

Expanding Literature of Human Right to Life in Pakistan

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Abstract

Right to life was incorporated in the Constitution of 1973, under Article 4 and 9. Initially, it was limited to be interpreted as a life limited to a vegetative life for a long time. However, progressive approach was adopted to give it new meanings in late 80's. Gradually, the judiciary stepped forward and started to widen the scope and vires of right to life, improving its quality. The constitutions which provide very rigid procedure for an amendment are big barriers to introduce new human rights like quality of life. It is the judiciary which provides a ray of hope by expanding horizons of already guaranteed constitutional rights. Resultantly, new rights emerged due to judicial role, raising standard of quality of life including right to shelter, right to livelihood/work, right to health, right to education, and right to protection of family, right to monetary compensation, right to go abroad and right to legal aid.

Key Words: Right to Quality of Life, Judicial Activism, Emerging Rights, Fundamental Rights, Constitution of Pakistan

1. Introduction

The protection of right to life under Article 9 of the Constitution could not be a highly valuable provision of fundamental rights, if it would have remained obscured and undiscovered as a treasure-trove for many other penumbra human rights. However, in the age of constitutional supremacy, the Supreme Court of Pakistan and the four High Courts expanded the limited ambit of 'life'. Instead of interpreting it as a vegetative life, the Courts impliedly discovered various rights in the corpus of right to life, enhancing its quality. When they started to extend the boundary of right to life, then they covered all rights, expressly or impliedly, attached with any aspect of quality of human life.

The paper, particularly, focuses that the Courts of Pakistan were not reticent to give liberal meanings to the constitutional provisions of right to life, particularly, its quality. The study also throws light on the emphatic role of the Courts, which played a vital role to protect the poor masses of the society from the corrupt and inefficient public functionaries to bring a social, economic and legal change, which was full of all malaise of bad governance, inherent in such regimes.

The present article also highlights penumbra aspects of right to life which basically enhances its quality, emerged owing to judicial activism, excluding environmental rights, which require a separate and an independent study¹.

Finally, it concludes that all rights were not recognized in one go. On the one hand, few were implied in right to life first, and then were denied later. On the other hand, there were many penumbra rights, which were denied first, but later were recognized.

2. Right to Shelter

The Part III, Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights 1966 recognized human right to clothing and housing, *inter alia*, other human rights.

The Constitution of Pakistan acknowledges the human right to housing as a Principles of Policy, but not as a justifiable right, under Article 38(d)².

When in a case of disputed property that was being used by the litigants for a long time, the Deputy Settlement Commissioner threw one of the parties on the street without a shelter. The Lahore High Court declared that the orders were illegal and without authority of law, under Article 9 of the Constitution³.

Right to life was explored as a treasure-trove to include right of shelter for the employees of the Pakistan Law Commission, expanding the meanings of word “life”, used in Article 9 of the Constitution that it included the right to enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights.

The Supreme Court in *The Employees of Pakistan Law Commission Islamabad v Ministry of Works*⁴ recognizing right to alternative shelter, under Articles 2A and 9 of the Constitution, the illegal occupants of the government owned land were required to vacate the same on account of construction of overhead bridge for public purposes, without an alternative accommodation.

The High Court in the case of *Nasreen Riaz v Lahore Development Authority*, 1998, which was reported in CLC also observed that the petitioners would be entitled to be provided compensation/rehabilitation in accordance with law for uprooting them from their present places of abode, holding that the public functionaries were liable for dispossessed population.

Even after recognizing a right to shelter, the Court observed that the personal fundamental rights had to be subordinate to larger public interest. Here the Court preferred a Principle of Policy like

social justice to a personal fundamental rights, ignoring the Supreme Court's judgment in *Benazir Bhutto*,⁵ wherein the Supreme Court held that the Directive Principles of the State Policy had to conform to and to operate as subsidiary to the Fundamental Rights

Similarly, when the withdrawal of the facility of official accommodation by the Pakistan Railway from its employees, leaving them roofless, was challenged, the Quetta High Court provided them reasonable opportunity to establish their rights. The Court categorically observed that "encroachments on any public street, foot path or pavement or area left and found necessary for healthy living of life" were illegal⁶.

Likewise, denial of Electric Power to the citizens⁷ and denial to provide security to a house providing shelter to women were also held as an infringement of right to life⁸.

Similarly, the Supreme Court of Pakistan responded,⁹ regarding the earthquake victims of Islamabad, under Articles 9, 14, 15, 23 and 24, obliged the "Authority to provide accommodation temporarily to the displaced families of the towers".

