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

**Writ Petition No. 66288 of 2022**

**Shumaila Sharif**

**Vs.**

**The Secretary Union Council etc.**

**JUDGMENT**

<b>Date of hearing</b>	<b>16.12.2022</b>
<b>For the Petitioner:</b>	Mr. Umar Saeed, Advocate.
<b>For Respondent No.2:</b>	Mr. Imran Muhammad Naeem, Advocate, with Mr. Hamid Rafiq, Law Officer, NADRA.
<b>For Respondent No.3:</b>	Mr. Mukhtar Ahmad Ranjha, Additional Advocate General.
<b>For Respondent No.4:</b>	Mian Muhammad Iqbal, Advocate
<b>For Respondent No.5:</b>	Mr. Hashim Ali Gill, Assistant Director (Litigation), Local Government & Community Development Department.
<b>For Respondent No.6:</b>	Ms. Rizwana Naveed, Additional Secretary, Human Rights & Minorities Affairs Department, with M/s Naveed Ahmad Goraya and Faisal Mukhtar, Law Officers.
<b><i>Amicus curiae:</i></b>	Mr. Kashif Alexander, Advocate.

**Tariq Saleem Sheikh, J.** – The Petitioner and Respondent No.4, both Christians, got married. On 06.10.2016, Respondent No.4 filed a petition for the dissolution of their marriage under Section 10 of the Divorce Act, 1869, which was granted by the Civil Court vide judgment and decree dated 01.02.2018. Subsequently, at the Petitioner's request, the Pastor of Trinity Gospel Church Ministries in Lahore issued a Certificate of Separation dated 08.12.2018. The Petitioner's Computerized National Identity Card (CNIC) expired on 03.10.2021, and she needed it changed to replace her ex-husband's name with her father's. When she applied to the National Database and Registration Authority (NADRA) (Respondents No. 1 & 2) for a renewal of her CNIC, it refused to include the Petitioner's father's name and asked her to provide divorce certificate from the Union Council concerned. According to the Petitioner, NADRA declined to

accept the Court's decree and the Pastor's Certificate as sufficient proof of the dissolution of her marriage. She requested a divorce certificate from the Secretary, Union Council No.226, Kot Lakhpat, Lahore (Respondent No.1), but he refused saying that it was not issued to the Christian community. By this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner seeks a writ of mandamus against Respondent No.1 for issuance of a divorce certificate.

2. This Court admitted this petition to regular hearing and appointed Mr. Kashif Alexander, Advocate, as *amicus curiae*. The Secretary, LG & CD, and the Secretary, Human Rights & Minorities Affairs Department, Government of the Punjab, were also impleaded as respondents who submitted their written statements.

3. The Petitioner's counsel contends that section 33 (1)(j) of the Punjab Local Government Act 2022 ("PLGA 2022") casts a duty on the Union Councils to ensure registration of births, deaths, marriages, and divorces for all the communities without discrimination. The refusal of Respondent No.1 to issue a divorce certificate to the Petitioner on the ground that they are Christians violates their fundamental rights guaranteed by the Constitution. The counsel has also referred to Article 36 of the Constitution, which expressly requires the State to protect the minorities' legitimate rights and interests.

4. The Additional Advocate General has little to defend the Respondents. He states that the Provincial Government is taking steps to address the Christian community's complaints regarding the non-issuance of divorce certificates.

5. Advocate Kashif Alexander, *amicus curiae*, contends that the court's decree determines the parties' future relationship whereas a divorce certificate is part of their identity. He maintains that obtaining a divorce certificate is a legal right that cannot be denied. It is especially important in this case because NADRA requires it to update the Petitioner's marital status before issuing her a new/revised CNIC. Respondent No.1 must be commanded to issue it which, even otherwise, is his statutory obligation.

6. Heard. The Christian Marriage Act of 1872 and the Divorce Act of 1869 are the principal family laws for Christians in our country. Every church has its precepts, but these statutes prevail where there is a conflict.

