

Comprehensive Sex Education Should Be a Right Under The Constitution of Pakistan 1973

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Abstract

The aim of this paper is to assert and support the idea that under Articles 9 (security of person), 14 (right to dignity), 25A (right to education), and 35 (protection of the child) of the Constitution of Islamic Republic of Pakistan 1973 (“Constitution”), the state must be tasked with the positive obligation of providing children with free and safe Comprehensive Sex Education (“CSE”) from an early age. The paper highlights judicial precedents wherein the above-mentioned provisions have been interpreted broadly to ensure the safety and well-being of the public-at-large. It juxtaposes such broad interpretations by the courts of Pakistan with the idea that provision of and access to CSE by all members of society is necessary to enable them to live safe and healthy lives, free from sexual coercion, abuse, sexually transmitted diseases, and early pregnancies. Additionally, national measures and international commitments have also been cited to display that while the Government of Pakistan realises the importance of CSE, it has taken few measures to ensure the elevation of CSE as a part of the educational curriculum. The paper also highlights direct quotations from the Quran and Hadith to dispel the false notion that sex education or any reference to sex in public discourse is against the injunctions of Islam. In conjunction with these, this paper has endeavoured to outline the risks and harms that adolescents in Pakistan are exposed to daily without the knowledge that CSE seeks to impart. Finally, the fundamental aim of the paper is to initiate a conversation in respect of the importance that CSE has in ensuring that young people lead safe, healthy, and fulfilling lives.

Background

On 9th January 2018, the dead body of eight-year-old Zainab was found at a garbage disposal site in Pakistan. She had been raped and brutally murdered by a man who later confessed to the rape and murder of at least seven other minor girls.¹ While the nation stood firm in its solidarity against the perpetrator and the Parliament passed strict legislation in the form of the Zainab Alert Bill 2020,² these were all merely reactionary measures. A long-term strategy with the objective of not just effectively apprehending and prosecuting such predators but also with the

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¹ Editorial, “Justice For Zainab” *DAWN* (17 October 2018) <<https://www.dawn.com/news/1439587/justice-for-zainab-timeline-of-the-kasur-rape-murder-case-that-gripped-the-nation>> 19 accessed May 2020.

² Zainab Alert Bill 2020 <http://www.senate.gov.pk/uploads/documents/1578920479_225.pdf> accessed 11 September 2021.

goal of preventing such crimes altogether is required in order to effectively tackle the issue. This is evidenced by the fact that in 2018, the Minister of Human Rights, Mumtaz Ahmad Tarar, revealed that as of late 17,862 cases of child sex abuse had been reported in the country.³ Unfortunately, this figure has seen an annual increase despite the punitive efforts by the government. A non-governmental organisation, *Sahil*, released a report in 2018 which depicted the miserable state of affairs in the country with over ten children facing abuse every day.⁴

The United Nations Educational, Scientific and Cultural Organization describes Comprehensive Sex Education as “a curriculum-based process of teaching and learning about the cognitive, emotional, physical, and social aspects of sexuality.”⁵ A problem as serious as the issue of rising sexual assault cases against children in Pakistan deserves to be countered by not just deterring potential predators with a swift and certain judicial system but also by arming the affected with knowledge and skills so that they may defend themselves if the need arises. One of the most effective ways this can be achieved is by mandating schools to impart free CSE to children. The population and government of Pakistan have historically remained resistant to adopting a pro-active approach with regards to the provision of sex education in schools, primarily because the subject is considered to be taboo as a topic of open discourse. This has mainly to do with the collective consciousness of the country’s society that is wary and hesitant while engaging with issues related to sexual health and well-being. Added upon that, the widespread and heavily believed notion that sex education will eventually transform young children into promiscuous individuals augments the reluctance of adding the same to the school curriculum. The same issue was prevalent in India. Despite the efforts of multiple regimes for sex education across the country, the country’s civil society chose sexual restraint and abstinence to be the primary solution.⁶ However, a research which compared the effectiveness of CSE with abstinence-until-marriage programs revealed that children provided with CSE were in a much better position to lead healthy lives before and after marriage than those who were part of the abstinence programs.⁷ This entails that the well-being of young children is dependent upon them having received CSE and must not be overlooked in light of cultural agendas that demand that sex and all matters associated with it remain taboo.

The absurd notions that impede the provision of sex education in Pakistan subsequently create an atmosphere where adolescents are left in a state of ambiguity and confusion while experiencing bodily changes on account of puberty. This ambiguity prompts them to access information of their own accord and ability from sources or people whose veracity is uncertain.⁸

³ Naimatullah Gadhi, “Sex Education” *The Nation* (2018) <<https://nation.com.pk/06-May-2019/sex-education>> accessed 19 May 2021.