In another case, the Court showed its concerns about the negative effects of a multi-story building, agreeing with the petitioner that "construction of a multi-storied building on the subject plot the original low density character of the neighborhood would be completely destroyed, degrading the environment and worsening the quality of their life and of the other residents of the neighbourhood."¹⁰

In a *suo moto* case, the Supreme Court unequivocally observed that right to life implied, *inter alia*, the right to shelter. It also clarified that a fundamental right could not be "snatched or waived off pursuant to an agreement".¹¹

The sustained approach of the constitutional Courts of Pakistan shows that they never hesitated to recognize 'right to shelter' as an inalienable fundamental right, under Article 9 of the Constitution.

3. Right to Livelihood/Work

The Constitution of Pakistan as well recognizes right to work /livelihood, under Article 37(e), which provides, *inter alia*, that the State "shall make provision for securing just and humane conditions of work". It has also been inserted in Article 38(b) and (d) that the State 'shall provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood,' obliging the State, to provide livelihood in miserable conditions, or at least as basic necessities of life.

Since the human rights also provided in form of the Principles of Policy which are unenforceable under the Constitution and are subject to availability of resources, therefore, they have been neglected widely in Pakistan for a long time. However, when the Courts started to read them with Article 9, then they were reinvigorated, due to judicial activism.

The Metropolitan Corporation having employed teachers in their schools failed to pay them salary on the pretext that Government had not regularized their service. It was held that so long as an employee remained in service and continued to perform his duty, it was not open to any employer to withhold his salary¹².

Similarly, in another case,¹³ the respondents were not regularised for having become over-aged. The Lahore High Court succinctly observed that “the workmen are in the lowest category of employees and it was really injustice militating against the provisions of Articles 2A, 3 and 9 of the Constitution to deprive them of their livelihood on such grounds.” It also opined that “the State is expected to provide means of livelihood to its citizens as far as possible and not to deprive them of unless for very valid reasons”.

Regarding the non-payment of salary, the Lahore High Court, reiterating its position, observed that “non-payment of salary to employee, who was performing or had performed duties, would amount to a violation of Constitutional commands and also it was violation of Articles 2A, 3, 9 & 14 of the Constitution; otherwise, the failing officers would be liable to be proceeded for disciplinary action”¹⁴.

Due to sanctions of atomic bomb tests, right to bring, hold, sell, withdraw, transfer, pay or take out foreign exchange was suspended during the emergency. When it was challenged under Article 4 of the Constitution, being out of the ambit of emergency provisions, the Court adjudged¹⁵ in the favor of petitioners that the deposits of foreign currency account holders could not be treated as a fixed account for a period of three years without the consent of all the foreign currency account holders¹⁶.

All the Constitutional Courts of Pakistan subsequently reiterated the established judicial approach, in a number of cases,¹⁷ on the ground of non-payment of salary, delay or denial of pension, or pre-mature retirement.

Similarly, in another case,¹⁸ the Supreme Court observed that, when a right to work as an employee and to be paid salary was contented under Article 9, the employment for a common person was a source of livelihood and right of livelihood was an undeniable right to a person. If work was a sole source of livelihood of a person, then, right to work was not less than a fundamental right.

In the famous ‘Basant case, wherein right to life and right to profession were in conflict, the Lahore High Court held that right to profession could not be enjoyed at the cost of lives of others; right to profession was subject to right to life, under Article 9¹⁹. Later, on the same issue, the Supreme Court, in a *suo moto* action, held the kite-flying was an infringement of Article 9²⁰. In another case, the Supreme Court held the withdrawal of a franchise of bus route, without providing the opportunity of the principle of natural justice was a deprivation of right to livelihood, under Article 9²¹.

In a case,²² when the relevant authorities, without proving the illegal source of income or drug money, presumed that it was a drug money or illegal source of income and deprived the petitioner of his all property, the Sindh High Court emphasized that mandatory requirements of law must be strictly adhered to for the reason that such action must be taken in accordance with Article 9 of the Constitution.

Even the Lahore High Court went one step ahead holding that depriving any body of his livelihood without due process was a breach of right to life. It observed that “appointment of petitioners was for their livelihood and to deprive them of their livelihood without due process had offended Art.9 of the Constitution, which included the right to life and right to livelihood”²³. Due process was also asserted in *Faisal Sultan v E.D.O*²⁴.

Similarly, the right was reaffirmed in another case when the same Court held that “right to life included right to a lawful and meaningful livelihood”²⁵.

The Court, while expanding the contours of right to livelihood which itself emerged from right to life, covered the right to travel, *inter alia*, other rights within its vires, because as a citizen he has travel “to any part of the world and in particular to educational or business centers of the world”²⁶.

The Supreme Court implied the delay of completion of a project as a violation of right to livelihood. Therefore, the Provincial and Federal Governments were “ordered to ensure completion of project because of the importance of *Mancher Lake* as well as to provide security to life and property of inhabitants living there for the last many years and earning their livelihood”²⁷.

