

Constitutional Rights of Religious Minorities in Pakistan

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Abstract

The constitution of Pakistan defines our country as an "Islamic State". Pakistan is predominantly a State established for Muslims but many non-Muslims have been living here since its establishment. The constitution of Pakistan stands for equality and justice for all people regardless of caste, gender, religion, region and language. Qualitative methodology has been used. The available data will be taken from the various governmental institutions. In this research the researchers draw an Islamic Republic of Pakistan Constitutional scenario. It will not only shed light on the exact image of Pakistan's religious minorities, but it will also explain their freedom to follow their religion's teachings and pursue their customs and traditions.

Key Words: Freedom of Religion, Constitution of the Pakistan, Religious Minorities, Islam, Fundamental Rights.

Introduction

The world's turned into a global village. Nearly all the world's countries became multi-racist, multi-religious, multi-linguistic societies. While diversity represents God's bounty, minority presence creates sensitive situations, and often requires delicate tackling. Minority rights have today become an integral part of civil rights embodied in the fundamental rights granted to the country's citizens. The way a state can tackle the problems of its minorities is a touchstone, by which its statesmen expertise can be judged. Within the territories of each state there are one or more minority groups are living, which have their own religious, linguistic, cultural and ethnic identities which are distinctly different from majority. Intra-minorities and majorities are essential for a stable and peaceful social set-up. Pakistan is a modern Islamic state that has different minorities and has lived in religious harmony since its inception. According to the studies of Youth Parliament Pakistan 2015, the statement presented by subcommittee made on Human Rights by United Nations could define the term appropriately in some way: A community of people of a society, composed of number of minorities which are not in a ascendant position in that state, in terms of linguistic, religious and racial characteristics that vary from that of majority of that state, but they have a sense of unity with each other, motivation, if not wholeheartedly, but through a common desire to survive, and the purpose of which in reality and in the statute of gaining parity with the majority ([Rahman and Akram 2020](#)).

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It is mentioned in Article 25 of Pakistan Constitution 1973, that all the citizens are equal in front of law and they are supposed to protect the law equally(The Constitution of Pakistan n.d.).

According to Article 26 of the constitution, there must be no discrimination shown against any citizen solely on the grounds of religion, gender, caste, race, residence etc.

A protection is provided to the minorities by Article 36 of the Constitution, according to it the legitimate rights and interests of minorities shall be protected by the state, including their proper representations in the provincial and federal services.

Islam has recognized every individual's fundamental right to life and honor regardless of beliefs, creed and religion. According to Islam "He who takes away an individual's life without legitimate authority is considered the one who has killed the humanity in general". The fundamental rights of non-Muslims were provided by Islam as being an equal with Muslims. No Muslim can harm the lives, property or religious places of non-Muslims.

A non-Muslim cannot be tortured in any way. According to the Holy Prophet (PBUH), "He who tortures a dhimmi is like the one who has counteracted him (the prophet). I shall counteract against him (he who tortures a dhimmi) on the Day of Judgment who has counteracted him ([Al-Ayni n.d.](#))."

It is also believed by the jurists of various schools of thought that the protection of social and political rights of non-Muslims is binding upon Muslims. In addition to this, Islam also recognized the rights of minorities in property and education according to convictions of their own. It is also recognized regarding the right to family and secrecy that they have liberty to manage their institutions according to the laws of their religion. These rights have also been protected by Islam granted to minorities by the Constitution of Pakistan([Hassan Shahjehan 2014](#)).

The Holy Quran Say

"Who so ever kills a human being (without any reason like) manslaughter or corruption on earth, it is though he had killed all the mankind".

Moreover, The Holy Quran explains the dignity of man in the following words: -

"We have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them far above most of our creations"

The Prophet (PBUH) established first Islamic State in Madina which gave all the minorities' utter freedom of religion. He gave assurance to all the minorities that they would receive equivalent opportunities to spend a prosperous life. He even allowed non-Muslims to merge with Muslims of Madina according to their will. The political rights were given to them and they had equal voting rights with respect to the Head of State election. Equal rights to vote were also given to them. Even on death of Prophet (PBUH), He assured complete security of the non-Muslims by giving the directions to his followers.

