

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

**MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE RIZWAN ALI DODANI
MR. JUSTICE SHEIKH AHMAD FAROOQ**

SHARIAT PETITION NO. 2/L OF 2008

Ambrin Tariq Awan, Advocate daughter of Tariq Ismail Awan,
R/o 10/G Model Town, Lahore

... Petitioner

Versus

Federal Government of Pakistan through Secretary, Ministry of Interior.

... Respondent

Counsel for the petitioner ... Nil

Counsel for the Federation ... Mr. Muhammad Nazir Abbasi,
Advocate

For NADRA ... Mr. Saqib Jamal,
Manager (Legal)

For Religious Affairs ... Hafiz Abdul Qudoos,
Asstt: Director

Date of Institution ... 22.10.2008

Date of hearing ... 30.04.2013

Date of decision ... 24.6.2013

JUDGMENT

ALLAMA DR. FIDA MUHAMMAD KHAN, Judge,-

Petitioner Ambrin Tariq Awan has, through this petition, filed under Article 203-D of the Constitution of the Islamic Republic of Pakistan, challenged Sections 8 and 21 of NADRA Ordinance 2000 for being discriminatory and violative of Islamic Injunctions. For easy reference, the impugned laws are reproduced hereunder:-

“Section 8.

Registration of persons, etc—(1) The Federal Government may by rules provide for the registration of different persons or classes thereof wherever they may be including citizens, foreigners and emigrants, and for different things or classes thereof whatever they may be and along therewith provide for the method of such registration, manner and form of application to be made therefore, fee or other sum to be charged therefore.

(2) Notwithstanding anything contained in any other law for the time being in force the Federal Government may, by rules, for the purpose of incentivizing registration of a particular class of persons under this ordinance, provide for any right, interest, privilege, benefit, reward or other advantage, tangible or intangible, available under Pakistan Law, to be extended to, or made available to or withdrawn from such class of persons required to be registered under this ordinance and such right, interest, privilege, benefit, reward or other advantage shall accordingly become extended, or available to or withdrawn from, as the case may be, to such class persons.

Section 21.

Information relating to births, deaths, marriages divorces, etc. –(1) The birth of a newly born citizen and the death of a citizen or any other prescribed persons or class thereof, shall be reported to the District Registrar by such Authority or officer in such manner as the Authority may, by regulations, prescribe.

(2) The marriage or divorce of a citizen or any other prescribed persons or class thereof, shall be reported to the District Registrar by such Authority or officer as may be prescribed by regulations.”

2. In spite of the fact that in the last para of her petition, she has positively asserted that at the time of hearing she will be making reference to the Injunctions of Islam as well as other books and has further stated that she will be assisted in this petition by Research Associates including Muhammad Shahid Malik, Ans Abbas and Sabir Ali who are already engaged in the research of this issue, none of them entered appearance before the Court.

3. We may mention that this petition was fixed on several dates but got adjourned for one reason or another. The notices were repeated again and again but the petitioner neither herself appeared before the Court nor intimated to the office as to why she was unable or disinterested to pursue her petition. Syeda Viqar-un-Nisa Hashmi, Advocate, who was initially engaged by the petitioner, has also withdrawn

her Wakalatnama on account of other engagements and lack of instructions from the petitioner. This Shariat Petition came for final hearing before us but even today the petitioner is absent. Therefore, in circumstances, it has to be decided on merits according to Federal Shariat Court Rules, 1981.

4. We have heard Mr. Saqib Jamal, Director (Legal) on behalf of NADRA and learned counsel for Federal Government. Printed policy matter regarding the issue has been submitted on behalf of NADRA, written comments of Federal Government and comments submitted by Miss. Shazia Bilal, Advocate have been received and taken on record. We have thoroughly perused the same and anxiously considered the contents of instant petition.