⁴ Zahid Imdad, “Over 10 children abused every day in Pakistan in 2018: Sahil report” *DAWN* (3 April 2019) <<https://www.dawn.com/news/1473645>> accessed 19 May 2021.

⁵ “Why Comprehensive Sexuality Education Is Important” (*UNESCO* 19 June 2018) <<https://en.unesco.org/news/why-comprehensive-sexuality-education-important>> accessed 11 September 2021.

⁶ S. Anandhi, “Sex Education Conundrum.” (2007) 43(33) *Economic and Political* 3367 <<http://www.jstor.org/stable/4419913>> accessed 27 September 2021.

⁷ Patrick Malone and Monica Rodriguez, “Comprehensive Sex Education vs. Abstinence-Only-Until-Marriage Programs.” (2011) 38(2) *Human Rights* 5 <<http://www.jstor.org/stable/23032415>> accessed 27 September 2021.

⁸ Maren van Treel and others, “Pakistan Shows WHY Comprehensive Sex Education Would Improve Young People’s Lives” (*D+C* 9 February 2021) <<https://www.dandc.eu/en/article/pakistan-shows-why-comprehensive-sex-education-would-improve-young-peoples-lives>> accessed 11 September 2021.

The spread of this misinformation with regards to sex and sexuality on account of the absence of a formal channel of communication further reinforces the taboo notions that exist in society. Most adolescents are exposed to pornographic material for the first time out of curiosity. The CSE programs seek to answer their questions in a safe and reasonable manner.⁹ As evidenced by the results of a research conducted by the Australian Institute of Family Studies, when children seek out guidance from the internet, polluted narratives of sexual relationships are perpetuated across their minds.¹⁰ Due to the lack of any counter-narratives or information, they are led to believe the ideas depicted online without any accountability or fact-checking. Ms. Horvath, a professor of psychology at Middlesex University in London has stated, “One of our recommendations is that children should be taught about relationships and sex at a young age. If we start teaching kids about equality and respect when they are five or six years old, by the time they encounter porn in their teens, they will be able to pick out and see the lack of respect and emotion that porn gives us. They’ll be better equipped to deal with what they are being presented with.”¹¹

According to the United Nations Population Fund, the lack of proper and accurate means of sex education leaves individuals “vulnerable to coercion, sexually transmitted infections and unintended pregnancy.”¹² Aside from including the right to education as a fundamental right in its Constitution, Pakistan has done little in recent years to influence a substantive change in the status quo. The aim of this paper is to assert and support the idea that under Articles 9, 14, 25A, and 35 of the Constitution, the state must be tasked with the positive obligation of providing children with free and safe CSE from an early age.

Constitutional Support

I. Article 9 – Security of Person

The right to life and liberty is enshrined under Article 9 of the Constitution. It states that “no person shall be deprived of life or liberty save in accordance with law.”¹³ A bare reading of the text of this provision implies that it confers only a negative obligation upon the state to not interfere with a person’s life or liberty unless a law permits and empowers it to do so. However, over the years, through various judgments, the courts have extended the interpretation of the provision in many different ways to include positive obligations upon the state. These positive obligations include any and all measures that must be undertaken to ensure that the citizens living within the jurisdiction of the government have unfettered access to a quality life; access to hygienic water and clean and unpolluted environment. The courts have reaffirmed the idea,

⁹ Ibid.

¹⁰ Antonio Quadara, Alissar El-Murr, and Joe Latham, “The effects of pornography on children and young people: An evidence scan.” (2017) Australian Institute of Family Studies <<https://aifs.gov.au/publications/effects-pornography-children-and-young-people-snapshot>> accessed 26 September 2021.

¹¹ David Segal, “Does Porn Hurt Children?” *The New York Times* (28 March 2014) <<https://www.nytimes.com/2014/03/29/sunday-review/does-porn-hurt-children.html>> accessed 1 October 2021.

¹² “Comprehensive Sexuality Education” (UNFPA) <<https://www.unfpa.org/comprehensive-sexuality-education>> accessed 11 September 2021.

¹³ The Constitution of Islamic Republic of Pakistan 1973, Article 9.

multiple times, that while the word “life” does not have a specific definition under the Constitution, its use in Article 9 surely does not just constitute physiological existence of life in a vegetative state, but also means to protect the “quality of life”. This has been clearly evidenced in the below-mentioned cases.

