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**JUDGMENT SHEET**  
**LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.21987/2022**

**Hafiz Awais Zafar**  
**Vs.**  
**Judge Family Court etc.**

**JUDGMENT**

<b>Date of hearing</b>	10.05.2022
<b>For the Petitioner:</b>	Mr. Allah Nawaz Nasir, Advocate.
<b>For Respondent No.2:</b>	Mr. Muhammad Akhtar Rana, Advocate.
<b>For Respondent No.3:</b>	Syed Muhammad Haider Kazmi, Assistant Attorney General, with Imran Muhammad Naeem, Law Officer NADRA.

**Tariq Saleem Sheikh, J.**– Respondent No.2 instituted a suit for recovery of dower against the Petitioner in the Family Court at Lahore which was decided in her favour vide judgment and decree dated 13.08.2020. The Petitioner did not satisfy that decree so she filed execution petition for its enforcement. The Executing Court issued him notice but he did not appear and subsequently even avoided coercive process. Eventually, on the application of Respondent No.2, the Court directed the National Database and Registration Authority (NADRA) to block his Computerized National Identity Card (CNIC) vide order dated 04.06.2021. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner lays challenge to that order (the “Impugned Order”).

***The submissions***

2.           The counsel for the Petitioner contends that the right to identity is a part of right to life and it cannot be syncopated without due sanction of law. A person’s CNIC can be cancelled, impounded or confiscated only by the Federal Government and that too on the grounds enumerated in section 18(2) of the National Database Registration

Authority Ordinance, 2000 (the “Ordinance”), which do not exist in the instant case. Hence, the Executing Court had no jurisdiction to pass the Impugned Order.

3. The Assistant Attorney General submits that the Civil Procedure Code, 1908, does not apply to the Family Court in terms of section 17 of the Family Courts Act, 1964, so it is competent to regulate its own proceedings. It can adopt any procedure unless it is specifically prohibited by law. In the instant case, the Executing Court took all possible steps – even issued coercive process – to procure the Petitioner’s attendance but failed. The Impugned Order was passed as a last resort.

4. The counsel for Respondent No.2 has adopted the Law Officer’s arguments. He argues that the Impugned Order was necessary to maintain rule of law and prevent the frustration of decree dated 13.8.2020.

### *Opinion*

5. The personal identity of a person comprises all those aspects of his profile which are significant to him.<sup>1</sup> His personal identity begins from the moment of conception and, going beyond the information such as date of birth, encompasses his personal attributes like biographical data, physical traits and significant social relations, such as ties to family members, culture or religion.<sup>2</sup> In this view of the matter, the right to identity is associated with several other rights, e.g. the rights to a name, nationality, juridical personality, family and culture.<sup>3</sup> Some legal experts consider it a part of the right of life while others posit that it is rooted in human dignity and thus fundamental and non-derogable.

6. The international law focuses more on what may be described as “legal identity”. Article 6 of the Universal Declaration of Human Rights (1948) proclaims that everyone has the right to be recognized as a person before the law. Articles 7 & 8 of the UN

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<sup>1</sup> Theodore McCombs *et. al.*, *Right to Identity* (2007).  
Available at: <http://scm.oas.org/pdfs/2007/CP19277.PDF>

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

Convention on the Rights of the Child explicitly protect the child's right to identity. These are reproduced below for ready reference:

#### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

7. The other treaties which seek protection of identity rights *inter alia* include the Hague Adoption Convention<sup>4</sup> and the anti-human trafficking conventions.

8. The 2030 Agenda for Sustainable Development contemplates that legal identity is catalytic for achieving at least ten Sustainable Development Goals. Therefore, it has established it as a specific target – Target 16.9 (legal identity for all).<sup>5</sup> The concept note of the United Nations Legal Identity Expert Group says:

“For the purpose of the operational United Nations definition, legal identity is defined as the basic characteristics of an individual's identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death.”<sup>6</sup>

9. The Constitution of Pakistan (1973) does not expressly guarantee the right to identity but can it still be claimed? In *The Minister*

<sup>4</sup> The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993).

<sup>5</sup> United Nations Strategy for Legal Identity for All.

Available at: <https://unstats.un.org/legal-identity-agenda/documents/UN-Strategy-for-LIA.pdf>

<sup>6</sup> *ibid.*

*of Home Affairs and the Minister of Education v. Collins MacDonald Fisher and Eunice Carmeta Fisher*, (1979) 3 All ER 21, Lord Wilberforce held that fundamental rights “call for a generous interpretation avoiding what has been called ‘the austerity of tabulated legalism’, suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.” The courts in India and Pakistan are essentially of the same view. In *Maneka Gandhi v. Union of India* (AIR 1978 SC 597) the Supreme Court of India held that it is not imperative that every right should be enumerated as a fundamental right in the Constitution. It can be claimed even if it forms an integral part of a named fundamental right or is of the same nature or character or if its recognition is necessary to make the exercise of the named fundamental right meaningful and effective. In *Jurist Foundation v. Federal Government through the Secretary Ministry of Defence and others* (PLD 2020 SC 1) the Supreme Court of Pakistan held that “fundamental rights in a living Constitution are to be liberally interpreted so that they continue to embolden freedom, equality, tolerance and social justice.” In *Hafiz Junaid Mahmood v. Government of Punjab and others* (PLD 2017 Lahore 1) this Court held that “fundamental rights are the heart and soul of a living Constitution and must at all times be ready to embrace and protect the sensibilities and sensitivities of the people. They must be progressively and purposively interpreted to advance the frontiers of freedom, individual autonomy and free choice. Such vibrance and vitality is the hallmark of a living constitution in a democracy.”