5. In nutshell, the contention of the petitioner is that section 8 of the NADRA 2000 requires every citizen of Pakistan to register his/her personal identity with the name of father and thereafter the CNIC, when prepared, indicates his/her name, sex, father's name, mark of identification and date of birth. However, she feels highly aggrieved by the fact that while a man is never required to make a fresh CNIC in various changed marital positions, a woman after her marriage, divorce, second marriage etc. has to go through an ordeal for changing her CNIC in every

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eventuality. In case of marriage she has to fill Form 'B' afresh, produce Nikahnama or, in case of divorce, go through a strenuous process before the Arbitration Council etc. and every time besides humiliation, she has to spend lot of money. In this process, according to her, she is also required again and again to change her original address, permanent address of her husband and, in case of her divorce, and to do so again at the time of remarriage, while the address of her husband always remain permanent in all such circumstances and he is not required to do so in any case. This procedure, she adds, is also to be followed for applying for a fresh passport which besides being vexatious and troublesome, also cause her financial burden. Preparing a fresh CNIC, she finally contended, not only results in wastage of time, energy or money for a woman but all these DATA changes are to be reflected in the official record, banking and other transactions which again is a lengthy bothering process.

6. According to the petitioner, this discrimination between male and female is not only against Article 25 of the Constitution but also in conflict with various Verses of the Holy Quran and tradition of the Holy Prophet (S. A. W.). In this connection she has placed reliance on the following Verses: 32:4, 124:4, 194:3, Verse 97 of Sura 16, Verse 35 of Sura 33, Verse 71 of Sura 9, Verse 70 of Sura 17, Verses 58 and 59 of

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Suran 16, Verse 17 of Sura 47 and Verse 1 of Sura 4. She has also relied on several books and a few Ahadith as well.

7. Before dealing with the points raised in the petition, we would like at the outset to mention that the petitioner has referred to Article 25 of the Constitution of Islamic Republic of Pakistan which according to her has been violated by the impugned sections, as the said Article provides that all citizens are equal before law, and are entitled to equal protection of law and that there shall be no discrimination on the basis of sex alone. In this connection, it is pointed out that keeping in view the jurisdiction conferred upon this Court, explanation of Article 25 of the Constitution by this Bench would amount to out-stretch our jurisdiction as interpretation of the Constitution falls in the exclusive domain of Hon'ble Supreme Court of Pakistan. It would, however, be sufficient to refer here to a Judgment of the Hon'ble Supreme Court of Pakistan titled Government of Balochistan Vs. Azizullah Memon reported as PLD 1993 SC 341, wherein, after thorough discussion of several cases in the light of Article 25, the Hon'ble Supreme Court has deduced the following principles:-

- “(i) That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

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- (ii) That reasonable classifications is permissible but it must be founded on reasonable distinction or reasonable basis;
- (iii) That different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings and persons accused of heinous crimes;
- (iv) That no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- (v) That a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but classification which is arbitrary and is not founded on any rational basis is not classification as to warrant its exclusion from the mischief of Article 25;
- (vi) That equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed; and
- (vii) That in order to make a classification reasonable, it should be based:
 - (a) On an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;
 - (b) That the differentia must have rationale nexus to the object sought to be achieved by such classification”.

8. We have thoroughly examined the contents of this petition and have observed that the Petitioner has relied on several Verses of the Holy Quran and Ahadith in support of her contentions but a bare perusal of the

same reveals that these citations are misconceived by the petitioner as the question raised by her is somewhat different from the general import of these verses as understood by her, as summed up in the subsequent paras.

9. The Holy Quran and Sunnah of the Holy Prophet (S.A.W) contain basic guidelines to be followed as principles in individual, social and collective life. In changed circumstances however, the institution of Ijtihad, is enforced, for the welfare of public at large, to meet the required objectives, mainly pertaining to the protection of life, honour, property, liberty etc. in accordance with the guidelines provided by Islamic Injunctions.

10. So far as submissions made in the petition in respect of equality between male and female are concerned, we fully agree that all persons irrespective of their colour, creed and gender, equally placed are to be treated alike both in privileges conferred and liabilities imposed. In fact it is an essential ingredient of justice that all people, regardless of their sex, must enjoy equal rights without discrimination on any count. All citizens of an Islamic State are equal before law and are entitled to equal protection of law with no differentiation. Every one is entitled to enjoy fundamental

rights and allowed to enjoy his/her rights, freely without any checks and restrictions, except as required by law. Rich and poor and man and woman are all alike in this respect. As a natural corollary to this comes absolutely equal treatment of all citizens, without any preference or reservation, in all sectors of life. It entails equality in protection of life, liberty, property, honour and dignity and freedom of expression, equal opportunity for freedom of trade or profession--with protection of employment and promotion--equal treatment in all departments without any discrimination between big and small, workers and employers, equal rights of livelihood of every member of Muslim State, equitable distribution of wealth between all citizens on merits, on the principles of maximum circulation of the total wealth of the nation, equal opportunities for consultation in matters of national interest and State affairs. Discrimination or inequitable division and gradation of the society according to Islamic Injunctions is, therefore, strongly discouraged because like a cancer in the body, it destroys the main structure of society and endangers the life of Muslim Ummah.