7. The Divorce Act was enacted in 1869 (the “Divorce Act”) to amend the law relating to divorce and matrimonial causes relating to persons professing the Christian religion and to confer jurisdiction on certain courts in respect thereof. Section 10 of the Divorce Act specifies the grounds on which the husband and wife may petition for dissolution of marriage. Section 22 prohibits the court from passing a decree for a divorce *a mensa et thoro* but allows the husband or wife to obtain a decree of judicial separation on the ground of adultery, cruelty, or desertion without reasonable excuse for two years or upwards of marriage. Section 55 states that all decrees and orders rendered by the court in any suit or proceeding brought under the Act shall be enforced and may be appealed in the same manner as decrees or orders issued by the court in the exercise of its original civil jurisdiction under the laws for the time being in force.

8. A court decree for dissolution of marriage entails legal consequences in all cases and creates rights and liabilities for the parties. The Divorce Act stipulates such implications for Christians, and one of them is that either party can marry again after the prescribed period has elapsed.

9. There is no cavil that when a marriage is dissolved, the parties have a right to a divorce certificate. But is it really necessary? Mr. Alexander contends that it is because it is a part of their identity.

10. A person’s identity refers to all aspects of his profile that are important to him.<sup>1</sup> His identity begins at conception and includes biological information, physical traits, and significant social relationships such as ties to family members, culture, or religion.<sup>2</sup> According to this view, the right to identity is inextricably linked to other rights, such as a right to a name,

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

<sup>2</sup> *ibid*

nationality, juridical personality, family, and culture.<sup>3</sup> Some legal experts consider it a part of the right to life, while others believe it is rooted in human dignity and thus fundamental and inalienable.

11. International law focuses more on what may be described as “legal identity.” According to Article 6 of the Universal Declaration of Human Rights (1948), everyone has the right to be recognized as a person before the law. Articles 7 & 8 of the UN Convention on the Rights of the Child expressly protect the child’s right to identity. The other treaties that seek to safeguard identity rights include the Hague Adoption Convention<sup>4</sup> and anti-human trafficking conventions. According to the 2030 Agenda for Sustainable Development, legal identity is a catalyst for achieving at least ten Sustainable Development Goals. Hence, it has designated it as a specific target – Target 16.9 (Legal identity for all).<sup>5</sup>

12. The Constitution of Pakistan (1973) does not explicitly guarantee the right to identity. However, in *Hafiz Awais Zafar v. Judge Family Court, Lahore, and others* (PLD 2022 Lahore 756), this Court held that Article 9 (right to life) and Article 14 (dignity of man) safeguard that right. Therefore, any citizen whose marital status changes due to the dissolution of marriage by divorce has a fundamental right to obtain a divorce certificate from the competent authority and then have their CNIC updated/revised.

13. Our Constitution gives minorities a special status. Its preamble states that the State shall make adequate provisions for the minorities to profess and practice their religions and develop their cultures. Secondly, the State shall guarantee fundamental rights, including equality of status, opportunity and before the law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship, and association, subject to the law and public morality. Thirdly, the State shall make adequate provisions to safeguard the legitimate interests of minorities. These asseverations are then secured through Article 2A (which makes the

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<sup>3</sup> *ibid*

<sup>4</sup> The Hague Convention on Protection of Children and Co-operation in respect of Inter-country 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>.

Objectives Resolution a substantive part of the Constitution). Article 4 (Right of an individual to be dealt with in accordance with the law) and Part II (Fundamental Rights and Principles of Policy). In *Ameen Masih v. Federation of Pakistan and others* (PLD 2017 Lahore 610), this Court held that “*minority rights* are, therefore, a basket of fundamental rights, constitutional values, State obligations under the Principles of Policy, international conventions like ICCPR (duly ratified by Pakistan) and the rich jurisprudence developed over the years.”