According to the Holy Prophet (PBUH) ---- "Muslim is one from whose tongue and hand the Muslims are at peace".

He also said at another moment, ----"Slanderers do not enter paradise([Williams 1971](#))"

In Islamic states great tolerance must be shown with minorities and they should be provided with highest administrative positions in order to play their role in the state's development. They have the right to follow their religion and fulfill the obligations of their religion, build their educational institutions and places of their worship so that they can give the education of their faith and creed to their children([Parveen Shaukat Ali. 2007](#)).

Objectives

The Minorities of Pakistan are living with religious harmony, but some where they are facing multiple

challenges such as job discrimination, socio-economical political and religious prejudices that must be attend with sincerity and meaningful measures to eliminate them. Being a responsible citizen, I intend suggesting measures to tackle these obstacles. By the need of circumstances, I have decided to precise a research article to obtain these objectives. The main objectives of the research are, provide an overview of the true implementation of the constitutional rights given to the minorities. Suggest constitutional improvement about minority.

For that purpose, I would initiate by drawing out a pictorial analysis that have shaped the Constitutional rights of religious minorities of Pakistan. Based on this analysis I would tend to examine the constitutional pillar and amendments, which minorities are enjoying by making of constitution of the Islamic Republic of Pakistan.

Research Questions

1. How are the minorities described in the constitution of Pakistan?
2. The constitutional rights of Religious Minorities have been implementing in the contemporary Era of Pakistan?

Literature Review

Religious minorities are an integral part of the society. They are small in numbers but they play an imperative role to maintain peace and religious harmony in the society. But in most of the society's minorities are in a susceptible circumstance as compare to majority. Minorities of any society require special measures to ensure that they benefit from the same rights as the rest of the population and need equal respect from members of different communities. These rights serve to reconcile the vulnerable groups and bring all the members of the society to the level of equality and give them their human and fundamental rights. This study can be fruitful in the socio, cultural and political development of the country.

Hamid Khan discuss in his book, Constitutional and political history of Pakistan In Pakistan, there are multiple minority groups, Muslim and non-Muslim. The distribution of rights whether constitution or provisional. Religious communities (Hindu, Muslim, Christian, Sikh, Buddhist and Jews) besides "Other religions and provided equal fundamental rights. He described the objective resolution and the committee report which was approved in 1954. He highlight the major issues before and after partition and what was the constitutional history of Pakistan and he defined the political development in the country(Khan 2009).

Farooq Yousaf wrote in his work the plight of religious minorities in Pakistan, he shed light on the violence and blasphemy that the main issue for the minorities he further mentions regarding the different schools of thought in Pakistan and the extremist's attacks which is the major problem of the country. He little bit high light the constitution of the Pakistan and restrictions which minorities are facing in our country by constitutional changes(Yousaf 2016).

Scholar Hina Sheikh conducted a survey report in which she had analyzed the status of religious minorities of Pakistan in 2010. She described the different incidents and violence in the contemporary era of Pakistan. Because of the miss-use of the blasphemy laws many innocent people suffered in the Pakistan such as the persecution, hatred and the religious discrimination happening in every stages of the society. (Sheikh 2010).

Dr. EshratHussainBasri writes in his research paper religious minorities in Pakistan. He discusses the different aspects of the minorities with different rulers of the country including the constitutional laws provided to the minorities by constitution of the Pakistan. He also defined the objective resolution Indian act and the Zia period of Islamization contemporary era(Basri 2016).

Conceptual Framework

Minority Uniqueness is a group phenomenon. In the modern context, in the world, there is no state that

is unrestricted by minority problems. Although minority survival is natural, the background for the minority problems is not necessarily the same. At different times it takes forms of focus and has taxed the minds of statesmen, philosophers and social scientist in various parts of the world. Global and international conventions and arrangements were signed at various ages in the history to protect the minorities.

The subject of the minority has become a significant political issue and has played a major role in the National and foreign relations, since the escalating egalitarianism in the 18th century. In the Democratic Nations, the first criterion to overcome such complications in the recognition, regardless of the religion, ethnicity, caste or language, of equal rights and duties for all. It is only Democracy that respects and provide fair representations to various populations. It is often unanimously claimed that Democracy defamations successfully handle minorities equally in the other hand, minorities should not live in an authoritarian society, where the state has everything. The minorities thus cannot maintain their distinct identities. They have fallen into the society itself.