The Supreme Court, in a *suo moto* case, also observed that “it was important to provide complete protection to all the stake-holders in terms of constitutional provisions so that they may feel secure in earning their livelihood and participate in socio-economic activities”²⁸.

The apex Court also reiterated that right to life also included the right to livelihood²⁹.

Even the Lahore Court went one step ahead, awarding 10 percent annual increase, in addition to past pension, due to delay in its payment, observing that “right to life under Art.9 of the Constitution included right to livelihood and hence sustenance”³⁰.

Expanding its horizons, the load shedding was held as a violation of “right to life to livelihood of power consumers was being restricted especially at the lower end of the scale because of their inability to access alternate sources of power supply”³¹.

State functionaries had particularly been warned that they were bound “to act fairly and justly to ensure that no one was denied the right to earn livelihood”³².

The Supreme Court prohibited unfair and discriminatory act by the public functionaries to prevent any person from earning his livelihood³³.

The cumulative effect of judicial activism shows that the constitutional Courts of Pakistan have also played their vital role to recognize human right to livelihood/work, which assures quality of life, , which is not expressly protected in the Constitution.

4. Right to Health

Article 38 (d) of the Pakistan Constitution, obliges that the State shall provide medical relief, promoting social and economic well being of the people.

Like the other implicit human rights, ‘right to health’ has not been protected expressly in the Constitution; however, the judiciary recognized it as a part of ‘right to life’ under Article 9 of the Constitution, expanding its horizons.

In *Shehla Zia*,³⁴ in public interest litigation, the petitioners opposed the construction of a power grid station near the residential area of Islamabad, writing a letter to the Supreme Court seeking to enjoin the government to stop the construction of a grid station on the ground that it violated the Constitutional right to life, under Article 9 of the Constitution. The citizens argued that the presence of high-voltage transmission lines would pose a serious health hazard to the residents.

The Supreme Court, while extending the ambit of right to life under Article 9 of the Constitution, observed that the petitioners, under Article 9, were entitled to protection of law from being exposed to hazards of electro-magnetic field or any other such hazards which might be due to installation and construction of any grid station, any factory, power station or such like installations.

Similarly, the Lahore High Court in *Pakistan Chest Foundation*³⁵ observed that smoking did not only spoil the health of the smokers themselves, but it also adversely affected the health of the

non-smokers who were made to passively smoke, because they were bound to inhale the smoke emitted by the smokers while sitting near them. The Pakistan Broadcasting Corporation was directed, not to relay any advertisement for the purpose of popularizing smoking among the people.

Regarding health, the Lahore High Court, in a case,³⁶ wherein a new sewerage system was alleged to endanger human health and life, observed that, “under Article 9 of the Constitution, with regard to protection of their life from diseases and inconvenience, it would be just and proper to issue suitable directions”. Accordingly, a number of directions were issued to cope with the health and environmental hazards.

In *Anjuman Tajran Charam*,³⁷ the High Court directed that, “after the completion and functioning of the new slaughterhouse, the stores/shops of hides and skins should be shifted to the new site”. Moreover, the Court was conscious of the fact that the alleged material “caused disease but also exit of offensive smell which made life of people living in neighborhood uncomfortable thus, affecting quality of life guaranteed under Art.9 of the constitution.”

In the same line, in the case of *Anjum Irfan*³⁸ challenging the draining out of polluted water to ‘River Ravi’ was causing different diseases, which were detrimental for public health, it was sought that a writ might be issued, asking for directions and guidelines for the authorities to perform their duties in such a manner to ensure pollution free environment for the health and safe living of the citizens. An appropriate remedy was awarded to address the issue.

The Sindh High Court, in public interest litigation,³⁹ observed that, while asserting on right to life, the water pollution due to industrial waste was an infringement of Article 9.

Similarly, the Sindh High Court also observed that, in a case,⁴⁰ wherein the custom authorities impounded an imported food hazardous for public health, the word ‘life’ in the Constitution had not been used in a limited manner; therefore, a wide meaning should be given to enable a man not only to sustain life but also to enjoy that.

In a tragic case, wherein a number of precious lives were lost, where a bus carrying a wedding party caught fire due to an explosion inside, the Lahore High Court, under Article 9 of the Constitution, expounded that “the word ‘life’ was very significant in the Article as it covered all facets of human existence, providing medical assistance for preserving human life; consequently, failure on the part of government hospitals to provide timely medical treatment to a person in need of such treatment would result in violation of his right to life”⁴¹.

The Lahore High Court asserting on right to life held that “word ‘life’ had not been defined in Constitution but it did not mean nor could be restricted only to vegetative or animal life or mere existence from conception to death. Underpinning the relationship between Article 9 and quality

of life, the Court expressly held that “Article 9 of the Constitution protected life of citizens and where life of a citizen was degraded, quality of life was adversely affected and health hazards were created affecting large number of people the same amounted to deprivation of life which was prohibited by Arts.9 & 14 of the Constitution⁴².”

