

Minorities Rights under the Islamic Provisions and the Constitutions of Pakistan

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Abstract

This paper analyzed the most debatable issue of minority rights under the supervision of Islamic provisions and the constitution of Pakistan. Though, as a human being, all people demand their rights. The basic concept of equality and human rights was presented by Islam as well as the last sermon of our beloved Prophet Hazrat Muhammad (PBUH) in the 'Charter of Human Rights'. Currently, most of the democratic states guarantee human rights but unluckily rights of minorities have not been defined clearly. But Pakistan is such a state where basic and fundamental rights have been guaranteed regardless of their religion, creed, color, and caste. This paper analyzed the rights of minorities under the teaching of Islam and their implementation in Pakistan. This paper also discussed the constitutional guarantee of minorities' rights and some practical steps that were taken by society and state for the safety and protection of minorities.

Key Words: *Human rights, Minorities, Constitutional Guarantee, Islamic Provisions, Charter of Human Rights*

Introduction

Human rights concept is much indispensable to lead a decent and reasonable life. So, the development of human beings gradually evolved parallel to the human rights concept. In actual,

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Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

human rights are natural rights and blessed us after birth immediately without any discrimination and no one can snatch these rights. According to Islam, these basic rights have been guaranteed and assured to a man by dint of his dignity and honor, because a man regards as “crown of all creations” by Islam. The significance of human rights presented in detail by numerous verses of the Holy Book and a lot of the sayings of our Beloved Prophet (PBUH). Human rights relate to dignity, liberty, equality of life, and personified in the International agreements and more specifically assured by the Constitution.

Some thinkers from the west regarded ‘Magna Carta’, ‘French Declaration of Rights of Man’ and ‘Declaration of Independence’ as the commencement of the concept of human rights. According to ‘Declaration of Independence’, it is proclaimed that “we hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of Happiness” (Khalid, 2018).

However, several minorities are residing in different areas of Pakistan. Despite, Islam guaranteed whole basic or fundamental rights to their minorities in Pakistan (Malik, 2002). Pakistani Constitution also guaranteed to their minorities whole fundamental rights and freedom of religion. According to all Pakistan’s Constitutions, minorities always remained free to build their places of worship as well as to practice their religion.

Research Methodology

The research work is analytical as well as descriptive in nature. Data related to this study collected by secondary sources such as books, journal articles, encyclopedias, and reports. The most important thing of this research work is that there is quoted translation of some Holy verses of Quran and Ahadiths by which guaranteed the minorities rights according to sacred religion Islam.

Human Rights, Minorities and Islam

In this universe, a man has a special dignity and status. According to Muslims, the basic concept of equality and human rights was presented by Islam firstly. Islam ensures the life of humans so sacred and doesn’t allow killing anyone. So, practically Islam presents the absolute pattern of human life.

Quran says: *“Who so ever kills a human being (without any reason like) manslaughter or corruption on earth, it is though he had killed all mankind” (Surat Al-*

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

Maida:32)Furthermore, dignity of human beings is enlightened in such 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” (Chaudhary, 2003).

Holy Prophet (PBUH) said, “A Muslim is one from whose tongue and hand the Muslims are at peace” (Şahih al-Bukhari: 10).He said at another occasion, “Slanderers do not enter paradise” (Sahih Muslim:105).

According to Islam Allah is sovereign in all over the universe, and guaranteed naturally equal rights to all, neither anyone can snatch these rightsnorcan change thisreality.According to the last sermon of our beloved Prophet (PBUH) in the ‘Charter of Human Rights’ “Human blood, property and honour are sacred and inviolable for all”(Chaudhary, 2003).

“O people fear Allah concerning women. Verily you have taken them on the security of Allah and have made their persons lawful unto you by words of Allah Verily you have got certain rights over your women and your women have certain rights over you”(43:13).

“Your lives, your property and your honour must be as sacred to one another as this sacred day, in this sacred month, in this sacred town”(Last Sermon 9th day of Dhul Hajj,10 A.H).

“And your slaves! See that you feed them with such food as you eat yourselves; and clothe them with the clothes that you yourselves wear” (Sahih Muslim: 4095).

“O people! Verily your Lord is one and your father is one. All of you belong to one ancestry of Adam and Adam was created out of clay. There is no superiority for an Arab over a non-Arab and for a non-Arab over an Arab; neither for white over the black nor for the black over the white except in piety” (last Sermon 9th day of Dhul Hajj,10 A.H).

Toward minorities, Islamhas a very soft corner. Islam protects all Muslims as well as non-Muslims and guaranteed to their rights of honor, life, religion, liberty, property, and dignity without any discrimination. The Holy Prophet (PBUH) established the first Islamic state in Medina and assured all the minorities to live their lives happily by guaranteed absolute freedom of religion. Likewise,Pakistan provides maximum administrative positions to the minorities and treated them with tolerance so that they might perform their job for state development. Quran says; “There is no compulsion in religion” (Surat Al-Baqara:256).