Definition

Minority can be defined as a multifarious group of people who are small in number of two aggregates, which together make up a whole. ([Laponce 1960](#)).

However, the social understanding of minorities is nuanced. Limits must be set to express a minority. It is defined as a group of people who have distinct religion, ethnicity, culture background and language. They are part of half of the population in the world.

Furthermore the minority is a group of different ethnicity, language or faith than the majority. ([Macartney 1934](#)).

The United Nations sub-committee defines the term minority as the non-dominant gatherings of the people within a community that maintains and wishes to uphold constant racial, religious or linguistics customs and features or characteristics, which are substantially changed from those of the majority of the population. (Benton 1968)'.
(Laponce 1950). The word minority is not free from opprobrium and it is always targeted all over the world.

Methodology

The qualitative method was used to understand the prevailing situation of the religious minorities in Pakistan since Partition to up till now and it also shed light on the constitutional rights of the religious minorities in Pakistan. In order to conduct and to prevent the fruitful impact on society different extensive data sources have been consulted. According to the needs of research, both primary and secondary data have been collected. I have utilized only qualitative research including, library, web information, official documents, statistics, previous research, different reports, journal articles, and news-papers were obliged in this regard. To accomplish the data, it has been analytically arranged.

Discussion and Analysis

Religious Minorities in Pakistan

Pakistan has a predominantly Muslim majority. As an Islamic Republic, a very small proportion of Pakistan's total population is made up by minorities. Approximately 97 percent of the total population of 212.2 million (2018) practice Islam, while about 3 percent practice other faiths, in which Hinduism and Christianity are the main minority religions. The fact that in social and state affairs minorities would naturally have limited contributions is reflected in these figures themselves. In addition, Pakistan's constitution also prohibits any minority member from holding presidential and prime minister highest state positions. Under Article 41(2) no person other than a Muslim should be eligible to be elect as a President of Pakistan and he should be of

age not less than 45 years and qualified enough to be elected as a National Assembly's member ([Tribune 2019](#)).

It is clearly mentioned in Article 91(3) that after the elections of Deputy Speaker and Speaker, the National Assembly shall proceed to elect one of its Muslim members as The Prime Minister without debate, to the exclusion of any other business.

In Pakistan there are people with two mental approaches; the traditional and the moderate. The people with moderate approach debates that the building block of Pakistan was fair citizenship for all based on agonistic national values, while the claims of conservative narrative states that Pakistan was only founded for Islamic defense and practices. Various international treaties were signed by Pakistan on human rights including The International Civil and Political Rights Covenant (ICCPR), and the Universal Declaration of Human Rights (UDHR). Pakistan reserved most of them and made Islamic injunctions as their observance subject, as a result of which the scope of treaties became enormously limited.

The Article 18 of the UDHR provides freedom for the rights of every human being, religion, conscience and thought. The customary law and treaty have bound Pakistan to enforce the rights of its people especially minorities who are supposed to be equal citizen of Pakistan, to the freedom of belief and religion and to give them equal rights of defense and religion.

After the addition of these rights in the constitution as essential and suitable for all the citizens, the constitutional reservations of rights of minorities are examined in sub-section in detail, "The Constitution and the freedom of religion and belief ([United Nations. and Office of the High Commissioner for Human Rights.](#))"

The Quaid-e-Azam Muhammad Ali Jinnah dreamed that the constitution of Pakistan also tried to guarantee for everyone the freedom of religion. The Article 20 of the Constitution of Pakistan ensured the freedom of practice of religion and establishment of religious institutions.

Lahore Resolution of March 1940 was called for Muslims, for the establishment of a new homeland, which clearly safeguarded the rights of religious minorities and provides all the citizens of the country their fundamental rights. It also pointed out the importance of freedom, tolerance, democracy equality and social justice. It served as the foundation stone for the constitution of Pakistan in future.

Minorities received permission to understand and practice their religious obligations freely and promote their culture.

