



MPO: A Menace to Fundamental Rights – Unveiling the Abuses

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Abstract: *This research article delves into the enduring challenges faced by our country in ensuring the preservation of constitutional liberties, even long after the end of the British colonial era. Examining the notion of "might is right" prevalent in our society, we highlight the existing disparity between the Constitution's perceived strength and its practical application. By scrutinizing the principle of strict construction of laws, we explore how it poses significant threats to citizens' liberties. While stringent interpretation may appear necessary for national security and governance, it often leads to an unjust infringement upon individual rights. This study emphasizes the importance of imposing limitations on government requirements to safeguard against arbitrary deprivation of liberty. By advocating for due care, caution, and attention in the decision-making process, we aim to foster a more balanced approach that respects citizens' fundamental rights while ensuring effective governance. Through an in-depth analysis of relevant legal precedents, we propose alternative strategies and reforms that can mitigate the existing shortcomings in upholding constitutional liberties, promoting a society where justice and freedom prevail.*

Research Objective

One unfortunate reality in Pakistan is the lack of constitutional education for the general public. The Constitution is not typically part of the ordinary syllabus, resulting in a lack of awareness regarding fundamental rights. This study intends to shed light on the fundamental right to safety, security, and fair treatment under the law. It seeks to empower individuals with knowledge about safeguarding themselves from illegal detention and arrest. For law students, this research will offer valuable insights into the true standing of the Maintenance of Public Order laws in the presence of the Constitution. The study utilizes qualitative research methods to explore

various facets of fundamental rights, which are routinely abused due to public unawareness. The constitution, as a sacred contract between the state and its citizens, places obligations on both parties. Safety, security, and liberty are among the most crucial obligations of the state. This research endeavors to expose the discrepancies between these obligations and the implementation of MPO laws (Khan et al., 2022).

Background

The background to this study stems from the events that unfolded on May 9th, 2023, when the former prime minister of Pakistan and the

chairman of a major political party were arrested inside the premises of the Islamabad High Court. Subsequently, the Supreme Court of Pakistan declared this arrest illegal. The resultant protests by supporters of the political party led to unfavorable circumstances nationwide. Numerous FIRs were filed, and many innocent people were detained under the oppressive MPO laws, with some still languishing in detention after a month. This research paper will delve into the nature of the MPO, its empowering effect on district administrations as a tool against innocent individuals, and the widespread abuse of this law. Additionally, it will highlight how the MPO contradicts the Constitution and basic human rights. The Constitution is the ultimate safeguard for people's rights, prevailing over any other law in the land. Article 4 of the constitution ensures that every citizen and person within Pakistan has an inalienable right to be dealt with in accordance with the law. Furthermore, Articles 10 and 10A of the constitution protect individuals' rights to arrest and detention, as well as the right to a fair trial. The landmark judgment in PLD 2007 Kar 544 solidified the doctrine of due process of law, emphasizing the importance of notice, the opportunity to defend oneself, and the impartiality of the tribunal or court.

To enforce these rights, Article 199 of the constitution places a tremendous obligation on high courts to safeguard and protect the lives and property of citizens and any person within Pakistan. Additionally, Article 8 of the constitution deems any law inconsistent with or derogatory to fundamental rights as void. It explicitly states that the state cannot enact laws that abridge or take away these rights. Despite these constitutional provisions, the West Pakistan Maintenance of Public Order Ordinance, 1960 exists, contains provisions that infringe upon fundamental rights and contravene Articles 8, 10, and 10A of the constitution. This study will engage in a comprehensive discussion on how the MPO violates fundamental rights, contradicts the constitution, and examine the viewpoints expressed by the apex courts regarding this law.

Introduction

The Constitution serves as the supreme law of a nation, representing a crucial agreement between the rulers and the public that must be upheld by both parties. In the case of our country, the unanimous enactment of the constitution on August 14th, 1973, was intended to ensure unwavering compliance. However, the unfortunate reality is that violations and disregard for the Constitution persist, with laws being enacted against its spirit and intent. One such law is the Punjab Maintenance of Public Order Ordinance 1960, which will be the focus of this research paper. This study aims to explore the oppressive aspects of the law and establish how it runs counter to the principles enshrined in the Constitution. Additionally, it will provide recommendations for remedies available to individuals detained under such laws. Of particular interest are the recent judicial rulings concerning this law, especially considering the incident that occurred on May 9th (Tahirkheli & Khan, (2013).

Literature Review

Introduction of MPO. "*The West Pakistan Maintenance of Public Order Ordinance, 1960*". The West Pakistan Maintenance of Public Order, Ordinance 1960, usually called MPO, is a law that was promulgated on the 2nd day of December 1960 to consolidate and amend laws related to the "preventive detention" of persons and "control of publications" for the reason of safety of public peace, public interest, and maintenance of public order. It is enforceable to the extent of the whole of Pakistan.