In a famous case of decomposition of polythene material, it was held that it had “cancerous effects on health and could also cause respiratory problem, thus, after use of polythene bags for a short period, same could not be disposed of by throwing, dumping or by burning”⁴³.

Regarding a relationship between health and air pollution, the Court, reiterating right to life, clarified that “If anything endangers or impairs quality of life in derogation of laws, a citizen has right to have recourse to Art.199 of the Constitution for removing that very thing and polluted air is one of them, for it is detrimental to quality of life⁴⁴.”

The Lahore High Court also held, asserting on health, that “environment (natural and built) was the overarching habitat and was intrinsic to survival and integral to quality of life”

The breach of right to life was also taken as a threat to health and life. The Peshawar High Court also reaffirmed the quality of life in, under Article 9⁴⁵.

5. Right to Education

The Constitution of Pakistan lacked the protection of ‘right to education’ as a fundamental right. However, it was enshrined only as Principles of Policy, which are unenforceable judicially and can be implemented by the sweat will of the Legislature or Executive subject to the availability of resources. The first three clauses namely (a), (b) and (c) of Article 37 of the Constitution of Pakistan enjoined the State to promote, with special care, the educational and economic interests of backward classes or areas, remove illiteracy and provide free and compulsory education within minimum possible period, and make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

Right to education has been for a long time implied in right to life under Article 9 of the Constitution, due to judicial activism.

In the case of *Headmaster v Chairman*,⁴⁶ the Lahore High Court issued a writ in favor of an educational institution, holding that word ‘life’ as used in Article 9 of the Constitution would include all such rights which were necessary for leading a proper and comfortable life and that the acquiring of knowledge was also a part of life and the State was under obligation to provide all possible facilities and opportunities to citizens for receiving education.

Similarly, the Lahore High Court again asserted right to education as a right to life, stretching the word 'life' to include right to education under Article 9 of the Constitution.⁴⁷

In *Sikandar Hayat Khan*,⁴⁸ the Peshawar High Court set aside an order, which put the name of petitioners in exit Control List on the ground that they were family member of a person, whose cases were under trial before the Accountability Courts. Since there were no cases against the petitioners and they wanted to proceed for education abroad; therefore, the Court entertaining the petition under Article 9, and, *inter alia*, other Constitutional provisions, let the petitioner to go abroad for study purposes. The view was reiterated in another case as well⁴⁹.

On the issue of discriminatory fee-rates in medical colleges, the Lahore High Court held that right to education was equal to right to life itself. Any disparity, without any reason, in fee schedule of medical colleges, would be a violation of Article 9 of the Constitution⁵⁰.

Again, the Lahore High Court observed that, regarding the tuition fee of self-finance student of the medical college students, although right to education was not expressly provided as one of the fundamental rights enumerated in the Constitution, but it could be drawn from right to life, giving it a broader and expanded interpretation. Apart from such recognition, the Court did not agree that tuition fee difference was unconstitutional on the test of Equality before law⁵¹.

In the case of *Imdad Hussain*,⁵² the Sindh High Court also addressed a violation of right to education, under Article 9, wherein a receipt of five year fee deposited in the bank was required to be shown at the time of admission. The Court vehemently asserted on right to education as a fundamental right and declared that any kind of legal instrument, whether a statute, regulation or executive decision, would be inconsistent with Article 9, if it deprived the candidate to his right to education. It also asserted that "term 'life' used in Art.9 of the Constitution is of very wide import and includes all those rights which are necessary for living a quality life befitting human dignity," as such the term "life" cannot be limited to mere vegetative or animal life."

In the following case, right to education, right to livelihood and right to carry out lawful profession were held incomplete without having access and right to travel to any part of the world and in particular to educational or business centers of the world⁵³. It was also extended to; *inter alia*, the right to education⁵⁴.

The Supreme Court concluded that "it ultimately affects quality of life which has nexus with other Fundamental Rights guaranteed under Arts. 4 and 9 of the Constitution". Moreover, "people cannot be free in real sense unless they are properly educated"⁵⁵.

The right to education was not only guaranteed for male or female, but also for eunuchs. It was ordered that they were not to be deprived from their legitimate right to get education⁵⁶.

In another case, it was observed that the governments must enhance budgetary allocations for improvement of education system⁵⁷.

Right to life included the aspect of acquisition of knowledge by a Muslim (male/female) being obligatory according to Qur'an and teachings of Holy Prophet (P.B.U.H.). Its role in Islam for successful life and progress of society was highlighted by the Lahore High Court⁵⁸. It was expanded to include provision of sports facilities as well⁵⁹.