The points presented by Quaid-e-Azam Muhammad Ali Jinnah between the years 1940-47 echoed in the pledge of Pakistan about freedom to worship and security of existence. Quaid-e-Azam Muhammad Ali Jinnah made an unconditional promise in his first address, about the equality of all citizens in front of law and religious freedom ([Khalid and Anwar 2018](#)). On August 11th 1947 Quaid-e-Azam said in his address of first constitute assembly of Pakistan that "In Pakistan Hindus would cease to be Hindu and Muslims would cease to be Muslim not in the sense of religion because that is the personal faith of each individual, but in political sense as citizen of state... you are free to go to your mosque or to any place of worship in this state of Pakistan. You may belong to any religion or caste or creed... that has nothing to do with the business of the state."

Objective Resolution

The Objectives Resolution also accepted the freedom of religious minorities, which is adopted in March 1949 by the constitutional assembly of Pakistan. It is said clearly that: All the persons have equal rights in front of law and supposed to be equally protected without prejudice to the law.

In this regard, any discrimination and guarantee fair should be prohibited by the law and all the persons should be equally protected without any discrimination of gender, colour, birth or other position, ethnicity, national or social origin, political or other opinion.

Minorities were free to enjoy their customs and traditions and government has the duty of protection of their interests. The government of Pakistan also allowed them to give their services for government. Non-Muslims and even some Muslim leaders of Constituent Assembly wanted Pakistan to become a secular state, but Islamic values were the main focus of constitutional structure of the country (Assembly 1949).

With the Objective Resolution the constitution-making phase began. Following the adoption of this resolution in 1949, the Constituent Assembly established numerous commissions for drafting a constitution based on the principles set out in the resolution. Among the committees Universal Concepts Commission was the most significant. It was made up of twenty-four leaders and led by the Prime minister. Nits inauguration on 12th August 1947 the assembly established a Committee on minorities' matters and on Pakistan citizen's fundamental rights. The subcommittee was chiefly divided in two major parts. The first part dealt with the development of basic human rights and the other part looked at rights of minorities and protection in Pakistan.

The Constituent Assembly approved the findings drafted in 1950 by that commission, published in 1954. Under this report, presented by the Human Rights Committee, minorities were granted fundamental rights as Pakistani citizens after it was accepted by the Constituent Assembly in 1950. It guaranteed the legal rights, to all state citizens, i.e., Muslims and non-Muslims.

Following Provisions were included in this report:

1. Equality before law for all citizens.
2. Freedom of occupation, association, speech, expression, conscience, trade or enterprise.
3. There must be no discrimination on the basis of gender, caste, race, religion or birthplace.
4. Every person should have an equal right to serve the state.
5. Every community has the authority to give religious teaching to the people of their community and personal laws of every community were guaranteed.
6. For the propagation of any religion no one would be required to pay special taxes other than his own.
7. In the matters of concession of taxes or exemption on religious institutions, no discrimination would be given to any religion.
8. No prejudice on admission to an institution of education.

The report was widely praised both inside and outside the Constituent Assembly. The Constituent Assembly, in its final report added the following clauses to the constitutional rights concerning minorities in Pakistan ([Mahmood 1990](#)).

Religious Minorities Fundamental Rights in Pakistan:

1. Any minority, living in Pakistan's territory or in any region of Pakistan having its own culture, distinct language or script, should not be prevented from retaining the same.
2. In providing assistance to educational institutions, the state shall not show any discrimination for any educational institution on the basis of the fact that it is primarily operated by a religious minority.
3. At the centre as well as in the provinces, there will be a Minister for Minority Affairs to take care of the minorities interests and to look after that the protections provided for minorities in the constitution are properly implemented ([Khan 2009](#)).