Article 3 of MPO: "*Government, if satisfied that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may, by an order in writing, direct the arrest and detention in such custody as may be prescribed under sub-section (7), of such person for such period as may, subject to the other provisions of this section, be specified in the order, and Government, if satisfied*

that for the aforesaid reasons, it is necessary so to do, may, extend from time to time the period of such detention [8][for a period not exceeding six months at a time.” (The Punjab Maintenance of Public Order Ordinance, 1960, 2017).

A writ petition was filed in the honorable Peshawar high court against the powers granted to the district governments under 3 MPO. “In the writ petition, the provincial government had been made a party through the chief secretary and the law secretary. It was submitted that the bill is not correct and is unconstitutional. According to the petitioner, any citizen can be arrested without giving any reason. Under the law of 3 MPO, it is a normal practice by the government. Along with this, the administrative officers have the power to execute, punish, and try”.

Although the Supreme Court of Pakistan has, on various occasions, given decisions regarding. “The separation of the administration from the judiciary.” As the separation of power is the main component of the constitution safeguarded by the apex courts. The powers of the judiciary have been completely dashed in this subject when the administration is exercising it alone. Under MPO, no trial is conducted given due process of law, and everyone is arrested and thrown behind bars without assigning any reason for the same, which is against articles ten and 10A of the constitution.

“A two-member bench of the high court, comprising Justice Shakeel Ahmed and Justice Waqar Ahmed, announced its previously reserved decision. In a major relief was given to hundreds of PTI workers and leaders arrested in connection with the May 9 attacks on state installations under 3 MPO, the court deemed the provincial administration's order illegal. The Peshawar High Court also nullified the deputy commissioner's orders for the provision of PTI worker's arrests (Tribune, 2023)”. The core issue with 3MPO is that the law allows the district administration to exercise the power to detain someone without informing him of his offense. Even without doing any offense, the deputy

commissioner can arrest someone merely on the basis of suspicion and not let him plead innocent. The same was done in the arrest of senior journalists and the anchor person Imran Riaz Khan, Aftab Iqbal, and many more. When they got arrested, there was no FIR against them. The local police first arrested them, and following their arrest, the deputy commissions concerned issued the detention orders under 3 MPO. The chief justice of Lahore High Court Lahore probes the matter after Imran Riaz's father filed a writ petition. The SHO concerned was called upon by the honorable high court that later on admitted the fact that when Imran was arrested, there was no criminal charge against him. The high court suspended the above-said SHO and directed the IG Punjab to present Imran Riaz before the court, but to date, he is missing. Still, no one knows where he is. He was detained under said MPO laws and even the authorities who detained him failed to produce him before a court of law (Bilal, 2023). The government is using these MPO laws just for political purposes, to destroy the political parties for their ulterior motives malafidely, and unfortunately, the state is a helping hand for the government in this task. The judiciary is playing its role but, at the moment, is nothing more than a tiger without a tooth. The same was said by the court, with wet eyes, while deciding the detention order of Asad Umer. Giving the orders to forthwith and immediate release, the Islamabad high court had ordered the police not to arrest the PTI senior leader, who was arrested under the MPO (Maintenance of Public Order) ordinance. Speaking to the media after the hearing, Babar Awan Senior, advocate Supreme Court of Pakistan and the council in this case, said that judge remarked that even “if Asad Umar is released, he will be re-arrested” despite the strict orders of the court until he holds a "press conference." These remarks portray the position of justice in this modern age in Pakistan in the presence of these MPO Laws (Tribune, 2023).

All the people who were detained under MPO laws were released by the courts. Yasmin Rasid was one of them. The Anti-Terrorism court even

ordered the local police to remove her name from the bogus FIR, "Hearing the case today, the court discharged PTI Punjab President Yasmin Rashid from the case and directed authorities to release her immediately. Declining the police's request for Dr. Rashid's physical remand, the Anti-Terrorism Court ordered the removal of her name from FIR number 96/23 registered at the Sarwar Road Police Station. Following the court's orders, the police removed her name from the FIR. She was presented before the court upon the police's request to demand her custody". She is a lady of extreme tenor age, and at this age, she was arrested by the local police and was detained without any reason, and the authority behind this arrest was the 3MPO (Tribune, 2023).