In the case of *Shehla Zia v WAPDA*, it was argued by the petitioners that high-voltage transmission lines connected with the power grid station being developed in their vicinity would pose as a serious health hazard and would, therefore, violate their constitutional right to life. The Supreme Court (“SC”) decided the matter in favour of the petitioners by stating that the provision under Article 9 of the Constitution entitled the petitioners to be protected from exposure to health hazards being caused by developmental projects.¹⁴ The Court’s rationale clearly outlined that the potential impact to the health and lives of the citizens in the vicinity of the grid station owing to the station’s environmental impact, violated the citizens’ right to a quality life. This principle was also used by the courts in *Anjuman Tajran Charam v The Commissioner* where the ancillary shops of a slaughterhouse that sold hides and skins were shifted to another location because the materials used by such shops were known to cause diseases and also because the pungent smell of the materials interfered with the nearby residents’ right to quality of life guaranteed by the Constitution.¹⁵ Additionally, in *Mohammad and Ahmad v Government of Pakistan* the Court held that a failure on the part of government hospitals in providing emergency medical treatment to the people in need of such treatment resulted in the violation of their constitutionally protected right to life.¹⁶ The rule developed in this case is important to note as it does not directly deal with a health hazard but rather considers the state’s inefficiency in responding to an emergency situation as a violation of the right to life.

As evidenced from the judicial precedent noted above, the right to life and liberty has been expansively interpreted by the courts of Pakistan to include a variety of other rights. The commonality being that all such rights affect one’s right to enjoy a “quality life”. The Lahore High Court (“LHC”) has further clarified in a judgment 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 Articles 9 and 14 of the Constitution.”¹⁷ The lack of CSE and sex awareness in Pakistan leads to multiple health risks; such as early pregnancies, which are neither safe for the mother nor the child, and sexually transmitted infections. For adolescents, specifically, a lack of CSE leaves them vulnerable to coercion and sexual exploitation at the hands of individuals who exercise control over them through a power dynamic. This is especially so since most of them are so young that they are unable to comprehend the fact that their rights are being violated and that they must speak up about such instances with a trusted adult. The threat to the enjoyment of the right to life in these cases is as real as that posed by the consumption of polluted water or exposure to electromagnetic radiation. With at least three thousand cases of child sex abuse being reported annually since

¹⁴ *Ms. Shehla Zia v WAPDA* PLD 1994 SC 693.

¹⁵ *Anjuman Tajran Charam v The Commissioner* 1997 CLC 1281.

¹⁶ *Mohammad and Ahmad v Government of Pakistan* PLD 2007 Lah 346.

¹⁷ *Syed Mansoor Ali Shah v Government of Punjab* 2007 CLD 533.

2017,¹⁸ it must be realised that a lack of CSE leaves these children defenceless against sexual predators who use their victims' young age as an advantage. Equipped with even a basic idea of consent, these children shall have a better chance of speaking up against such offenders and resisting their actions, thereby guarding their own right to a quality life. A study conducted in Shanghai depicted that the providence of sex education radically reduced the extent of vulnerability young children faced from sexually transmitted diseases and sexual coercion.¹⁹ The lack of CSE exposes the youth and the population in general to health and safety risks that can, at the very least, be mitigated, if not entirely curbed by the provision of the same. A lack of CSE is thus hampering peoples' right to a quality life in Pakistan.

II. Article 25-A – Right to Education

As per Article 25-A, the Constitution states that “the State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.”²⁰ The insertion of this Article under the 18th Amendment to the Constitution elevated the status of the provision of education from merely a principle of policy to a fundamental right.²¹ Furthermore, Article 38 (d) outlines the responsibility of the state to “provide basic necessities of life, such as food, clothing, housing, education and medical relief.” Even prior to the transition influenced by the 18th Amendment, the right to life was expansively interpreted to include the right to education, since the latter impacted the quality of life that one could enjoy.

The importance that the right to education has been granted by the courts of Pakistan can be effectively witnessed by quoting relevant case law. In *Headmaster, Zia-ul-Aloom High School v Chairman (Canadian Labour Congress)*, the LHC stated that the use of the word “life” in Article 9 of the Constitution included the right to education and “all such rights which were necessary for a leading proper and comfortable life, worthy of citizens of a free country.”²² The rationale used by the Court, in this case, may be used to justify and support the inclusion of CSE in school curriculums nationwide since it seeks to prepare young people to lead a “proper and comfortable life”. Similarly, in *Ahmad Abdullah v Government of Punjab*, the Court associated the right to education with the right to dignity by holding that a certain degree of education was imperative for a dignified existence and that the State must undertake positive action to ensure citizens' enjoyment of both these rights.²³ In *Rana Aamer Raza Ashfaq v Dr. Minhaj Ahmad Khan*, the SC determined that the right to education “ultimately affects quality of life which has nexus with other Fundamental Rights guaranteed under Articles 4 and 9 of the Constitution.”²⁴ Furthermore, it was stated by the apex Court that

¹⁸ Sahil, “Cruel Numbers.” <<http://sahil.org/wp-content/uploads/2020/03/Cruel-Numbers-2019-final.pdf>> accessed 11 September 2021

¹⁹ Bo Wang and others, “The Potential of Comprehensive Sex Education in China: Findings from Suburban Shanghai.” (2005) 31(2) *International Family Planning Perspectives* 63 <<http://www.jstor.org/stable/3649481>> accessed 30 September 2021.

