

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**

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**C.P. No.D-2253 of 2018**

<b>Date</b>	<b>Order with signature of Judge</b>
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**Present**

**Mr. Justice Muhammad Ali Mazhar**  
**Mr. Justice Agha Faisal.**

Syed Mureed Ali Shah.....Petitioner

Versus

Federation of Pakistan & another.....Respondents

**Date of hearing: 23.04.2019**

Petitioner Syed Mureed Ali Shah present in person.

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**Muhammad Ali Mazhar, J:** This petition has been brought to challenge the Constitution (Twenty-fourth Amendment) Act, 2017 published in the gazette of Pakistan on 26.12.2017. The petitioner has prayed as under:

- “(A) declare impugned 24<sup>th</sup> Constitution amendment Act No.XXXVIII, 2017 dated 26.12.2017 (Annexure P/1), whereby amended Clause (3), (5) and inserted proviso in Clause 5 of Article 51 of the Constitution is unlawful, malafide, unreasonable, ultra vires being inconsistent with the Articles 1(2)(c), 9, 17, 18, 19, 25, 51(2) and 218(3) of the Constitution hence void ab initio and of no legal effect;
- (b) grant ad interim relief by suspending the operation of the impugned 24<sup>th</sup> Constitution amendment Act No.XXXVIII, 2017 dated 26.12.2017 (Annexure P/1) and Notification dated No.F.8(3)/2018-Elec-1 dated 05.03.2018 (Annexure P/4) till the pendency of the instant petition and restrain the Respondents their officers, agents and cronies from taking any acts in pursuance thereof;
- (c) cost of this petition may kindly be awarded to the Petitioner;

- (d) grant any further, additional or alternative or better relief(s), as this Honorable Court may deem just and proper in the facts and circumstances of the case.”

2. The petitioner in person argued that the aforesaid amendments have disturbed the concept of ‘one man one vote’ and ‘equality of representation’ by allocating seats of National Assembly to each province and Federal Capital area on the basis of Population Census-2017. Due to irrational disparity, it is not possible for the respondent No.2 to conduct free and fair general elections. It was further argued that the combined effect of Articles 9, 17, 18, 19 and 25 read with Article 51(2) of the Constitution clearly explicate that the right to vote is a fundamental right. It was further contended that under Article 199 of the Constitution, this court can strike down the aforesaid Constitutional amendment.

3. Heard the arguments. According to Article 51 of the Constitution of Islamic Republic of Pakistan, the seats of National Assembly and Provincial Assembly including the seats reserved for women and Non-Muslims have been described. It is further provided under Sub-Article (2) of Article 51 that a person shall be entitled to vote if he is a citizen of Pakistan; he is not less than eighteen years of age; his name appears on the electoral roll; and he is not declared by the competent court to be of unsound mind. By virtue of 24th Constitutional amendment, Sub-Article (3) was substituted with the amendment that the seats in the National Assembly referred to in clause (1) except as provided in clause (4) shall be allocated to each province, the federally administered Tribal Areas and the Federal Capital and the compositions of allocated seats have also been provided against the names of provinces with total general seats 272, women seats 60 and total seats 332, whereas prior to amendment the general seats were 266, women seats were 60 and total seats were 326.

4. According to our considerate outlook, the amendment made in the Constitution whereby some seats were enhanced does not in any way disturb the concept of 'one man one vote'. When we raised a query to the petitioner that how this petition is maintainable under Article 199 of the Constitution to challenge the Constitutional amendment? The learned counsel referred to the judgment of the apex court reported as PLD 2015 S.C. 401 in which paragraph 81, the synopsis of detailed reasons of the apex court in the said judgment were highlighted. The learned counsel referred to clause (f) which enunciates that the Constitution and its Preamble are built on a trichotomy that separates powers between the Legislature, the Executive and the Judiciary, and each one must operate within its respective domain. Thus, whilst the Legislature is fully empowered to make laws or amend the Constitution it is the superior Courts that will ascertain their constitutionality and interpret them because the Constitution itself has empowered them.

5. The procedure for the amendment in Constitution is provided under Article 238 which expounds that the Constitution may be amended by the Act of Majlis-e-Shoora (Parliament) for which under Article 239 a bill to amend the Constitution may be originated in either House and when the bill has been passed by the votes of not less than two-thirds of the total membership of the House, it shall be transmitted to the other House. Besides other procedural provisions which are to be akin to the amendment of Constitution, it is clearly provided under Sub-Article (5) that no amendment of the Constitution shall be called in question in any court on any ground whatsoever, whereas under Sub-Article (6) it is further provided that for the removal of doubt, there is no limitation whatever on the power of the Majlis-e-Shoora (Parliament) to amend any of the provisions of the Constitution.

6. As a result of above discussion, this petition is misconceived which is dismissed in limine with caution to the petitioner not to file such petition in future which does not serve any purpose except the wastage of precious time of the court. Next time such type of petition if filed shall be dismissed with heavy cost.

Judge

Judge

*Asif*