The Role Of Higher Judiciary in Enforcing the Human Rights: Especially Security of a Person, in Light of Article 9, of the Constitution of the Islamic Republic of Pakistan

The judicial authorities are the custodian of the Constitution. The primary function of the court is to provide justice, and in a scenario like the present in Pakistan, the only hope is the supreme court, but sometimes it looks like even the supreme court is a tiger without a tooth in a number of cases it has been observed that the state does not comply with the orders of the apex courts in its true sense, fresh examples are available, Ali Muhammad Khan case, Asad Umar case and many more, in which the judiciary gave clear directions to release the above said accused but, the state being in power detained the above said people otherwise.

But at the same time, in the presence of a number of case laws, we cannot deny the fact that courts are doing their level best to safeguard the crippling human rights laws in the country. For example, in the case 2012 SCMR 1, the Supreme Court explained article 9, security of a person (2012 SCMR 1).

"Scope of article 9 is enlarged to each and every aspect of human life. The word "life" in the Constitution has not been used in a limited

manner. Wide meaning should be given to enable a man not only to sustain life but to enjoy it. The duty of the state is to see that the life of a person is protected as to enable him to enjoy it within the prescribed limits of the law" (Ahmed, 2021).

In another case, PLD 2005 SC 193, the Supreme Court orders as follows.

"Legislature under the objective resolution/which is part of the constitution has to ensure an egalitarian society, based on the Islamic concept of fair play and social justice" (PLD 2005 SC 193).

Explaining the importance of the liberty of a person, the supreme court, in its landmark judgment, stated that,

"Right of personal liberty of a citizen is enshrined in article 9 of the constitution and has been jealously granted by the courts in Pakistan, if any person has been deprived of his liberty that should only happen in accordance with law" (2010 SCMR 27).

Against the illegal detention, the apex court ordered in. PLD 2005 Lah 370 "that liberty of a citizen cannot be curtailed merely on presumptions" (PLD 2005 Lah 370).

Case Laws on 3MPO

Arshad Ali Khan vs. Government of Punjab 1994 SCMR 1532

"Before an act is held to be prejudicial to public order, it must be shown that the act or activity is likely to affect the public at large. An act that is concerned only with an individual and does not amount to an activity prejudicial to public peace and tranquility cannot fall within the ambit of S.3 of the Ordinance. Where the police had already registered a case against the veteran under various provisions of Pakistan Penal Code that clearly shows that the detenu was accused of substantive offenses and therefore this preventive detention on the same allegations could not be justified in Law" (Arshad Ali Khan

vs. Government of Punjab, 1994; Riaz, Suleman & Cheema, 2020).

Answer vs. District Magistrate Upper Dir and eight others PLD 2020 Peshawar 44

It was held that if the accused has already been nominated in an FIR under any provision of PPC, then detention under S.3 of MPO does not serve any meaningful purpose hence is double punishment granted for the same offense, which does not serve the true sense of law (Anwer vs. District Magistrate Upper Dir and eight others, 2020).

“It is well settled that even the Constitution of the Islamic Republic of Pakistan provides that no person shall be deprived of life, liberty save in accordance with law. Indeed the state has to act within the limits of law whenever the life or liberty of an individual is affected” (2004 P.Cr.L.J 1604).

“Life and liberty of a citizen are too much important, that no person shall be deprived of this precious liberty. Unless allegations against him are prima facie proved from the record” (2004 MLD 1541).

“Needless to say that it has consistently been held umpteen times by the courts that powers under section 3MPO could not be invoked for the detention of a person on grounds other than provided for by the law. As such preventive detention of a person who is either accused of an offense or convicted of a crime would not only amount to double jeopardy but would also militate against the spirit of the relevant law, prescribing procedure and penalty for the commission of an offense, as resort to preventive measures, it is useful only before a commission of the offense and not after an offense has been committed, where after the case is registered and legal process for the prosecution of the perpetrator is initiated” (PLD 2016 PESHAWAR 89)

Conclusion

In light of Articles 9, 10, and 10-A of the Constitution of the Islamic Republic of Pakistan, and under the above-said case laws and judgments of the apex courts of Pakistan, this fact is now crystal clear that the life and liberty of a person is much more important to be protected. And courts guarantee the same under 2004 P.Cr.L.J 1604 “It is well settled that even the Constitution of Islamic Republic of Pakistan provides that no person shall be deprived of life, liberty save in accordance with the law. Indeed the state has to act within the limits of law whenever the life or liberty of an individual is affected.” After the event of 9th May, the provision of S.3 MPO has been used just to serve the political reasons and the political befits to the ruling party, whereas the state became the tool to serve the benefits to the government, detaining a number of active political workers of Pakistan Tehreek e Insaf, just to gain power in the upcoming elections. This has not happened for the first time in the history of Pakistan, these types of laws always serve the ruling parties to gain strength, but it should be kept in mind that they are double-edged swords that would be used to bleed them also. As far as liberty is concerned, it should not be breached using such lame laws which do not sustain in any court of law.

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