²⁰ The Constitution (n 13) Article 25-A.

²¹ The Constitution (Eighteenth Amendment) Act 2010, s 9.

²² *Headmaster, Zia-ul-Aloom High School v Chairman (Canadian Labour Congress)* 1996 CLC 1785.

²³ *Ahmad Abdullah v Government of Punjab* PLD 2003 Lah 752.

²⁴ *Rana Aamer Raza Ashfaq v Dr. Minhaj Ahmad Khan* 2012 SCMR 6.

“people cannot be free in real sense unless they are properly educated.”²⁵ It must also be noted that pursuant to the laws of Pakistan, the right to education does not merely constitute the right to be taught a set curriculum in a specified period of time. The Court in *Akhtar Hussain Langove v Inspector General of Police, Balochistan*, clarified, “... education cannot be limited to the pursuit of academic knowledge alone. A complete education attends to a student's mind as well as body...”²⁶ This interpretation essentially broadens the meaning of the term “education” in the Constitution and decrees non-academic knowledge and activities to be a substantive part of education which is a constitutionally protected fundamental right of all citizens. The expansive interpretation of the right to education coupled with right to life makes room to argue that CSE must be made a part of school curriculum. CSE enables all children live a safe life. This safety is necessary to live a fulfilling life, the object of both rights.

To elaborate, it must be noted that contrary to popular belief, adolescents do not just require adequate sex education in order to prevent unplanned pregnancies and to protect them from contracting sexually transmitted infections. They deserve it simply on account of the fact that they are human beings. And human beings should rightfully be able to learn, access, and use the information, and skills they require in order to lead healthy and fulfilling lives. Additionally, so that they are well-equipped to make informed decisions that have life-altering consequences. The nexus between the right to education and the right to CSE cannot be overlooked in light of the rationale adopted by the courts in emphasising the importance of the right to education. The right to CSE, therefore, finds its roots within the provisions of the Constitution of Pakistan and must therefore be provided for. Bearing this context in mind, advocacy groups such as the Right to Education Pakistan, Aahung, and Rutgers Pakistan must initiate and lead a discourse on the importance of CSE in order to influence governmental organs to do the same. A multi-tier effort that involves the nexus and cooperation of governmental and non-governmental entities is likely to at least address the problem effectively, if not solve it altogether.

III. Article 14 – Right to Dignity

The fundamental right to dignity is protected by Article 14 of the Constitution. It states that “the dignity of man and, subject to law, the privacy of home, shall be inviolable...”²⁷ A bare reading of this provision depicts that while the latter half of the provision can be curtailed pursuant to appropriate legislation, the former part – the dignity of man – shall remain inviolable in any case. It is unfortunate to see this fundamental right being more frequently and grievously violated in Pakistan than any other right.²⁸ The instances of the violation of dignity often occur in private spaces and are not easily substantiated with evidence, therefore, filing a suit to obtain a remedy seems a far-fetched and overtly arduous task.

However, in the instances where issues regarding violation of the right to dignity have been brought before them, the Courts of Pakistan have interpreted the provision of law in its

²⁵ Ibid.

²⁶ *Akhtar Hussain Langove v Inspector General of Police, Balochistan* 2015 YLR 58.

²⁷ The Constitution (n 13) Article 14.

²⁸ Babar Sattar, “The Right to Dignity” *The News* (21 September 2019) <<https://www.thenews.com.pk/print/529583-the-right-to-dignity> > accessed 19 May 2021.

true spirit and granted appropriate remedies. In *Barrister Asfandiyar Khan v Government of Punjab*,²⁹ the Court held that the use of words such as “disabled”, “physically handicapped”, and “mentally retarded” in a statute was violative of the right to dignity possessed by persons with different abilities. The words were subsequently struck out from the statute, and a reprint was ordered. This rationale was carried forward by the Court in *Mst. Beena v Raj Muhammad*.³⁰ In this case, the SC held that the mere fact that a mother is disabled does not deny her the custody of her child after the dissolution of marriage and that such an instance was violative of the right to dignity.

It must now be contended that if courts can exercise empathy and sensitivity in matters which violate the dignity of persons, they must also take measures to ensure that people can fully enjoy their right to dignity. The courts must understand that subjecting an individual to sexual abuse and coercion is one of the gravest violations of human dignity. Such an ordeal leaves the victim in trauma, despair, and mental agony for an indefinitely long period of time, if not their entire lives. In addition to this, the social stigma wrongfully attached with being considered a victim of sexual assault as opposed to being recognised as a survivor adds to the loss of dignity of the survivor on a cumulative basis, daily. However, in Pakistan, legal jurisprudence has largely focused on such crimes through the lens of criminal offences as opposed to considering them as violations of fundamental rights. CSE seeks to inform and teach young people about their bodies and sexuality so that they may guard themselves against violations of their right to dignity and security of person. The judicial economy and the government in general must, therefore, consider the provision of CSE as a protective measure that seeks to guard fundamental rights, including the right to dignity.

