ‘entertainment’ within the contemplation of Article 26 of the Constitution as follows:-

“Article 26 of the Constitution guarantees that there must be no discrimination against any citizen regardless of race, sex, caste, religion or place of birth to access places of public entertainment or resort. The term 'Entertainment' has been elaborated by this Court in case reported as "PARKS PAKISTAN (PVT.) LTD v. DIRECTOR, EXCISE AND TAXATION and others" (1994 CLC 1034), relevant portion is reproduced hereunder:

"Entertainment, as per ordinary dictionary means amusement, recreation or pastime. Amusement means anything that diverts the mind and pleases the mind. Recreation has the meaning of refreshment of the strength and spirits after toil and diversion while pas-time connotes to pas-time agreeably and in a pleasant manner. Keeping the ordinary dictionary meaning of the words in view entertainment denotes any amusement, recreation of pas-time which diverts working of mind from ordinary channels to something different in a pleasant and pleasurable manner."(Emphasis supplied).

The Court also held that:-

---failure to provide such basic necessary facilities is not only violative of Article 26 of the Constitution, which deals with the issue of access to place of public entertainment or resort which include place to rest and take leisure and place for food and prayers but also it is clear violation of Articles 9, 14, 15, 20 and 38 of the Constitution which speaks about fundamental rights of the citizens of Pakistan i.e., right to life and liberty (Article 9), right to dignity (Article 14), right to freedom of movement (Article 15), right to food (Article 38), right to water (Article 9) and right to practice and propagate one's religion (Article 20).

35. Judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own

powers to intervene in the matters relating to policy of the Statutory Bodies/Board having financial perspective and outcome and exercise. The Honorable Supreme Court in “DOSSANI TRAVELS PVT. LTD and others Versus Messrs TRAVELS SHOP (PVT) LTD. and others” (PLD 2014 Supreme Court 1) has eloquently laid down the scope, purpose and limit of the concept of Judicial Restraint, while holding as follows:-

“27. In contemporary age, there has been a significant growth in the judicial review of administrative actions and the grounds on which the Courts interfere have been expanded. This expansion, however, "has taken place in the shadow of competing concerns of 'vigilance' and, 'restraint' and it is faithfulness to these dual concerns of vigilance and restraint which produces the unique supervisory jurisdiction which is the hallmark of judicial review." If the Courts fail to maintain this delicate balance, none else but people's confidence in the judiciary would be the worst victim. As aptly observed by Radford:

"One of the principal aims of a system of judicial review must be to maintain a high level of public confidence in the administrative decision making process and this must also be borne in mind in assessing the level of judicial intervention which is desirable. It can be argued that the courts' desire to achieve a fair and just result in an individual case must be tampered with a commitment not to interfere unduly with the achievement of policy objectives---"

36. In his treatise “Judicial Review of Public Actions” (second Edition p. 639), **Justice (R) Fazal Karim** has quoted the passage from the book “Taking Rights Seriously” by Ronald Dworkin (p. 137-149) wherein he described that the term *“Judicial Restraint argues that the court should allow the decisions of other branches of government to stand, even when they offend the judge’s own sense of the principles required by the broad constitutional doctrines, except when those decisions are so offensive to political morality that they*

should violate the provisions on any plausible interpretation, or, perhaps, when a contrary decision is required by clear precedent”

37. It is also to be noted that rights of street vendors have also been recognized by the Indian Supreme Court in “Suaudan Singh &Ors Vs. N.D.M.C. &Ors”(1992 AIR 1992) wherein it has been held that *“every citizen has a right to the use of a public street vested in the State as a beneficiary but this right is subject to such reasonable restrictions as State may choose to impose”*.

It was further held that:-

“Street-trading is albeit a fundamental right under Article 19(1)(g) of the Constitution but it is subject to reasonable restrictions which the State may choose to impose by virtue of clause (6) of Article 19 of the constitution. The right to street-trading under Article 19(1)(g) of the Constitution does not, however, extend to a citizen occupying or squatting on any specific place of his choice on the pavement regardless of the rights of others, including pedestrians, to make use of the pavements. In other words, a citizen is permitted to hawk on the street pavements by moving from one place to another without being stationary on any part of the pavement vested in the State. [252E-G]”

38. While examining the assertions of the Petitioner and grounds so taken to substantiate those contentions, it is observed that right to movement is not an absolute rather a qualified right, which can be subject to reasonable restriction to further the public interest, as discussed in detail earlier. Now the only question arises whether establishment of Food Street, if any, by the respondent amounts to infringement of Petitioner’s fundamental right of movement or whether it comes within the purview of reasonable restriction on the benchmark of public interest as laid down under Article 15 of the Constitution.