The Court held that a policy for advancement of quality of education was not breach of right to life, but was a reasonable classification⁶⁰.

Realizing the importance of universal primary education, the Constitution has been amended, under Article 25-A, which enjoins the federal and provincial Governments to provide a compulsory education for children of certain age as a fundamental right to education⁶¹.

6. Right to Protection of Family

The Constitution of Pakistan does not protect family as a fundamental right explicitly. However, right to protection of family, as internationally recognized, has been provided in the Principles of Policy, and right to protection of family has been enumerated exclusively in a separate Article, which shows its significance in the scheme. Article 35 of the Constitution, regarding the protection of a family, provides as “the State shall protect the marriage, the family, the mother and the child”. It also, regarding the maternity relief, obliges the State to take executive or legislative measures “for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex and for maternity benefits for women in employment”.

Since right to protection of family is not protected as one of the fundamental rights expressly, therefore, judicial activism played a pivotal role to convert one principle of the Principles of Policy as an enforceable fundamental right, impliedly under Right to Life.

The Supreme Court urged all Courts to be careful in family matters, otherwise, any negligence “on their part could deprive an accused person/citizen of his life and may cause irreparable hardship and damage to his family”⁶².

In *Sajida Bibi*,⁶³ the Court held that “forcible separation of a duly married couple, through coercive measures by police or any other person, violated not only Article 35 of the Constitution, but also the fundamental right guaranteed under Article 9”, prohibiting any harassment by the police.

In a famous case of *Federation of Pakistan v Shaukat Ali Mian*⁶⁴ the Court held that the deposits of foreign currency account holders could not be treated as a fixed account, otherwise, they would not be able to withdraw the deposits without hindrance to meet their family liabilities and, and could not lead a life as envisaged by Article 9 of the Constitution.

In a forced marriage case of *Muqaddas Inayat v Guardian Judge, Daska, District Sialkot*⁶⁵, the Court did allow disposing the minor's property. The guardian Court permitted, but the High Court, under Article 9 of the Constitution, did not allow.

Salary was ordered to be issued as it was a "main source of livelihood of a civil servant was his salary, without which he could not sustain his family needs"⁶⁶.

In another case of a forced marriage, the Court observed that "Articles 4, 9 and 35 of the Constitution had guaranteed the life, liberty, marriage and privacy of home of a citizen of country...When law did not prohibit the parties from marrying each other; it was the duty of the State to protect the marriage and the family"⁶⁷.

Taking it further, the police was not only prohibited to harass but was directed "to provide protection and safety to petitioner and her husband so as to secure them in future"⁶⁸.

Under Article 9 of the Constitution, the Court in a consent marriage case observed that "neither the police nor any other state functionary had any right to cause harassment to a married couple with a view to cause separation between spouses"⁶⁹.

The Constitution and judicial decisions of the constitutional Courts of Pakistan have rightly protected right to protection of family.

7. Right to Monetary Compensation

The Courts of Pakistan imposed monetary liabilities on the people who infringed the rights available under Article 9 of the Constitution. In a number of cases, they imposed damages and in many cases directed the authorities to prosecute the violators of Article 9 of the Constitution.

The Sindh High Court observed that monetary compensation to a victim of violation of fundamental right could always be awarded by the Court, making it effective and meaningful, directing to pay to the victim and that such compensation was payable by way of public law duty of the State and its officers, independent of the private rights that a citizen could claim through ordinary proceedings⁷⁰.

The concept of monetary compensation was fortified by the Sindh High Court, when a government driver, due to his negligence, caused casualty in a road accident. The Court held that

it was the duty of the State, under Article 9, not to deprive life of any person except in accordance with law. Therefore, both defendants (government and driver) were jointly and severally liable to pay the compensation in a sum of Rs.37, 90,000 in favor of the plaintiff⁷¹.

The monetary compensation was also allowed to be claimed in a case,⁷² wherein the Lahore High Court settled the longstanding issue of traffic pollution caused by vehicular emission, observing that a person, whose right of easement, property or health was adversely affected by any act or commission of an act by a third person in neighborhood or at a far-off place, was entitled under Common law to seek injunction and also claim damages, but constitutional rights were higher than legal rights conferred by law, be it municipal law or common law.

In case of a flood affected area, under Article 9, the government was bound to build a wall but failed. Therefore, the affected residents “were entitled to compensation and rehabilitation by the State in case of any loss, damage or destruction in consequence of floods etc”⁷³.

The Provincial Government, in a case of terrorism, was enjoined to make payment of compensation to the heirs of persons and to provide maintenance to the families of those persons who had been killed⁷⁴. In a pension case, the petitioner was awarded compensation in addition to pension⁷⁵.