10. Article 9 of the Constitution of Pakistan (1973) guarantees the right to life and liberty and enjoins that no person shall be deprived of it save in accordance with law. In *Ms. Shehla Zia and others v. WAPDA* (PLD 1994 SC 693) the Hon’ble Supreme Court of Pakistan held that the term “life” in the said Article means more than mere animal existence. It ruled:

The word “life” is very significant as it covers all facets of human existence. The word “life” has not been defined in the Constitution but it does not mean nor can it 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.”

The Court added:

“The Constitutional Law in America provides an extensive and wide meaning to the word ‘life’ which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedoms and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.”

11. Our courts have expanded the right to life over time and held that it includes “the right to legal aid; the right to speedy trial; the right to bare necessities of life; protection against adverse effects of electro-magnetic fields; the right to pure and unpolluted water; the right of access to justice;”<sup>7</sup> the right to livelihood,<sup>8</sup> the right to travel,<sup>9</sup> the right to food, water, decent environment, education and medical care.<sup>10</sup> Keeping in view the international human rights jurisprudence discussed in the earlier part of this judgment which considers the right to identity as concomitant to the right to life, I hold that the said right is protected under Article 9 of our Constitution. I would also read it into Article 14 which guarantees dignity of man.

12. Let’s now come to the National Identity Card. The National Database and Registration Authority Ordinance, 2000, provides for registration of all persons. Section 10 entitles every citizen to have the National Identity Card who has attained the age of 18 years and is registered under section 9. The Ordinance also makes provision for issuance of Pakistan Origin Cards (section 11), Overseas Identity Cards (section 12) and Alien Registration Cards (section 13). Section 19(4) stipulates that the cards issued under the Ordinance, including the National Identity Card, shall be the proof of his identity as could be established from the contents of such card.

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<sup>7</sup> Fazal Karim, *Judicial Review of Public Actions*, Second Edition, Vol. 2, p. 804 (internal citation omitted).

<sup>8</sup> *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383); and *Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others* (2015 SCMR 1257).

<sup>9</sup> *Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior and 3 others* (PLD 2010 Lahore 230).

<sup>10</sup> *Nestle Pakistan v. Director Pessi and others* (PLD 2019 Lahore 515).

13. Sub-sections (1) & (2) of section 19 of the Ordinance specify a few circumstances when the National Identity Card is compulsorily required. These include grant of passport, permit or other travel document for going out of Pakistan and identification of a voter at various elections. Section 19(3) empowers the Federal Government to specify any other purpose for which the production of any card issued as aforesaid shall be necessary. However, the need for the CNIC has increased manifold during recent years. In *Muhammad Umar v. Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 2 others* (PLD 2017 Sindh 585) the Sindh High Court observed that now almost every government and private organization requires CNIC from a person before they attend him. “It is not possible to get higher education, apply for a job, open a bank account, get a driving licence or arms licence, get utility connections, purchase railway and air tickets, execute any instrument, stay in a hotel or lodge, appear in a court proceedings and enter in certain building and premises without production of CNIC.” In this backdrop it can be legitimately argued that the CNIC is essential for enjoyment of a number of fundamental rights guaranteed by the Constitution. Hence, a person cannot be deprived of it without due process.

14. Section 18(1) of the Ordinance stipulates that all the cards issued by NADRA, including the CNIC, shall be the property of the Federal Government and it may cancel, impound or confiscate it by an order after giving a show cause notice to the holder. Section 18(2) enumerates the circumstances in which it may take such an action. It reads:

(2) An order under sub-section (1) cancelling, impounding or confiscating a card may be made only if there is reason to believe that—

- (a) the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible;
- (b) more than one cards have been obtained by the same person on the same eligibility criteria;
- (c) the particulars shown on the card have been obliterated or tampered with; or
- (d) the card is forged.

15. Inasmuch as cancellation, impounding or confiscation of CNIC impacts the fundamental rights of a person, the provisions of section 18 of the Ordinance must be strictly construed and scrupulously followed. Any order passed or action taken on a consideration other than those stipulated therein cannot sustain.

16. In the present case, the Executing Court has passed the Impugned Order dated 04.06.2021 without taking section 18 of the Ordinance into consideration. The said section does not allow blocking / digital impounding of the CNIC of a person to compel him to appear before the court.

17. I am fully aware of the fact that the courts frequently direct digital impounding of the CNIC because it is an effective means to secure presence of a person. Sometimes it even impels a fugitive from law to surrender. Notwithstanding the benefits, this cannot be permitted because it does not have the sanction of law. Such orders are contrary to Article 175(2) of the Constitution<sup>11</sup> and the concept of rule of law. The Federal Government may, therefore, propose the Parliament to amend the Ordinance.

### ***Disposition***

18. In view of what has been discussed above, this petition is **accepted**. The Impugned Order dated 04.06.2021 is declared to be without legal authority and set aside.

**(Tariq Saleem Sheikh)**  
Judge

Approved for reporting

Judge

*Naeem*

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<sup>11</sup> Article 175(2) of the Constitution mandates:

“No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law”.