39. The Petitioner failed to produce any notification issued by the Respondent for establishing Food Street rather it is evident that sit

out cafés are established out of practice in the area and with the gradual increase in number the place attracted food lovers and families looking for having dine out in multitude and this mass crowded attraction further flourished the business of eateries in the area as well as it occasioned serious issues in the flow of traffic on that road. In order to resolve the issue and to regulate the traffic flow, the Respondent vide Board Resolution No.210 dated 17.09.2014 declared a very small portion of Saddar Road lying in between the Bank Road and Haider Road as Pedestrian Street/walking street from sunset to midnight.

40. The qualification for imposition of ‘reasonable restriction’ on the fundamental right of freedom of movement as envisaged under Article 15 of the Constitution is that it must be imposed in the public interest whereas Section 117 sub-section (K) of Cantonment Act, 1924, which empowers the Board to perform discretionary functions if it is likely to promote the safety, health or convenience of the inhabitants of the Cantonment. The Relevant portion of the provision is provided hereunder for the purposes of clarity:-

117.Discretionary functions of Board:-

(1) A Board may, within the cantonment, make provision for---

(a)-----

*(k) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section, likely **to promote the safety, health or convenience of the inhabitants** of the cantonment;*

(Underlined and highlighted for emphasis)

41. It is therefore observed that Petitioner’s fundamental right to freedom of movement was subject to control by way of reasonable restriction imposed through law in the public interest as laid down under Article 15 of the Constitution. Under Section 108 of the Cantonment Act all streets and the pavements appertaining to streets are provided and maintained by the Board, therefore the area in

question is also under its management and control and therefore it was competent to regulate the flow of traffic by way of declaring the portion of Saddar Road in between the Bank Road and Haider Road as Pedestrian Street/walking street from sunset to midnight through Board Resolution No.210 dated 17.09.2014 because it offered a solution to the heavy influx of traffic in the area, regulated the flow of the same and thus directly promoted the convenience of the inhabitants as provided under Section 117(K) of the Act. On 29.04.2021, Naveed Nawaz, Additional Executive Officer appeared and relied upon a Cantonment Board Resolution No.210 dated 17th September, 2014 in order to justify the impugned act. In the absence of any notification for establishment of Food Street by Respondent on record, the restriction so imposed does not negate the right of movement rather it regulates its exercise and the area still remained open and accessible for general public but only vehicular access is restricted for certain definite amount of time and pedestrian access through walking is available to the general public for that particular time. It is therefore, apparent that freedom of movement of citizen, which is protected under Article 15 of the Constitution, is not infringed or denied in that limited area of sit out cafes rather the mode of moving freely through that specific portion of the area for specific amount of time is restricted only to the extent of vehicular access and not of the person himself. Even otherwise, the portion so designated as pedestrian zone by the Respondent is limited area of the Road and there are other connected roads available side by side to approach the Hospital through any mode of transportation and therefore when alternate passage/public road is open and available to the Petitioner for approaching Cantonment Board Hospital, then it cannot be termed that the area of sit out café, where access is regulated through pedestrian way for limited time period, infringes individual's fundamental right of movement. It is primary purpose of the law and duty of courts to strike a balance between individual rights of a citizen and collective rights of the general public.

42. Article 26 of the Constitution commands that there must not be any discrimination to access the places of public entertainment or resort. However, the manner to access such places can be regulated for the purposes of managing the flow of traffic, which ultimately is a thing directly related to the interest and convenience of the public as required by Article 15 of the Constitution and laid down under Section 175 sub-section (K) of the Cantonment Act. It goes without saying that for the purposes of regulating traffic flow and to avoid traffic jams and gridlock situations, entry of vehicular access on a particular road can be controlled and regulated for the very purpose.