Holy Prophet of Islam tells about non-Muslims:

“unto you your religion, and unto me my religion, However, Islam respects humanity and has clear teaching about minorities” (Chaudhary, 2003).

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

Religious Minorities in Pakistan

Pakistan is an Islamic country and established on the base of Islamic ideology. Approximately, Pakistan consists of an overall 92% population of Muslims and 8% Non-Muslims which are Hindus, Sikhs, Jains, Parsis and Kalasha except for Ahmadis (because they are denied to being non-Muslim). They are anxious about their rights. 11th September 1947, it was the day when Father of Nation Quaide-Azam gives special attention to the minorities and said:

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or 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...Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State” (Paul, 2009).

Jinnah’s proclivity for Constitution making in Pakistan awards all citizens with equivalent rights despite of their religions and he approved this belief by the given authority to Mr. Zafarullah Khan (who was an Ahmadi) as first Pakistan’s foreign minister.

Religious Minorities and Constitutions of Pakistan

The Constitution is the document in which powers and functions are divided among the various organs of the state. It is a sacred book and implemented upon the whole nation without any discrimination, biases, and prejudice (Mahmud, 1995).

According to Constitution Article 25 (1), all Pakistani citizens are equivalent ahead of the law and all Pakistani citizens entitled to equal shelter, protection and security of the law.

a. Objectives Resolution(As Preamble of Constitution):

Pakistan is an Islamic Republic state. After Pakistan’s existence, the process of constitution making became too much conflicted among the Islamic vision and Islamic-neutral of state formation. Some leaders want to make Pakistan a secular state but Mr. Jinnah clearly declared that Pakistan established on the name of Islam so it will be a complete Islamic state. However, ‘the Government of India Act 1935’, with certain editions, became the Pakistan’s first interim

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

constitution. The first Constituent Assembly (15, August 1947) was assigned the basic task that was forming the Constitution of Pakistan. The constituent assembly was passed the Objective Resolution on 12th March 1949, which became the substantive part and foundation stone for future Constitution of the Pakistan (Shafqat, 1998). In the Objective Resolution, specifically integratethe fundamental or basic rights for all Pakistani citizens. The first constituent assembly approved Objective Resolution by legislation process and reveals by made certain provisions for to profess the religions of minorities, safeguard their legitimate interests, and develop their cultures. The Objective Resolution guaranteed the basic rights to Pakistani citizens by provisions which are given here:

Sr#	Certain Provisions made by Objective Resolution to ensure Citizens Rights
1	Minorities are free to practice and profess any religion and it is the responsibility of the government to make sure and protect the minority rights
2	Wherein sufficient provisions will be made to safeguard the minorities legitimate interests, and depressed or backward classes
3	Wherein the freedom principles, social justice, democracy, tolerance and equality as enumerated through Islam shall be entirely experiential
4	Minorities have given the right and allowed to enter into Pakistan's government services (Compiled by Author)

However, some constituent assembly members want to make Pakistan a secular state, but objective resolution laid the forming of Pakistan based on Islamic principles as well as guaranteed the minority rights (Mehdi, 2013). So after the passage of Objective Resolution, it makes easy for the constituent assembly to framing the constitution (Tahira, 2018).

b. The Basic Principles Committee:

The constituent assembly framed several committees. However, several committees and sub-committees performed the task of forming a constitution. Among these, one of the most important was the Basic Principles Committee. Prime minister headed the Basic Principles Committee and it has consisted of 24 members. On 12 August 1947, in the inaugural session of the constituent assembly was established a committee and divided into two sections, one was occupied with minorities related matters and another section was related to fundamental rights of Pakistani citizens (Pak, 2015). The Constituent Assembly adopted the basic principles committee reports. It was finalized in 1954, and guaranteed the gorgeous fundamental rights to all Pakistani citizens and minorities. The report was incorporated into the following provisions:

Sr #	Provisions by the Basic Principles Committee for Minorities Protection
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Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

1	There is no discrimination for minorities based on sex, race, place of birth, religion, and caste
2	There is equality for all people before the law
3	There is equal shelter and protection of all citizens for law
4	The right to induction in the services of the state
5	There is no any discrimination in educational institutions for the purpose of admissions
6	There is “no discrimination against any community in the matter of exemption from or concession in taxes granted with respect to religious institutions”
7	Freedom of expression, speech, conscience, trade, occupation, profession or business
8	No any person would be compelled “to pay any special taxes for the propagation of any religion other than his”
9	Every community would be allowed to give religious instructions to the students of its own community and personal law of every community was guaranteed

(Compiled by Author)

c. Constitution 1956:

But before accomplished its task the Assembly has been dissolved by Ch. Ghulam Muhammad in October 1954 and convened the 2nd Constituent Assembly in May 1955. The Assembly framed and then passed the Pakistan’s first Constitution on 29th February and then promulgated in 23rd March 1956 (Baldwin, 2007). The constitution of 1956 was buildup with the whole fundamental rights of their citizens irrespective of their religions. In the constitution, Pakistan named as ‘The Islamic Republic of Pakistan’ and ‘Objective Resolution’ remained as the preamble of the constitution. State Policy of directive principles have consisted of three parts. Firstly, it excluded minorities from assuming the head of the state office. Secondly, Article 198 affirmed that no any law will be ratified which is abhorrent of Islam according to Sunnah and Quran, “in a subsequent part of this alluded to as commands of Islam and prevailing laws shall be escorted compliance with standards of such directions” (Tariq, 2011). It was included in the constitution by these words that nothing has an effect on the status of minorities as a citizen, personal laws of minorities, or any provision of the Constitution.

