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## **Shirin Munir v Government of Punjab [PLD 1990 SC 295]**

Muhammad Haleem C.J., Shafiur Rahman, Ghulam  
Mujaddid and Usman Ali Shah, JJ

*Shirin Munir v Government of Punjab*<sup>1</sup> is a landmark judgement in Pakistan's constitutional history expounding on Articles 22<sup>2</sup> and 25<sup>3</sup> of the Constitution. The Supreme Court ("Court") granted leave to appeal in thirteen petitions concerning the access of women to admissions in medical schools. These women were denied admission despite having higher marks than several men admitted in the same cycle. Disparity arose because out of 858 open-merit seats in medical colleges, women could secure admissions on 181 seats protected under the women's quota. The remaining 677 general/open-merit seats were awarded to men only, which significantly increased the competition for women, while allowing men with lower marks to secure admissions.

The Court considered three different issues. Firstly, whether the petitions were proper and maintainable since male students who were given admissions were not impleaded in the petitions despite them being interested parties. The Intra-Court Appeal in the High Court case was dismissed in favour of Respondents (the State) on this technicality. Secondly, whether Article 22(3)(b) of the Constitution displaces the applicability of Article 25(2) on the principle *lex specialis derogat legi generali*? Thirdly, whether the regulatory practice of medical schools in denying women admission on the remaining 677 seats, despite higher FSC. marks, unconstitutional? For the most part, this case note will comment specifically on the court's determination on the third issue.

The Court did not make a conclusive remark on the first issue. However, inference can be drawn that the Court considered this as a mere technicality which did not merit dismissing the petitions. On the second issue, Respondents claimed that Article 22(3)(b) must take precedence over Article 25(2) as it specifically pertains to denial of admission in public institutions. Resultantly, since Article 22(3)(b) does not prohibit denial of admission based on sex, the regulatory measure of medical institutions is constitutional. The Court goes into extensive detail on principles of constitutional interpretation to conclude that it is under the obligation to interpret the constitution as a whole, thus these articles must be read in a manner that allows both to operate to the fullest. This conclusion allows the Court to transition to the third issue.

In the Court's view, inconsistency or consistency between Articles 25(2) and Article 22(3)(b) hinges upon the determination of whether an intelligible or reasonable classification (the intelligible differentia) permissible under the framework of Article 25 exists on the grounds of sex alone. The Court considers classification based on sex alone permissible if it is reasonable and intelligible.<sup>4</sup> It remarked that such intelligible differentia makes Articles 25(2) and 22(3)(b) consistent especially with scenarios wherein boys are not allowed admission in an all-girls school and vice versa. This was also found to be consistent with the intent of the Constitution that the court attempted to ascertain using the Principles

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<sup>1</sup> This case is considered under the pre-18<sup>th</sup> Amendment version of Article 25. In this version, sub-clause 25(2) was as follows: "There shall be no discrimination on the basis of sex alone".<sup>1</sup> "[A]lone" was omitted in the 18<sup>th</sup> Amendment.

<sup>2</sup> Article 22 offers safeguards as to educational institutions in respect of religion, etc.

<sup>3</sup> Article 25 grants equality of all citizens before the law.

<sup>4</sup> Arun Raj, *Rational Nexus and Intelligible Differentia: Need of Fair, Just and Reasonable Thoughts*, available at < <https://www.latestlaws.com/articles/rational-nexus-and-intelligible-differentia-need-of-fair-just-and-reasonable-thoughts> >

of Policy as guiding tools.<sup>5</sup> The Court held that since six out of the seven medical schools are open to co-education, their sex-based restrictions could only be permissible as a protective measure of women and children as stated in Article 25(3). Thus, protecting comparatively less meritorious boys over competent women is a gross violation of the Constitution in the Court's view. Thus, using women's quota as a ceiling was deemed unconstitutional, consequently allowing women to contest on the open merit seats as well.

The Court's determination comes as a positive step to prevent institutional discrimination against women. However, seeing the Court's ruling in light of the current version of Article 25 may help identify the jurisprudential significance of the judgement. With the omission of the word "alone", the legislature offered an enhanced protection under the current version of Article 25. Only affirmative action is now allowed because it is covered within Article 25(2) of the Constitution. Previously, the executive argued that the operative impact of the phrase "sex alone" in the older version of Article 25 was that discriminatory actions that were based on other social factors in conjunction to sex were allowed. For instance, if women of a certain age and physical attractiveness were only allowed to become air hostesses, it would be a valid action as it is not on the basis of "sex alone". This judgement took a positive step by interpreting the phrase "sex alone" in favour of the marginalized class. But still, the Court's determination that discrimination will be allowed if there is a reasonable or intelligible interest opens room for exploitation. This is because decision regarding the legality of discriminatory actions hinges upon the biases of the person making the judgement as to whether the interest sort is compelling, reasonable and justified. The institutionalized patriarchy within Pakistan presents an appreciable risk that such determinations would always favour the dominant class.

Furthermore, the judgement is often critiqued for failing to grant relief to the petitioners. Although medical institutions were directed to allow women to compete on the open-merit seats in subsequent admission cycles, in addition to their quota, the petitioners were not accommodated in the schools because almost two years had lapsed since their admission denial. Thus, while the judgment strongly advocates for affirmative action measures for women, the absence of any relief to the actual women who were unfairly prevented from securing admissions was certainly a blow to the cause.

In conclusion, *Shirin Munir* marks a significant stride in Pakistan's constitutional history, particularly regarding progressive interpretation Article 22 and the original version of Article 25. The Supreme Court has emphasized the imperative of interpreting constitutional provisions in a manner that upholds the fundamental principles of equality and non-discrimination.

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<sup>5</sup> Article 37, Constitution of the Islamic Republic of Pakistan.