IV. Article 35 – Protection of the Child

The Principles of Policy that support the idea that CSE should be provided to adolescents as a right are enshrined in Article 35 of the Constitution. Principles of Policy do not command the same level of authority as fundamental rights since they are not enforceable by right as opposed to the latter, which the government is obligated to provide for. However, this distinction does not mean that Principles of Policy are liable to be entirely ignored by the state; they form a substantive part of the Constitution and subject to governmental budget and limitations, must be provided for as well. This principle was reiterated multiple times by the apex Court of the country. The SC in *Mst. Beena* case invoked the provisions of Article 29 of the Constitution to clarify the importance of Principles of Policy. It was held that “disregarding the Principles is contrary to the express language of the Constitution ...”³¹ and that the Principles “were given by the people to themselves through their chosen representatives when the Constitution was written.”³² The importance of Principles of Policy was specifically pointed out by the SC in *Benazir Bhutto v Federation of Pakistan*. It was held that they “...advance the cause of socio-economic principles and should be given a place of priority to mark the onward progress of democracy. These provisions become, in an indirect sense, enforceable by law and thus bring

²⁹ PLD 2018 Lahore 300.

³⁰ PLD 2020 SC 508.

³¹ *Ibid.*

³² *Ibid.*

about a phenomenal change in the idea of co-relation of Fundamental Rights and directive principles of State Policy.”³³ The authority granted to the Principles of Policy through judicial interpretation entails that these provisions must be the guiding doctrines for state machinery in the deliverance of their responsibilities and for upholding the fundamental rights.

Article 35 of the Constitution is protective towards the right of children. It states that “The State shall protect the marriage, the family, the mother and the child.”³⁴ This Article was invoked in *Muhammad Naseer v District Police Officer, Sialkot*. In this case, the LHC used the provision to render the employment of a minor girl as a housemaid, unconstitutional.³⁵ It was also held that in light of other Principles of Policy and fundamental rights preserved in the Constitution, a minor child has the right to be educated and to not be forced into employment. In another case, *Muhammad Suleman v SHO*, the LHC shed light on the rationale behind outlawing child labour and servitude. It was held in the obiter dictum, “Child labor is condemned because it deprives children of their childhood, potential and dignity, and is harmful for their physical and mental development.”³⁶ At this point, it must be noted that a lack of CSE leaves children defenceless against risks such as sexual coercion, physical abuse, and addiction to pornography which have at least the same, if not a greater impact on their dignity, development, and potential. In addition to imposing a negative obligation on citizens by outlawing child labour, the state must also issue positive obligations pursuant to the provision of fundamental rights and principles of policy to protect the interests of children in a holistic manner.

Persuasive Arguments

I. National Initiatives

In Pakistan, the provision of CSE finds at least some semblance of support from the National Education Policies. Since 2009, organisations such as Rutgers Pakistan and Aahung have initiated the discourse on providing young people with knowledge and skills via CSE. Both these organisations have termed their sex education programs as “Life Skills-Based Education” (“LSBE”) to detach themselves from the stigma attached with the term “sex education” by religious, social, and political stakeholders.³⁷ So far, they have been successful in engaging over 1200 schools with their program. This figure, however, is towered by the number of schools and students who are not in any form or manner receiving sex education. The efforts made by such advocacy groups have substantially influenced the incorporation of provisions regarding LSBE in the National Education Policy of 2009 and the information about HIV/AIDS in the national curriculum for grades 9 and 10. Section 6.2 of the 2009 Policy states that “emerging trends and concepts such as...prevention education against HIV, Life Skills Based Education, detection, and prevention of child abuse shall be infused in the curricula and

³³ *Benazir Bhutto v Federation of Pakistan* PLD 1988 SC 416.

³⁴ The Constitution (n 13) Article 35.

³⁵ *Muhammad Naseer v District Police Officer, Sialkot* 2017 LHC 3936.

³⁶ *Muhammad Suleman v SHO* 2020 LHC 200.

