

20. PRESIDENT'S POWERS OF ART:45

Article 45 of the Constitution of the Islamic Republic of Pakistan empowers the ***President to grant pardon, reprieve, and respite, and to remit, suspend, or commute any sentence passed by any court, tribunal, or other authority.***

Under the NEW CHARTER:

PRESIDENT'S POWER OF PARDONING CONVICTS under Article 45 of the Constitution will be adopted or dealt with in the following way:

- ***NO CONVICT can apply for pardon if his / her case has been dealt with the provisions of QISAS & HADOOD LAWS in which the VICTIM FAMILY has already considered the options and REFUSED TO ACCOMMODATE THE CONVICT(s).***
- *If the case is still lying under consideration of the VICTIM FAMILY, the **LATER will be given NOTICE to decide their option within FIVE days.** After this period (of 5 days) it will be presumed that VICTIM FAMILY doesn't want to agree with QISAS option / facilities.*
- ***Anyway, the Prime Minister Office AND the President will collectively decide each Pardon-Petition within TEN (10) days whatsoever.***

TRUTH remains that IT IS NOT THE CONVICT's RIGHT TO HAVE PARDON after HE has availed all HIS RIGHTS or facilities of APPEAL(s) etc before APPLYING FOR PARDON.

RATIONALE BEHIND THIS ORDER?

- THE ABOVE ORDER will take away the HANGING SWORD from the Convict's head waiting for years in the hope that perhaps he would get pardon someday.
- Convicts spend years in prisons after their petitions - which are mostly REFUSED ultimately – BUT TILL THEN their JAIL-MEALS & CLOTHING, and SECURITY had caused enough Financial Burden to the government; and social, psychological and continuous MENTAL TORTURE for visiting family members & friends.

BACKGROUND OF ABOVE ORDER:

The President's pardoning power under Article 45 is massive but subject to significant constitutional limitations, statutory restrictions, and religious-legal debates. The primary boundaries and legal precedents governing Article 45 include:

- Under Article 48(1) of the Pakistan Constitution, the President cannot exercise executive authority independently, it needs **Prime Minister's binding advice**.

- The Supreme Court of Pakistan has repeatedly affirmed that the power to pardon must be exercised strictly on the advice of the Prime Minister and the Federal Cabinet.
- Under Islamic jurisprudence, offenses involving bodily harm or murder fall under *Qisas* (retribution) and *Diyat* (blood money); classified as *Haqooq-ul-Ibaad* (rights of individuals) rather than rights of the State.
- **No absolute right to pardon:** The **Council of Islamic Ideology (CII)** and legal petitions argue that the ***President cannot unilaterally pardon a convict in Qisas or Hudood cases***, only the victim or the victim's legal heirs hold the right to forgive the offender.

[On 17th April 2018: *A senior lawyer, named Khurshid Khan, had moved the Peshawar High Court (PHC), and challenged Article 45 of the Constitution which is about the president's power to grant pardon. Petitioner says pardoning a convict without consent of victim or his family is un-Islamic;*] **THE EXPRESS TRIBUNE** of the same date is referred.

- **Only the punishment is modified:** Legal scholars clarify that a presidential pardon under Article 45 addresses the *sentence* itself, not the *conviction*. The President can wipe out or reduce the punishment, but they cannot legally rewrite history to declare that the trial court's judgment of guilt was non-existent. Only a

court of law can overturn a conviction or clear a person's criminal record.

- **The court's safety valve:** While Article 45 grants wide discretionary authority, the ***Supreme Court of Pakistan retains the power of judicial review***. If a pardon is found to be politically motivated, malicious (*mala fide*), or exercised arbitrarily without due application of mind, the judiciary can declare the presidential order void.