The Constitution of 1973 and the Rights of the Minorities

Constitution in every part of the world, guarantee the rights of all modern democratic states. But minorities are often neglected; their rights are not separately mentioned. Minorities therefore live wherever they live, claiming discrimination and particularly in developed parts of the world. Several minorities in Pakistan reside in various parts of the country. According to Islam, those minorities are guaranteed their rights. Every person has equal rights, according to the 1973 constitution. They are free to worship their spiritual patrimony and

practice it. The constitution of 1973 grants the religious minorities fundamental rights, as follows([Pakistan and Pakistan. National Assembly 1973](#)):

1. The minorities have the freedom to commence, business or occupation.
2. They have rights for freedom of speech.
3. Rights to the information given by the constitution.
4. The person has a liberty of professing religion and managing religious institutions.
5. Protection from taxation for the purpose of giving it to all religions.
6. Protect educational institutions with respect to religion.
7. They have given provision regarding the property.
8. Protecting ownership rights.
9. Equal protection for all citizens.
10. Educational rights.
11. There should be no discrimination of religion in public places.
12. No discrimination should be shown regarding services.
13. The culture, scrip and language of minorities should be protected.

The constitution provides reservations of ten additional seats for non-Muslims including Hindus, Christians and persons who belongs to Scheduled Castes like Sikhs, Buddhists, Parsi's and members of Qadiani (Ahmadi) group.

The rights are valued highly, and minorities are free to pursue their culture and enjoy equal rights. For example, the Christian community celebrates Christmas, Easter and other festivals without any hesitation. And on the other hand, Hindus celebrates Holli and Dewalli, also Sikh community according to their customs and traditions celebrates Besakhi and other cultural festivals. Religious minorities have the right to receive education according to their needs and wishes and because of their political interest they can cast votes and take part in elections.

Discrimination and Violence

Minorities are the country's key pillar. They are playing their white role in building peace and improving Pakistan. Some of the best hospitals and educational centers ran under the supervision of minorities. They all work as ministers in government sectors, along with businessmen and teachers, as they play an important part in the success and improvement of society.

Since we know, minorities are a corner-stone of any state. After partitioning Pakistan, a tremendous contribution was made by them in national development. The Quaid-e-Azam was keenly concerned with the nation's educational future. In the meeting of Quaid-e-Azam with Parsi leaders, he asked them to make their community agreed about the matter. Then the admission will be opened in two big Parsi Schools for all, namely BVS and Mama Parsi. There are many welfare projects accomplished by Jamshed Nusserwanji as president of the Municipality of Karachi, including Maternity homes, Primary education, Water supply, drainage schemes, he also constructed a housing project with the name of Jamshed Quarters and many more. He did all the public services without any distinction of creed, color or caste. The Parsis have done a great deal for refugees. Jimmy Lawyer in 1947 stated that, Parsis were able to do more for Muslims than they were doing. What held them was the fear of being noticed and then robbed of their wealth.

The other community that tried earnestly in 1947 and thereafter to heal Muslim refugee's wounds was the Christians. At the time of creation of Pakistan, they began human revivification task at all levels. Not only that, another positive contribution was that they work through shoulder to shoulder in the Pakistan movement to tilt the population's balance in favors of Muslim league. In Punjab Assembly in 1947 three Christian members voted for Pakistan. In Archbishop J. Saldanha's words, "it may not be claimed that these votes were decisive but it was certainly a small but sincere contribution from us."

And then C.E. and Frank Anthony Gibbon and other Christians were able to secure certain concessions for Anglo-Indians. Later as Deputy Speaker of Punjab Assembly, Gibbon was also elected. One of the prominent and notable Christian personalities of that time was DewanBahadur S.P. Singh, and Mr. Rallea Ram also contributed in field of education as he was the head of the Rang Mahal High School of Mission. All these gentlemen had a meeting with Muhammad Ali Jinnah and their hopes and fears were known to him. The Quaid-e-Azam assured them that they will equal citizen of Pakistan as Muslims are. ([Mahmood 1992](#)).

But unfortunately, Quaid-e-Azam's vision is not fulfilling properly, but somewhere it can be observed that minorities are facing different challenges, and Many times minorities are facing constitutional negligence. Such issues of concern are:

1. Lack of Religious Minorities Committee: In our country, there is no administrative committee regarding religious minorities.
2. Difficulty in reformation of laws on blasphemy and abusing existing laws: The religious minorities in Pakistan facing multiple challenges, violence and religious prejudice such as false accusation of blasphemy laws.
3. Non-implementation of five percent Minority job quota: Constitution of Pakistan provided 5 percent job quota for the minorities but it is not implemented in many governmental departments it is limited in the books or documents not in the reality.
4. Discrimination in admissions in Schools and lack of advanced education coverage and learning.
5. Underrepresentation of minorities within politics: Religious minorities have less representation in politics. However, they are the citizens of the country in this context their representation must be increased in politics according to their expectations.
6. Forced marriages and forced conversions: Minorities are forced to convert in the other religion by some persons especially Hindu community is facing these issues.