³⁷ Venkatraman Chandra-Mouli and others, “Building support for adolescent sexuality and reproductive health education and responding to resistance in conservative contexts: cases from Pakistan” (2018) 6(1) *Glob Health Sci Pract.* 128 <<https://doi.org/10.9745/GHSP-D-17-00285>> accessed 11 September 2021.

awareness and training materials shall be developed for students and teachers in this context.”³⁸ Similarly, in the consultation meetings conducted for the National Education Policy, 2016, the importance of the systematic development and provision of LSBE was highlighted by the government.³⁹ Multiple other legislations such as National Youth Policy, 2008, have had the same agenda. Clause 11 of the Youth Policy states the national objective of “providing necessary life skills for youth through university and school curriculum and in the non-formal education sector to make youth capable of coping with their problems in the early years of marriage.”⁴⁰ Similarly, the Punjab Youth Policy, 2012, also states the need to “increase availability of integrated sexual and reproductive health information and services for adolescents and youth”⁴¹

The presence of these provisions in state legislation underscores the fact that the government is cognizant of the importance of sex education for the youth. While it is a positive step that the importance of sexual and reproductive health is being recognised through formal legislation, there are multiple lacunas in the system which can be mitigated via the provision of CSE as a right. The National Youth and Education Policies were enacted before the 18th Amendment to the Constitution which transferred the authority of legislation regarding the affairs of Education to the provincial assemblies. This shift in the legislative economy of the country and decelerated action on the part of the provinces have halted the progressive steps that were being taken to make LSBE a part of school curriculums nationwide. Quite recently, enforcement of PTI’s Single National Curriculum initiative has started in Islamabad’s schools. In this regard, religious scholars, appointed as members of the SNC Committee, are supervising the substance of textbooks in all subjects, including science. In the name of Islamic morality, they have cautioned publishers not to print any illustration or drawing in biology textbooks that show human figures “sans clothes”.⁴² Subject to the successful implementation of this Curriculum in Islamabad, the same is likely to be extended and applied to the education systems in the rest of the country. It is therefore, that the provision of CSE as a fundamental right at this point is a need of the hour to ensure that a school education is holistic in the true sense.

II. International Conventions and Precedents

In addition to national initiatives, Pakistan has also associated itself with multiple international conventions and forums which strongly advocate for the rightful provision of CSE to minors. The foremost of these is the Sustainable Development Goals (“SDG”) adopted by the United Nations General Assembly and ratified by 193 countries, including Pakistan. Target 3.7 of the goals recommends nations to “ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the

³⁸ National Education Policy, 2009. <http://itacec.org/document/2015/7/National_Education_Policy_2009.pdf> accessed 11 September 2021.

³⁹ Consultation Meetings for National Education Policy 2016-Lahore. <http://itacec.org/document/2016/nep/Punjab_Report_NEP.pdf> accessed 11 September 2021.

⁴⁰ National Youth Policy 2008.

⁴¹ Punjab Youth Policy 2012.

⁴² Pervez Hoodbhoy, “Cost of enforced modesty” (*Dawn* 19 June 2021) Available at: <<https://www.dawn.com/news/1630231/cost-of-enforced-modesty>> accessed 8 September 2021.

integration of reproductive health into national strategies and programmes.”⁴³ The fulfilment of several other development goals is indirectly related to the provision of sex education to children. These include putting an end to the epidemic of AIDS (Goal 3) and elimination of violence against women and girls, including female genital mutilation (Goal 5). Additionally, Pakistan was also a participant in the International Conference on Population and Development, organised by United Nations Population Fund, which seeks to ensure, inter alia, the global provision of and access to sexual and reproductive health resources. Pakistan’s verbal commitment to the cause is evidenced by the remarks of Dr Zafar Mirza, the former special advisor of the Prime Minister on Health. At the conference in 2019, he stated that “...it is critical to meaningfully advance towards achieving access to sexual and reproductive health as an integral part of Universal Health Coverage.”⁴⁴ Furthermore, at the Sixth Asian and Pacific Population Conference in 2013, Pakistan further regurgitated the necessity for providing adolescents with “comprehensive sexuality education and access to comprehensive and integrated quality sexual and reproductive health services.”⁴⁵

The above-mentioned are merely a few of the many international commitments that Pakistan has made vis a vis sexual and reproductive health. While it must be admitted that over the years efforts have been made to provide for such commitments, it is undeniable that these efforts have not had nearly as much impact as is required to ameliorate the dire situation in Pakistan. These international commitments, however, can be effectively used as persuasive arguments in a court of law which seeks to deliberate upon the provision of sex education as a right. It is for this reason that they have been added to this paper.

Counter Arguments and the Islamic Perspective

With due consideration to the fact that in Pakistan’s socio-cultural setting, sex and sex education are treated as deeply private and taboo matters that should ideally not be referred to in public discourse, it may be argued that school administration and parents would oppose the curricular addition of CSE to the educational system. Such resistance shall largely be supported by two fundamental misconceptions: (i) CSE shall inform children about sex and shall nudge them towards being sexually active before marriage; and (ii) religious clerics may oppose the notion of adding discussions about sex to public discourse.