From the case law, it is quite evident that monetary compensation, which is otherwise a tortious liability, is awarded in Pakistan, in the cases of violation of right to life, guaranteed under Article 9 of the Constitution.

8. Right to Go Abroad

The political culture of Pakistan, for the last two decades, has been immersed in revenge and corruption. The vehement public demand of accountability of dishonest politician, bureaucrats, industrialist and feudal lords compelled the successive governments to introduce accountability laws. Although such laws were enforced, institutions were established and Special Accountability Courts were created to handle the malaise of corruption, but it appeared to be only eyewash, just to satisfy the people and the media. More or less, such laws were abused and innocent or non-responsible people suffered, due to incompetence or political motives of the incumbent governments. In that milieu, again the Judiciary was a sole ray of hope for the victims.

Mostly, the restrictions to go abroad were challenged under Article 9 of the Constitution and the Courts rightly awarded the relief to the petitioners under right to life, along with other fundamental rights

The Sindh High Court in *Nahid Khan V Govt. of Pakistan* refused to recognize that right to travel abroad did extend to right to life, holding that it could be restricted in public interest. And that it was a subjective act, ignoring all the previous established law that public interest was not a subjective thing⁷⁶.

However, the Lahore High Court, almost on the same ground of *Nahid Khan*, held that orders to put the name of the petitioner, another PPP central leader on ECL, were illegal and without authority of law, “due to lack of guidelines of reasonable classification and incommunicado, admitting that right of the citizen to travel abroad being a fundamental right guaranteed by Articles 2A, 4, 9, 15 & 25; it was abridged and such right of the State through legislative measures had to be tested on the touchstone of the Constitutional provisions”⁷⁷.

The Court also reiterated it in the case of *Federation of Pakistan v Mirza Muhammad Iqbal Baig*⁷⁸. Similarly, the Peshawar High Court following the same line of interpretation in *Sikandar Hayat Khan*⁷⁹ set aside an order, widening the scope of Article 9.

In another case, the Sindh High Court also followed the suit to declare the orders of putting the petitioners’ name on the ECL to be illegal, if the reasons were not communicated, over ruling its own decision of *Nahid Khan*.

When same kind of *an* incommunicado order was challenged, the Court held that liberty of every citizen of the country was safeguarded/guaranteed under Articles 4, 9, 14 & 15 of the Constitution; therefore, the same was to be jealously guarded and any action without sufficient cause depriving/curtailing the liberty of citizen was not warranted by law and was liable to be struck down⁸⁰. The Sindh High Court again reiterated its position⁸¹.

The Supreme Court also, in a high profile case of a former Prime Minister, asserted that right to life was an inviolable right of a citizen, along with other fundamental rights. So, it could not be waived or contracted out⁸².

Moreover, right to international travel has also been declared as a right to life or liberty, which is guaranteed under Article 9 of the Constitution⁸³.

It was also reiterated in the case of *Farooq Saleh Chohan v Government of Pakistan*⁸⁴. Right to travel was a right life; therefore, any trial in absentia offended provisions of Article 9 of the Constitution⁸⁵.

In *Riaz Hussain v State*⁸⁶, it was held that even absence of counsel would amount to absentia, in case of a bail.

Now, it is well established constitutional right in Pakistan that citizens can remain in, go abroad or return to Pakistan, under Article 9, along with other human rights.

9. Right to Legal Aid

The constitutional Courts of Pakistan also recognized right to legal aid as a fundamental right guaranteed under Article 9 of the Constitution of Pakistan. Although Article 10(1) of the Constitution provides that “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice”. Nevertheless, it has also been recognized under Article 9 as well. Basically, Article 10 provides a negative right, but now it has been stretched from a negative right to a positive right, which means that not only the State should not deny, but also provide the services of a legal practitioner on the State’s own expenses. The extended protection is the culmination of judicial activism.

In such a case, the appellants were not provided a fair opportunity to defend themselves because the defense counsels provided at the state expenses were not given a reasonable time to prepare the defense, which caused serious prejudice to the appellant who were convicted in a capital charge in undue haste. The Lahore High Court vitiated the trial, holding as a violation of right to life⁸⁷.

Further, it was held that “right to counsel of an accused of his choice “is a *sine qua non* for enjoying protection of Arts. 9 & 4 of the Constitution and a fair trial cannot be visualized without such an accused being represented by a counsel of his choice or by a counsel on State expense”. Therefore, “trial and proceedings without a counsel, in case of such an accused, would be violative of Art.9 of the Constitution”⁸⁸.