Despite of all these measures, the majority live on the impression that minorities enjoy privileges, while the reality is quite different in that they face restrictions and discriminations. The official narrative, overlooking the disturbing manifestations of increasing religious intolerance, persistently affirmed that there were sufficient constitutional guarantees regarding religious freedom. Failure of successive governments seen in observing the existing disparity in statutory rights and they continue to argue that the minorities have all the religious freedom. It follows from the claims that relics of the past as vibrant religious diversity is misunderstood by the authorities, such as places of worship certain rituals etc.

Second, Pakistan is an official narrative country where all the guidelines are mentioned in constitution but lack strong tradition of openness, the rule of law and Democracy. Thus, the officers try to deny, deflect or dilute the ground-reality at serious cost, as a result government has to shift the recognizing issues related to forced conversions, proper presentation of religious minorities in politics etc. As a result, some affirmative actions were initiated while official narrative co-opted the notion of interfaith dialogue/ relationships. Because there is no proper system in the country to genuinely implement the constitution. ([Report March 2015](#)).

But now we have observed a turning point in our society that the government is taking a lot of initiatives for the minorities so that they can get their rights and lot of implementations have been done lately.

Conclusion

The incorporation of religious minorities as decent people into national politics and government sectors would involve socio-political changes and progressive legislation that would grant them the right to equal citizenship of the country. The bigotry and the rise of racial intolerance must shed light on discrimination and populism's wave. Minorities in particular Christians, played an integral role especially during the independence movement until 1947 in the creation of Pakistan. Educational institutions of Christians in

Karachi and Lahore participated in the independence movement and helped in building Pakistan. While Hindus which were residing in the frontier regions of Pakistan decided to stay there and play their role in its progress. Pakistan is now at a significant juncture in which minorities of the country have predefined fate and future. In the fields of culture, business and arts, religious minorities have made their existence memorable. The Government of Pakistan reassures minorities as to their safety, whether it's about their lives or about their economic, cultural, social, and political interests. This is the freedom of minorities and their rights in Pakistan, which are enshrined in our constitution, must be covered as well. Islam commands that the protection of lives, properties and reputations of non-Muslims is adherent. The rights of the poor and all minorities in Pakistan create a free and pluralistic democracy in which allows all individuals to participate freely in politics of Pakistan and in the economic and social development of Pakistan. Whatever the setting, ambition and color, both minorities shall be treated as residents of an equal State.

Since the inception of Pakistan, Christian, Hindu and other cultures have existed in the country with fraternity and religious unity. The government must ensure that the Article 20 of Constitution implemented at all levels in its true spirit and provides for the rights of minorities to practice their religion, as well as for security. In addition, strict legislation should be formulated by legislature for the punishment of those who found guilty of forced conversions and weddings. Moreover, the state should arrange the security of all places of worship to minority communities appropriately. Under state machinery, officials too should be subject to conviction and punishment for failing to provide victim family justice. Subsequently during the partition of Sub-continent in 1947, non-Muslims like Sikhs, Hindus and Christians along with Muslims sacrificed their lives in the creation of Pakistan, this makes them equal citizens of the country.

Recommendations

- Set up an official National Commission on Minorities.
- Guaranteeing the National Commission on Human Rights full freedom. (The NCHR).
- Ensure complete enforcement of the 5 percent minority job quota.
- Choose alternate ways of voting to guarantee true religious representation of minorities in both federal and provincial assemblies.
- Take immediate action to prevent forced conversions and marriages.
- Introduce legislation incorporating substantial penalties for false accusations.
- About blasphemy.
- 5 percent minority education quota should be introduced in higher education institutes such as universities and colleges which give vocational, technical or professional teachings, to ensure that the religious minority students are receiving necessary education and training so they can avail the opportunities for jobs under 5 percent quota schemes.

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