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11. However, it is highly pertinent to mention that, we notice differences amongst people in their physique, capability, mental and physical abilities, intensity of sentiments, delicacy of emotions, general appearance, height and weight and many other internal and external factors. These differences mark the status and rank of each individual in society. All human being themselves are different from each other and every one has particularly unique characteristics. No two persons are the same in all respects.

12. In this background, we observe that with regard to man and woman, there are some obvious differences that make the two sexes distinctly separate from each other and call for special preferences and status, in one or other area of life, for each of them. As an undeniable matter of fact, both man and woman from point of view of physical structure, biological and psychological make up, have many differences and, resultantly, each of them has particular limitations or special privileges. Consequently, no hard and fast rule/law can be enacted which is similarly applicable to both sexes in each and every circumstance.

Therefore, there are, always some reasonable differences in special circumstances which, at times, are incompatible or inconsistent with the social status of either of them. While generally the male on average is in endowed with stronger nerves and physical structure which indicates that apparently he has been designed for hard and difficult jobs, a female's body is equipped with delicate sentiments and acute perceptions indicating that she has been blessed with most commendable, exceptional and exclusive capabilities and special qualities necessary for specially significant responsibilities, including conceiving, bearing and upbringing her children with extreme love, care and unprecedented self sacrifice and, thereby, contributing to provide firm foundation for a cultured society. It is her tender sentiments as compared with man that inspite of countless difficulties and unimaginable inconvenience she is ever-ready, day and night, to fulfill continuous demands of her child. Every man owes a lot to her mother who bears and rears him at the cost of her rest and health and, at times, even at the cost of her life. Hence a mother's lap is always considered the best place for a child to be naturally nourished and brought

up. It shows that having been equipped with different physique and sentiments, man and woman have not been entrusted with equal responsibilities by nature. Therefore it will not be just and fair to demand her to also shoulder all social responsibilities equally with man, besides those of her own, of which she has been absolved by countless injunctions.

13. In this background, it is pertinent to reiterate that "equality" and "similarity" do not connote one and the same thing. While rights and privileges of both man and woman should be equal, these cannot be exactly the same or completely identical in all respects. Admittedly there is no privilege or preference in favour of either of them, however, it is not at all necessary that their rights/duties regarding work and role should also be exactly the same without any division whatsoever. In certain instances the rights/privileges can be dissimilar also. Equality means parity and equitableness while identity means being exactly the same. Where one is mandatory, the other may take different shape according to law and, eventually, both can not be placed identically in all circumstances because

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the world is not exactly alike for them, despite the fact that both are apportioned equal rights.

14. We may further mention that though both man and woman enjoy equal status and play an equal role in building the human society, its culture and civilization, and are treated equally on all levels in all areas of activity, but it does not necessarily mean that they both must do the same, similar or identical work, as discussed above. It merely indicates their position, status, and role in terms of their rights, functions and contributions to society, and emphasises women's equality with men. But in spite of their equal status, roles, and functions, women's work, though of equal importance in all respects in the main scheme of life, may be different from the nature of the work assigned to men, in performing day to day functions.

15. Concerning the women's position in *Islam*, it is to be noted that *Islam* regards the woman as an independent, perfect member of society, and places no difference between her and the man as far as human virtues go. Verse No.228 of Surah Al-Baqrah clearly ordains that:

وَالهٖنَّ مِثْلُ الَّذِي عَلَيهِنَّ بِالْمَعْرُوفِ-

“And, in a fair manner, they (women) have rights similar to those (of men) over them.” (2:228)

Thus the relation of women to men is not of bondage or disparity but of pure, clean equal partner.

16. It is an undeniable fact that equality before law and equal protection of law are the main principles inherent and interwoven in the Islamic law and polity. They are the fundamental principles of Islam.