14. In *Suo Motu Case No.1 of 2014 etc.* (PLD 2014 SC 699),<sup>6</sup> the Hon’ble Supreme Court of Pakistan reiterated that minorities have a special status under our Constitution and approvingly cited the following excerpt from the writing of Tayyab Mahmud, a Professor at Seattle University School of Law and Director of the Centre for Global Justice:

“The express guarantees for freedom of belief and practice of religion, the rule of law, due process, equal protection, and a progressive legislative agenda, proffered by the leadership of the Pakistan Movement, constitute an implied social covenant with religious minorities in Pakistan.”<sup>7</sup> The apex Court further stated: “Protecting the freedom of religious belief and practice of all communities was indeed the predominant right asserted in several propositions and resolutions passed by the All India Muslim League (AIML). Despite the fact that members of the AIML were being strongly influenced by secular liberal thought, the ideology underlying the Pakistan Movement was the creation of a separate nation-state for the protection of the interests of the Muslim minority in India. However, these freedoms were not limited to protecting the Muslim minority but all religious minorities. One of the famous Fourteen Points enumerated by Mohammad Ali Jinnah on proposed constitutional changes was that ‘full religious liberty, i.e., liberty of belief, worship and observance, propaganda, association, and education shall be guaranteed to all communities.’<sup>8</sup> Furthermore, ‘adequate, effective and mandatory safeguards should be specifically provided in the Constitution for minorities in these units and the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them’ as stated in the Resolution adopted by the 27th Annual Session of the AIML at Lahore on 22-24 March 1940, which we now celebrate as Pakistan Day. Thus, the very genesis of our country is grounded in the protection of the religious rights of all, especially those of minorities.”

15. It is the function of the Local Government to register births, deaths, marriages, and divorces and issue certificates in respect thereof.

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<sup>6</sup> *Suo Motu* actions regarding suicide bomb attack of 22-09-2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral.

<sup>7</sup> Tayyab Mahmud, *Freedom of Religion and Religious Minorities in Pakistan: A Study of Judicial Practice*, Fordham International Law Journal, 19.1 (1995), p.51.

<sup>8</sup> Point No.7

Under section 51(2)(x) of the Punjab Local Government Act, 2013, the Municipal Committees were charged with this duty. The Punjab Local Government Act, 2019 (read with the Third and Fourth Schedules), the Metropolitan Corporations, Municipal Corporations, Municipal Committees, and the Town Committees performed this function. And now, under section 33(1)(j) of the recently-enacted PLGA 2022, it is the mandate of the Union Council. At this stage, it is pertinent to mention that Section 21 of the National Database and Registration Authority Ordinance, 2000, ordains that the marriage or divorce of a citizen should be reported to NADRA.

16. Section 202 of PLGA 2022 empowers the Government to make rules for carrying out the purposes of the said Act. However, it has not framed any rules for the registration of divorces of minorities in general and the Christian community in particular and the issuance of divorce certificates. The local governments have also not made any bye-laws in this regard in terms of section 203.

17. The Petitioner is not the only person who has complained of non-issuance of a divorce certificate by a Union Council. This is a general issue that the Christian community is facing. This Court considers that rules/bye-laws under sections 202/203 of the PLGA 2022 are necessary to meet the situation. Accordingly, the Government of the Punjab is directed to frame the requisite rules and issue notifications and letters, etc., within 90 days from the date of announcement of this judgment.

18. During the proceedings, it has been brought to the notice of this Court that NADRA's Registration Policy dated 06.04.2021 (Version 5.0.2) allows a change of marital status of a divorcee on the basis of an affidavit in the prescribed form. Until the Provincial Government frames rules as directed above, NADRA shall accommodate the Christian community in accordance with the Registration Policy.

19. In view of the above, the Petitioner is directed to re-apply to NADRA for the issuance of CNIC and submit her affidavit in the prescribed form along with a certified copy of the Civil Court's judgment

and decree dated 01.02.2018. NADRA shall process her application in accordance with the law and the Registration Policy dated 06.04.2021.

20. This petition is **disposed of** with the above directions.

**(Tariq Saleem Sheikh)**  
**Judge**

*Naeem*

Announced in open court on \_\_\_\_\_

Judge

Approved for reporting

Judge