
PROTECTION OF PRIVACY OF GIRLS IN EDUCATIONAL INSTITUTIONS



RCBHC

RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

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COURT: HON'BLE CHIEF JUSTICE MUHAMMAD HASHIM KHAN KAKAR
SUBJECT: CONSTITUTIONAL LAW
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QUERY: **PROTECTION OF PRIVACY OF GIRLS IN EDUCATIONAL INSTITUTION?**

MEMO.

My lord, it is humbly submitted as under:

The importance of privacy and modesty of women is deeply rooted in the teachings of Islam, in the Constitution, Laws and in the norms of our society. These principles emphasize to promote dignity, respect and protection for women. In Quran the Almighty in **Surah An-Nur (24:30-31)** ordains and instruct the men to lower their gaze in the following verses:

"Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is acquainted with what they do." (Underlined emphasizes)

Pakistan was indeed created with the intention of providing a homeland where Muslims could live their lives in accordance with the principles of Islam. This is reflected in the Constitution of Pakistan, which enshrines Islam as the state religion and aims to enable Muslims to live by Islamic teachings. The Preamble of the Constitution, as well as its provisions under Articles 2, 2-A and 31, emphasize the importance of Islamic principles in the governance and legal framework of the country. The right to privacy, particularly for women, is an aspect that is jealously guarded and protected under the Constitution and is also consistent with Islamic principles.

Article 9 of the Constitution of Pakistan provides that no person shall be deprived of life or liberty save in accordance with law. The term "life" in Article 9 has been given an expanded definition by the superior courts of Pakistan, extending its meaning beyond mere physical existence or vegetative state but to include the fulfillment of all requirements needed for a complete, normal, and dignified life. **In case Shehla Zia vs. WAPDA (PLD 1994 SC 693), the August Court expounded that the right to life as provided under Article 9 of the Constitution, is not limited to mere existence but includes providing a healthy environment to the Citizens.** It is condign to reproduce the most significant paragraphs dealing with the article 9 is extracted as under:-

*"Article 9 of the Constitution **provides that no person shall be deprived** of life or liberty save in accordance with law. The word "life" is very significant as it covers all facts of human*

existence. The word "life" has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal by law he it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward. [p.. 712) K

The word "life" in terms of Article 9 of the Constitution is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition under Article 184(3) of the Constitution c.: Pakistan, 1973 is maintainable. [p. 713] L

The word "life" in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. [p. 714] M."

In case of Akhtar Hussain Langove vs. Inspector General of Police Balochistan (2015 YLR 58 Balochistan), the Hon'ble High Court of Balochistan, held that Article 9 of the Constitution includes a healthy environment in the following terms:

"9. That the fundamental right to life as (Article 9 of the Constitution of Pakistan) is not one limited to mere existence, **but "includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally"** (Shehla

Zia v. WAPDA, PLD 1994 Supreme Court 693), which would include providing a healthy environment to the citizens. The Sports Complex has been set up at huge public expense and to run and maintain employs a very large number of persons, whose salaries too form part of the public expenditure. It must therefore be ensured that this huge investment is not wasted. Sports' men, women and young people must have access to places where they can develop their sporting potential."

In essence, the right to life under Article 9 of the Constitution of Pakistan is a fundamental right that has been broadly interpreted to include all aspects of human existence that contribute to living a dignified life. This includes the right to enjoy life with dignity.

Furthermore, ***the right to life has been associated with the dignity of man as provided in Article 14 of the Constitution***, which states that the dignity of man and the privacy of home shall be inviolable. Article 14 of the Constitution of Pakistan 1973 guarantees the ***right to dignity*** and privacy of home, stating that "The dignity of man and, subject to law, the privacy of home, shall be inviolable". ***This right has been broadly interpreted to ensure that the right to life is not restricted to mere existence but includes the quality of life and the right to live with human dignity***, which encompasses various facets of human civilization.