43. It is not out of place to mention here that sit out cafes have become widespread phenomenon throughout the world. The recent outbreak of COVID-19 has further added to its popularity and appeal because of the approved health advisory to maintain social-distance as probable safety precaution against this Pandemic. The six feet social distance criteria encouraged the culture of sit out cafes worldwide and increased its clientele rapidly. Maintaining Outdoor Dining Area in a clean and sanitary condition is the foremost requirement for a sit out café and its utility stands further elevated because of the fact that it would be easier to follow social distancing guidelines in sit out cafes in comparison to the indoor cafes. Creative use of street row and sidewalks have been increased in different countries during the COVID-19. In Washington State, Langley, Spokane, and Vancouver are some of the cities that are either allowing restaurants to temporarily expand into the ROW or seriously considering that option, while municipal neighbor to the south, Portland, already has such a program in place. Other U.S. cities, such as Cincinnati, Denver, and Tampa, have recently given businesses (including restaurants and, in some cases, retail goods display) the option to extend into adjacent sidewalks, streets, and parking lots. Some international communities have limited vehicular access on one or two blocks of their downtown streets and only allow pedestrians and bicyclists to use them. Cincinnati has closed some of

its streets, both partially and fully, and is allowing their use for street cafes. Closer to home, Coupeville will be temporarily closing off a section of Front Street to cars during June, 2020, to allow local restaurants and retail businesses to use a portion of it.¹

44. COVID-19 has had a drastic impact on every field and walk of life. The long-lasting impacts of this pandemic have changed the way businesses used to be conducted and will have a strong impact on business models as well. In the post-COVID-19 world, where social distancing will be the norm, the restaurant industry will have to reinvent itself altogether. Under the circumstances, sit out cafés offers good solution to the changing dynamics because open air environment and observance of social distancing, which are useful and necessary precautionary measure against the Pandemic is best possible in a proper sit out café, if permission for outdoor dining is granted by the relevant department of the Government. With reference to the ground taken by the Petitioner that due to COVID-19, the Government has banned public gatherings and the Food Street established under the permissible approval of the Respondent has provided a place for public gatherings, which has exposed the general public to the Pandemic, suffice to observe that the situation of COVID-19 remained under vigilant oversight and supervision of the Government Department and considering and analyzing the situation and its intensity the National Command Operation Center (NCOC) issues directions from time to time regarding opening or closure of businesses including food chains/restaurants/outdoor cafes and when the NCOC has issued permission for dinning out, then in such a case no sit out café can be asked to close down its business so far as it is complying with the SOPs and other requirements issued by the NCOC and other departments concerned.

45. In the case of “HARIS BIN HASSAN JANG Versus FEDERATION OF PAKISTAN and others” (2021 CLC 413), this

¹<https://mrsc.org/Home/Stay-Informed/MRSC-Insight/June-2020/Creative-Use-of-the-ROW-During-the-Pandemic.aspx>

Court while dealing with the question of banning political gathering due to the COVID-19 situation on the ground that it is apprehensive to the fundamental right of life provided and guaranteed by the Constitution, observed that SOPs issued by the Government as a safety preventive measures to cope up with the pandemic disease are binding and obligatory upon the participants of such gatherings, if holding such gatherings is permitted by the Government, under Article 5(2) of the Constitution. It was held that:—*“The word “inviolable” used in Article 5(2) of the Constitution means that it is never to be broken and infringed. In the case of President Balochistan High Court Bar Association and others v. Federation of Pakistan and others (2012 SCMR 1784), august Supreme Court of Pakistan has held that “to be loyal to the State is the basic duty of all citizens and they have to be obedient to the Constitution and the law, wherever they may be. Thus, adherence to the Constitution and the Law by the citizens is mandatory. Non-compliance of the Constitution and the Law makes a citizen liable for action, in accordance with law”. It would also include principles of natural justice, procedural fairness and procedural propriety. Laws are always made not to be violated but to be obeyed. In Suo Motu Case No.15 of 2009 (PLD 2012 SC 610) august Supreme Court of Pakistan held that “it is expected from every citizen of Pakistan that he shall be loyal to the State and the basic duty of every citizen is to be obedient to the Constitution and law as ordained under Article 5 of the Constitution.” Respect for law is never maintained by force but by the appreciation of the reasons, appreciating its veracity and through obedience. Unfortunately, sometimes, the law falls in crisis due to misunderstanding or lack of vision.*

46. For what has been discussed above, it is unequivocal that the Petitioner has failed to file any notification and to establish so called food street in the evening and through road joining from it can pass through and in order to discourage the business activity during

Covid, no such directions for such interference can be allowed by this Court. He remained unable to point out any violation of fundamental rights, justiciable within the ambit of Article 199 of the Constitution. The petition fails and is **dismissed** accordingly.

47. Before parting with the judgment, I acknowledge with thanks the valuable assistance rendered by learned counsel for the parties, especially, Mr. Kashif Ali Malik, ASC and the Research Officers at the Lahore High Court Research Centre.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**