10. Conclusion

The framers of the Constitution of Pakistan had never anticipated the present form of Article 9 that judicial activism would extend it to almost every problem of life. It has been perceived, for a long time, as a negative right, to protect a human life almost equal to an animal, physical or vegetative life. A number of other negative rights were also protected, incorporating the International Charters and Covenants, regarding human rights. On the contrary, positive human rights were either ignored or, if they were recognized, then they were recognized only cosmetically as the ‘Principles of Policy’, which were unenforceable judicially and were available only subject to the economic resources. Their acknowledgement but impotence, with reference to implementation, led the successive governments of Pakistan to remain oblivious toward the decoratively provided human rights except right to compulsory education at a later stage.

Judicial activism regarding right to life under Article 9 is stretched over from a negative right to administrative, criminal, civil, and family and tortious rights. Apart from the emanation of new rights, Article 9 also underpinned many other human rights as well, protected under the Constitution inchoately. The significant difference, which is worthy to be underlined, is that Article 9 got synergy, whenever it was read with the provisions of the Objective Resolution, which became a substantive part of the Constitution under Article 2A.

Recapitulating the case law, it is evident that judicial activism has strengthened the rule law, promoted an egalitarian society and became a ray of hope, when no government, law or court could help the down trodden masses of Pakistan. The International Judicial Conference in Islamabad in August as part of the 50th anniversary celebrations of the Supreme Court of Pakistan declared 2006 as a year of judicial activism⁸⁹.

The study of case law, regarding fundamental right to life, also shows that the cases like right to abortion, right to die and 'euthanasia' have never been brought before the constitutional Courts of Pakistan; perhaps due to the reason that Pakistan is a country with a Muslim dominant population.

The judicial activism in Pakistan, particularly, after the reinstatement of the Chief Justice of Supreme Court of Pakistan, due to an unprecedented movement of civil society, played a catalyst role to expand the horizons of right to life, under Article 9 of the Constitution of Pakistan. It has been rightly expected that the Supreme Court of Pakistan would revolutionize itself into the Supreme Court of People of Pakistan⁹⁰.

Recent judicial activism, particularly, entrenching the doctrine of Basic Structure or Salient Features of the Constitution, has taken probability of fundamental rights to touch new heights⁹¹.

References

- 1) See generally Environmental Aspects of Human Right to Life in Pakistan: The Impact of Article 9 of the Constitution, (2007) Journal of Islamic State Practices in International Law. (JISPIL) 21 UK
- 2) It provides, inter alia, as: “the State shall: ... provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment”.
- 3) 1986 MLD 409
- 4) *The Employees of Pakistan Law Commission Islamabad v Ministry of Works* 1994 SCMR 1548
- 5) *Benazir Bhutto v Federation of Pakistan* PLD 1988 SC 487
- 6) *Bashiran v Divisional Superintendent* 2001 CLC 1229
- 7) *Erum Heights Residents Welfare Association v Karachi Electric Supply Corporation* 2001 CLC 321
- 8) *Zubadia Khatoon v Chief Secretary, Government of Punjab* PLD 2003 Lahore 53
- 9) *Saad Mazhar v Capital Development Authority* 2005 SCMR 1973
- 10) *Navid Hussain v City District Government*, 2007 CLC 912
- 11) 2011 PLD 619 SC, *Suo Moto* Case No 13 of 2009
- 12) *Metropolitan Corporation v Imtiaz Hussain* PLD 1996 Lahore 499
- 13) *Executive Engineer, v Irrigation Tubewell Workers' Union* 1997 PLC 562
- 14) *Ghosia Naz v Deputy Education Officer* 1997 PLC (C.S.) 666
- 15) *Federation of Pakistan v Shaukat Ali Mian* 1999 PLD 1026
- 16) *Federation of Pakistan v Shaukat Ali Mian* 1999 PLD 1026
- 17) *Liaqat Ali v Post Master General, Punjab Multan* 2000 PLC 497; *Qamaruddin Soomro v Administrator, Municipal Committee* 2000 CLC 633; *Abdul Qadir v District Education Officer* 2001 PSC 1073; *Zafar Mahmood Malik v Water Management Specialist* 2005 PSC 4; *Ghulam Umar Kazi v General Manager* 2006 PSC 1143; *Abdul Majeed v Government of Pakistan* 2006 SCMR 1415
- 18) *Naveeda Tufail and 72 others v Government of Punjab* 2003 PSC 69
- 19) *K.B. Threads (PVT.) Limited v Zila Nazim* 2004 PLD 376
- 20) PLD 2006 SC 1
- 21) PLD 2005 SC 193
- 22) *Tariq Irshad v State* 2006 PCrLJ 23
- 23) *Muhammad Aslam v Vice Chairman* 2010 PLC(CS) 266 Lahore
- 24) *Faisal Sultan v E.D.O. (Education)* 2011 PLC(CS) 419 Lahore
- 25) *Muhammad Saeed v Executive District Officer (Agriculture), Khanewal*, 2010 PLC(CS) 961 Lahore
- 26) *Mian Ayaz Anwar v Federation of Pakistan* 2010 PLD 230 Lahore
- 27) *Suo Moto* Case No.10 of 2010, 2011 SCMR 73
- 28) *Suo Moto* Case No.16 of 2011, 2014 SCMR 541
- 29) *Abdul Wahab v Habib Bank Ltd.* 2014 PLC(CS) 393
- 30) *Chairman NPT v Shafqat Tanvir Mirza* 2014 PLC (CS) 567 Lahore
- 31) *Judicial Activism Panel v Government of Pakistan* 2014 PLD 623 Lahore
- 32) *Muhammad Tahir Javed v DCO, Chiniot* 2015 MLD 512 Lahore