Accordingly the equality between the sexes is maintained in the Holy Quran at various places. (Please see 16:97, 33:35/36, 3:195, 4:124, 2:228).

However, the *Islamic* law also, like all other systems of law, is not static and ordains strictness or allows relaxation in accordance with circumstances, but like all other laws, it also insists that in order to determine strictness or relaxation in a particular case, attending circumstances should be carefully examined and viewed in accordance with the spirit of Islam itself. No law can be applied universally in all circumstances. Every law or rule has some exceptions which correspond to changed circumstances and the law itself takes care of the same. The law

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may be relaxed in some circumstances when its objectives can be met in other reasonable ways, and the safeguards do not need to be enforced strictly.

17. Keeping in view the above broad principle, we have thoroughly considered the issue raised by the petitioner but have found nothing repugnant in the impugned sections. Instead we find these rules/sections perfectly in accordance with the objectives set by Islamic Shariat, in the larger interest of public at large, as a whole. There may be some inconvenience or hardship for some individuals in the impugned sections while complying with these but actually these sections safeguard interests of women in cases of inheritance, sale/purchase deeds, financial and commercial transactions, demands of maintenance, guardianship/custody, convenience in travel abroad, particularly to Saudi Arabia where a lady has to be necessarily accompanied by her husband or "Mahram" (i.e. relatives in prohibited degree), even if she goes there for performance of Hajj/Umrah etc., and the CNIC which is a reliable means to establish her identity, provides the requisite proof. The Injunctions of Islam, contain no specific Verse or Sunnah of the Holy Prophet (S.A.W), in particular,

which lay bar on making or changing CNIC/Passport etc. and which is violated by these sections. The precedents of earlier period referred to by the petitioner are no more in existence as the whole world has now turned into a global village where International laws, procedures and rules are in force and every person/nation willy nilly has to follow the same. According to Islamic Injunctions, the Muslim Umma is ordained by Islamic Injunctions to thoroughly and consistently keep on considering the new issues and challenges arising from time to time and place to place and accordingly, by means of Ijthihad, enact any law, frame any rule or adopt any procedure to suit the requirement for public interest or welfare and convenience and keep in pace with the word. This unique characteristic of Islamic law has specifically made/kept Islam as a dynamic progressive religion. Though, as stated, inconvenience and hardship may be caused to a woman, it may be pertinent to point out that the whole exercise for changing CNIC or making Passport etc. is normally, in our social set up being undertaken by father, brother, son or husband, as the case may be, and so a man is also anxiously involved in the process.



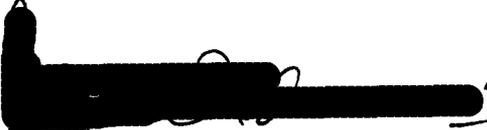
18. Here it may also be pertinent to mention that while according to Injunctions of Islam, husband and wife each in his/her own capacity have similar rights/obligations (Verse 2:228), these Injunctions have also maintained difference in several commands as applicable to a man and a woman in different conditions. Even in respect of obligatory prayers, fasting, performance of Hajj, (during certain specific days/periods/conditions of pregnancy etc.) a woman has been granted concessions which are denied to a man. In financial responsibilities after marriage/divorce, dower, maintenance, custody etc., these injunctions grant to a wife many allowances of which her husband is not only deprived but over charged with certain further responsibilities as well. However, all these concessions, allowances and relaxations in various injunctions are based on highest level of wisdom and not at all attributable to the preference of one over the other.

19. To sum up, while keeping in view the text and spirit of Islamic Injunctions and the requirements of modern world, we have no doubt in our mind that any legislation made or rule framed by the Islamic Government, in public welfare and interest – provided these are not violative of the Injunctions of Islam contained in Holy Quran and Sunnah of the Holy Prophet (S.A.W) – must be considered valid and is to be followed, in letter

and spirit, by each and every citizen, irrespective of his/her gender, creed or colour.

20. In view of the above, this petition being without any legal force is dismissed accordingly.


JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN


JUSTICE RIZWAN ALI DODANI




JUSTICE SHEIKH AHMAD FAROOQ

Announced in open Court
at Islamabad on 2.4.4.2013
*Mujeeb-ur-Rehman/**

Fit for reporting