Article 31 of the Constitution of Pakistan is also significant as it outlines the ***steps that shall be taken to enable Muslims in Pakistan to order their lives in accordance with the fundamental principles and basic concepts of Islam***. It emphasizes the importance of facilitating and enabling the Muslims of Pakistan to order their lives according to the Holy Qur'an and Sunnah, and mandates the State to promote Islamic moral standards. **In case Abdul Majeed Vs Additional District and Sessions Judge Faisal Abad and 4 others (PLD 2012 Lahore 445)**, the Court highlighted the importance of interpreting the Constitution broadly and liberally, considering its impact on the life, liberty, and rights of the people, as well as its role in governance. The relevant paragraphs of the judgment are reproduced as under:-

"8. A Full Bench of honourable Sindh High Court in case of SHARF FARIDI and 3 others v. THE FEDERATION OF ISLAMIC REPUBLIC OF PAKISTAN through Prime Minister of Pakistan and another (PLD 1989 Karachi, 404) has dealt with a number of constitutional provisions including Chapter-2 relating to the Principles of Policy and it found that in the wake of controversy, it was necessary first to ascertain the principles of interpretation, which may be applicable in such a situation. The governing principle is that as the Constitution is a document, which affects the life, liberty and the rights of the people and also provides to governance of the country, it has to keep alive to meet

the social, moral, commercial, political and legal bars and problems, which may arise from time-to-time. It is also held that the Constitution should not be interpreted in a narrow and pedantic manner. It should be given liberal and broad interpretation to any enactment, which transgress the limitation placed by Constitution, would be declared void.

Even otherwise, the Objectives Resolution, as incorporated into the Constitution by Article 2-A, has been deemed justiciable by courts, meaning that provisions of the Constitution or laws that are not in accord with the Objectives Resolution can be struck down. This suggests that while the Principles of Policy themselves may not be enforceable, the broader objectives and values they represent, as encapsulated in the Objectives Resolution, can have a justiciable aspect that the courts can enforce.

We live in a tribal society and in tribal societies and traditional communities, **interactions between males and females are governed by strict norms of interaction.** These norms are based on long-standing traditions and entrenched in our society that prioritize respect, modesty, and the protection of honor. The concept of social distance between males and females is deeply ingrained and tied to our cultural and religious values. These norms are designed to maintain social harmony, protect modesty, and prevent situations that could lead to moral or social discord. Therefore, the questioned act of the respondents also does not align to our social norms and values and snatches the very fundamental right to life, as guaranteed by the Constitution. One of the main challenges befalling on the girls' education in our society and prime cause of drop out of girls from schools level is the (genuine) apprehension and anxiety of parents about the preservation of personal safety and modesty of their children and protection from harassment while going to schools. In order to counter this issue, it is necessary to provide a safe and secure access to the girls as well as to increase the enrolment of girls in the educational institution.

Obviously, the right to conduct lawful trade and business also protected under article 18 of the Constitution, but it is not an absolute and unfettered freedom and in case of conflict, the right to life and dignity would prevail over the right to conduct trade and business. This is because the right to life is considered a more fundamental and inalienable right that is essential for the enjoyment of all other rights. The State has the authority to impose restrictions on the right to conduct trade and business if it is necessary to protect public health, safety, and morals, or to ensure the dignity and life of its citizens. It is fundamental duty to provide a conducive environment to the girls in order to incentivize the parents for enrolment

of female in educational institution, which is also a necessary step to ensure full participation of women in all spheres of national life, as enshrined in the article 34 of the Constitution.

In conclusion, the sanctity of privacy and the modesty of women and girls are not only deeply embedded in the Islamic ethos but are also robustly protected under the Constitution of Pakistan. The Constitution, through its various articles, particularly Article 9, which broadly interprets the right to life, and Article 14, which safeguards the dignity of man and the privacy of home, provides a strong legal framework for the protection of these values. The superior courts of Pakistan have consistently upheld these rights, recognizing that the right to life encompasses all the amenities and facilities that enable individuals to live with dignity and respect.

The teachings of Islam, as reflected in the Holy Qur'an and the Sunnah, further reinforce the importance of these principles, guiding societal norms and influencing the legal landscape to ensure that females are accorded the highest degree of respect and protection. The Constitution's preamble and its Islamic provisions, including Article 31, mandate the State to enable Muslims to live in accordance with Islamic principles, which inherently include the protection of privacy and modesty.

The judiciary has played a pivotal role in interpreting the Constitution to ensure that the right to life is not confined to mere existence but extends to a **quality of life** that allows for a dignified existence, free from undue interference and in harmony with Islamic teachings and societal values. This holistic approach to the right to life and dignity has significant implications for the protection of women's privacy and modesty, ensuring that these fundamental rights are not only recognized but actively preserved and promoted within the legal and social fabric of Pakistan.

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