- 33) *Pir Imran Sajid v Managing Director/General Manager (Manager Finance) Telephone Industries Of Pakistan* 2015 SCMR 1257
- 34) *Ms. Shehla Zia v WAPDA* PLD 1994 SC 693
- 35) *Pakistan Chest Foundation v Government of Pakistan* 1997 CLC 1379
- 36) *Ameer Bano v S.E. Highways* PLD 1996 Lahore 592
- 37) *Anjuman Tajran Charam v The Commissioner* 1997 CLC 1281
- 38) *Anjum Irfan v Lahore Development Authority through Director-General* PLD 2002 Lahore 555
- 39) *ibid*
- 40) *Adeel-Ur-Rehman v Federation of Pakistan* 2005 PTD 172
- 41) *Mohammad and Ahmad v Government of Pakistan* PLD 2007 Lah 346
- 42) *Syed Mansoor Ali Shah v Government of Punjab* 2007 CLD 533 Lahore
- 43) *Khurram Khan v Government of Punjab* 2009 PLD 22 Lahore
- 44) *Haji Mullah Noor Ullah v Secretary Mines and Minerals* 2015 YLR 2349
- 45) *Ms Imrana Tiwana v Province of Punjab* 2015 CLD 983; *Ali Steel Industry v Government of KP* 2016 CLD 569
- 46) *Headmaster v Chairman, Evacuee Trust Property Board* 1996 CLC 1785
- 47) *Ahmad Abdullah v Government of the Punjab* 2003 PLD 752
- 48) *Sikandar Hayat Khan v Government Of Pakistan* 2003 PLD 102
- 49) *Khizar Azam Khan v N.W.F.P. University of Engineering and Technology* 2000 CLC 957
- 50) 2004 PLD 771
- 51) *Shazia Irshad Bokhari v Government of Punjab through Secretary Health* 2005 PLD 428
- 52) *Imdad Hussain v Province of Sindh* 2007 PLD 116
- 53) *Mian Ayaz Anwar v Federation of Pakistan* 2010 PLD 230 Lahore
- 54) *Suo Moto Case No.13 of 2009, 2011* PLD 619
- 55) *Rana Aamer Raza Ashfaq v Dr. Minhaj Ahmad Khan* 2012 SCMR 6
- 56) *Dr. Muhammad Aslam Khaki v S.S.P. (Operations) Rawalpindi* 2013 PLD 188
- 57) 2014 SCMR 396. Art. 25A
- 58) *Saira Rana v University of Central Punjab* 2014 YLR 475 Lahore
- 59) *Akhtar Hussain Langove v Inspector General of Police, Balochistan* 2015 YLR 58
- 60) *Fakheryar Khan v Agriculture University Peshawar*, 2016 PLD 266
- 61) See generally “Right to free and Compulsory Education in Pakistan after 18th Constitutional Amendment”, Dr Amanullah, “Journal of South Asian Studies”, Vol 28. No. 2 July to December 2013
- 62) *Khalil-uz-Zaman v Supreme Appellate Court* PLD 1994 SC 885
- 63) *Sajida Bibi v Incharge Chouki* 1997 PLD 666
- 64) *Federation of Pakistan v Shaukat Ali Mian* 1999 PLD 1026
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- 66) *Zafar Mahmood Malik v Water Management Specialist and 5 others* 2005 PLC(CS) 4 Lahore
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- 68) *Noor Ul Ain v D.P.O., Kasur* 2012 YLR 1901 Lahore
- 69) *Mst. Bachaan v Province of Sindh* 2017 CLC 1530 Karachi
- 70) *Mazharuddin v The State* 1998 PCrLJ 1035
- 71) *Akhtar Ali Khan v Islamic Republic of Pakistan* 2007 MLD 851
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- 73) *Chakar Ali Khan Rind v Government of Balochistan* 2011 CLC 601 Quetta
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- 76) *Nahid Khan V Govt. of Pakistan* 1997 PLD 513
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- 79) *Sikandar Hayat Khan v Government of Pakistan* 2003 PLD 102
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