Both these refutations fail to logically display a valid reason for not introducing CSE to the educational curriculum. A paper published in the *American Sociological Review*, conducted empirical research which established that individuals in predominantly Muslim societies have the lowest report of engaging in premarital sex.⁴⁶ While it is admitted that in

⁴³ Target 3.7, Sustainable Development Goals, 2030 <<https://sdgs.un.org/goals/goal3>> accessed 11 September 2021.

⁴⁴ Dr. Zafar Iqbal, “International Conference on Population and Development” (*The News International: Latest News Breaking, Pakistan News*) <<https://www.thenews.com.pk/magazine/money-matters/590561-international-conference-on-population-and-development>> accessed 11 September 2021.

⁴⁵ “Asian and Pacific Ministerial Declaration,” *Compendium of Recommendations on Population and Development*, II <https://www.un.org/en/development/desa/population/publications/pdf/policy/Compendium/Volume%20II/i_Chapter%204.pdf> accessed 11 September 2021.

⁴⁶ Amy Adamczyk and Brittany E. Hayes, “Religion and Sexual Behaviors: Understanding the Influence of Islamic Cultures and Religious Affiliation for Explaining Sex Outside of Marriage”. (2012) 77(5) *American*

Pakistan, where a majority of the population is Muslim, the general public notion is to abstain from non-marital sex and refrain from discussing sex openly, however, empirical research has also depicted that in Pakistan, 11% of men reported to have participated in pre-marital sex and 29% reported having participated in non-marital sex.⁴⁷ The afore-quoted statistics suggest that despite the conservative mindset that discourages any and all references to sex education in a curricular capacity, a significant proportion of Pakistan's population indulges in non-matrimonial sex. The first counterargument that sex education shall nudge adolescents towards sex, thus, stands refuted by the fact that pre-marital sex is an existing reality of society. CSE primarily seeks to purge the taboo associated with sex. The idea that CSE shall promote more "child sex incidents" is a testament to the ideas perpetuated by this very taboo. Additionally, while adults are perpetrators in many sexual assault cases, often minors (teenagers) tend to be involved as well. The purpose of CSE is to inform people of all age groups regarding sexual interactions about the concept of consent. CSE not only seeks to deter cases of sexual assault by purging the taboo associated with sex but also seeks to inform young people about consent so that they may effectively observe, identify, and report situations in which their consent is being manipulated. Unlike Zainab's case, where it is still unclear as to whether there was prior history of sexual assault/molestation, many cases in Pakistan have a long history of molestation/assault on very young children due to continued access by the perpetrator (who in most cases is a close relative) to the child. If children are made aware of these ideas and notions at a young age through proper means (e.g., schools), they are more likely to raise hue-and-cry/report instances to some elder they trust, which can thus break the cycle.

The fact that religious seminaries may oppose it is not reason enough to discourage innovation and legal evolution through legislative change. There is neither a Hadith nor Quranic Ayat that outlaws sex education. In fact, the Quran and Hadith themselves at multiple instances openly inform the Ummah about the permissible, prohibited, accepted practices viz sex, sexual hygiene etc. For instance, verse 222 of Al-Baqarah (Chapter 2) of the Holy Quran elaborates on the permissibility of sex during menstruation: "They ask about the monthly course. Say, it is a state of impurity, so keep apart from woman during their monthly course and do not go near them until they are clean. When they have cleansed themselves, then you may go to them in the manner Allah has enjoined you."⁴⁸ Similarly, it may also be asserted that the Islamic notion of sex education does not only target adults, it also intends to train the young to learn about sex from the very first instance they recognise it. In the Holy Quran, Allah said: "And when the children among you reach puberty, let them ask permission [at all times] as those before them have done. Thus does Allah make clear to you His verses; and Allah is Knowing and Wise."⁴⁹ Imam al-Daylami records a narration on the authority of Anas ibn Malik that the Messenger of Allah (Allah bless him & give him peace) is reported to have said: "Not one of you should fulfil one's (sexual) need from/fall upon his wife like an animal; but let there first be a messenger between you." "And what is that messenger?" they asked, and he replied:

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⁴⁷ Ali M Mir and others, "Exploring urban male non-marital sexual behaviours in Pakistan" (2013) 10(1) *Reproductive Health* 22.

⁴⁸ Quran, 2:222.

⁴⁹ Ibid 24:59.

"Kisses and words."⁵⁰ In the afore-quoted Hadith, the Messenger of Allah (peace be upon him) is guiding his companions about foreplay in an educative manner, which serves as a valid religious precedent for CSE. Religious seminaries and clerics who may oppose the curricular provision of CSE are thus, in actuality, opposing a direct religious precedent that is reinforced and supported by both the Quran and the Hadith. At any rate, legally, the state's initiative of providing and ensuring the successful impart of CSE can only be challenged if the initiative is violative of the provisions of the constitution or the principles of Islam. In the latter case, a petition shall have to be filed in the Federal Shariat Court of Pakistan to strike down an initiative for the provision of CSE on account of its 'supposedly' irreconcilable nature with respect to the principles of Islam. The sources cited above, clearly entail that such a potential petition has opposition from the primary sources of Islamic Law: the Quran and Hadith and finds little or no support to its credit.

Another counterargument is one which questions the ability of CSE programs to effectively tackle the problem of rising sexual assault cases and STIs. Multiple studies conducted by leading experts under the auspices of the Council of Europe conclude that "sensitising children, parents, teachers, police and local communities to the nature and extent of sexual violence, and giving permission to discuss it, are essential steps in tackling it."⁵¹ These studies conclude that educational acquaintance with ideas such as gender-based violence, dating violence as a violation of human rights, the responsibility to report sexual abuse, and gender-based violence is a necessary pre-cursor to any meaningful change and progress. A practical application of this conclusion can be witnessed in Georgia where Senate Bill 401 by the Georgia state legislature officially added annual age-appropriate sexual abuse and awareness programs in grade 9, entailing that children will start learning these concepts at a younger age starting in 2019.⁵² "Even generally, while sex education varies in content across schools, studies have demonstrated that comprehensive sexuality education programs reduce the rates of sexual activity, sexual risk behaviours (e.g., number of partners and unprotected intercourse), STIs, and adolescent pregnancy".⁵³ Even international organisations such as UNESCO have expressed agreement on the positive impact of CSE in curbing instances of sexual assault:

When delivered well, CSE responds to this demand, empowering young people to make informed decisions about relationships and sexuality and navigate a world where gender-based violence, gender inequality, early and unintended pregnancies, HIV and

⁵⁰ Musnad al-Firdaws of Al-Daylami, 2/55.

⁵¹ Peter Gordon, *Sexuality Education and the Prevention of Sexual Assault*, (2011) PROTECTING CHILDREN FROM SEXUAL VIOLENCE—A COMPREHENSIVE APPROACH 175 <<https://www.coe.int/t/dg3/children/1in5/Source/PublicationSexualViolence/Gordon.pdf>> accessed 11 September 2021.

⁵² Editorial, "Sexual Abuse and Assault Awareness Frequently Asked Questions" *GEORGIA DEPARTMENT OF EDUCATION* (8 November 2018) <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Documents/SB%20401%20FAQ_November%208%202018.pdf> accessed 22 January 2022.

⁵³ Helen B Chin, "The effectiveness of group-based comprehensive risk-reduction and abstinence education interventions to prevent or reduce the risk of adolescent pregnancy, human immunodeficiency virus, and sexually transmitted infections: two systematic reviews for the Guide to Community Preventive Services" (2012) 42(3) *Am J Prev Med* 272.

other sexually transmitted infections (STIs) still pose serious risks to their health and well-being.⁵⁴

In light of the above, the positive impacts that CSE has upon the community overshadow the superficially religious argumentation against the provision of CSE and the needless opposition it may receive owing to the taboo attached with the word “sex”.

Conclusion

This paper has attempted to weave a connection between the provision of CSE and Fundamental Rights. The jurisprudential discourse on the rights to life, dignity, and education has aimed to show that a lack of CSE for adolescents is impeding their enjoyment of those rights in a substantial manner. The history of broad judicial interpretation of the right to life by Pakistani courts to include any element which impacts a “quality life” has left substantial room for progressive growth. Additionally, the courts have also chosen to consider the word “education” to encompass more than just academic knowledge and skills. This interpretation entails the courts’ potential affinity to consider CSE as a rightful constituent of the term “education” under the Constitution. It has also been depicted that the courts have considered the right to dignity as one which is inviolable under any circumstance. This interpretation was then connected with the sound assertion that a lack of CSE leaves children in circumstances where their right to dignity can be purged by others. In concurrence, several credible arguments were made by citing Principles of Policy, governmental legislation, and international precedents. In conjunction with these, this paper has endeavoured to outline the risks and harms that adolescents in Pakistan are exposed to daily without the knowledge that CSE seeks to impart. At the conclusion of this discussion, it seems reasonable to assert that pursuant to the fundamental rights and principles of policy enshrined in the constitution, CSE must be provided to adolescents as a right. With the country’s government considering a complete overhaul of its educational curricula, through the Single National Curriculum initiative, the government must also fulfil its constitutional duties and international commitments by ensuring the provision of CSE throughout the country. Pakistan lives in a day and age where the mere statistical probability of harm in the form of contracting a globally spread virus has nudged the government to snub civil and commercial liberties via lockdowns to protect its people. This begs the question, why should the government not respond to the proverbial pandemic of sexual assault in Pakistan by fulfilling its positive obligations and keeping its people safe?

⁵⁴ UNESCO News, UNESCO, (2019) <<https://en.unesco.org/news/why-comprehensive-sexuality-education-important>> accessed 22 January 2022.