Sr#	Nature of Minority Rights	According to Constitution of 1956
1	Equality	equal protection and shelter of law as well as equality before law
		All duly qualified citizens were provided full right of personal life and liberty
		and they were eligible for appointment to service of state
2	Life and liberty	The right to apply for a writ of habeas corpus
		No punishment for the act which was not punishable when committed
		Provided full right of personal liberty
3	Freedom	Were provided fully freedom of expression, speech, occupation, peaceful assembly and association
		Provided right to reside in any part of the country

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

		And the right to move freely throughout Pakistan
		exemption for any kind of tax which could be used for propagation of the religion other than one's own
		Freedom to attend any educational institution
		the right to propagate, profess, and practice any religion subject to public order and morality
		Freedom of conscience
4	Property	Freedom of acquisition
		No any person could be deprived of his property without adequate compensation
		Freedom of disposal of property
5	Social	The practice of un-touchability also declared illegal
		Freedom from servitude, force labor, punishment, slavery, cruel, torture, or inhuman treatment
		No discrimination on ground of religion, caste, sex, race, or birth place

(Compiled by Author)

In 1958, the constitution of 1956 was abrogated unfortunately by martial law. So, in February 1960 a military commission appointed for presenting the 2nd Constitution of Pakistan. However the military commission framed the new constitution in 1962, "which did not include fundamental rights but these was included in the constitution through constitutional amendment afterwards" (Aftab, 2014).

d. Constitution 1962:

It was the day of 8th June 1962, when another constitution with adequate provisions was enforced in Pakistan. As usual, the objective resolution also remained as preamble in the constitution of 1962 but a republic with unicameralism and presidential system. Principles of policy and directive principles were included and dealt with some issues such as solidarity, national integration, Islamic way of life, social welfare, protection for minority rights and backward areas development. The constitution of 1962 was actually made for enabling the minorities, without any restrictions to promote their culture and to observe their religious rights.

Sr#	Nature of Minority Rights	According to Constitution of 1962
1	Equality	Equality before law
		Equality of opportunities
		Equality regarding accessibility to public places
2	Freedom	Freedom of speech, religion, movement, profession, association trade etc
3	Life & Liberty	Principle of preventive detention and principle of detention and arrest
		Protection against retrospective punishment
		Right to personal freedom and Right to life and liberty
4	Culture	Right to culture etc

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

5	Property	Right to compensation and not to be expropriated
		Freedom to acquire property anywhere within the country
6	Fundamental	Right to constitutional remedies to protect fundamental rights
7	Social	Freedom from force labor, slavery, and untouchability

(Compiled by Author)

Then, this Constitution was abrogated on 25th March 1969, and after the General Elections in 1970, newly established civil government of Pakistan gave the Interim-Constitution to the country in 1972 and after that framed the Constitution of 1973 that was passed on 12th April 1973 and legally enforced in country, on 14th August 1973 (Hashmi, 2018).

e. Constitution 1973:

After independence and more than a quarter century, the constitution of 1973 was promulgated as the first democratic Pakistani constitution. The constitution of 1973, ensure the spirit of the Islamic requirements such as “all existing and future laws would be in conformity with the injunctions of Islam as laid down in the two main sources of Islamic law which are the Quran and Sunnah” (Tariq, 2011) as well as guaranteed to protect the freedom of religion. The constitution enforced a specific bill related to fundamental rights of state citizens in which guaranteed to each citizen to propagate, profess and practice his/her religion. The constitutions also make sure about every sect and every denomination of religion to manage, establish and maintain to his/her religious institutions (Blitt, 2005).

“They also included safeguards against religious taxation and compulsory religious instruction in educational institutions for a religion other than one’s own. Over time, the contradictions and ambiguities between the imposition of an overarching Islamic legality and the provision of religious rights led to constitutional-political sectarian battles” (Khan, 2015). However, the constitution of 1973 fulfilled all the requirements of their citizens through enforcement of a bill named fundamental rights which provide specific protections to the minorities such as freedom to follow their culture and worship.

Sr#	Nature of Minority Rights	According to Constitution Of 1973
1	Equality	Equality before law
		entitlement to equal shelter and protection of law
		Equality regarding accessibility to public places
		Safeguard in services against discrimination
2	Freedom	Freedom to manage institutions related to religions
		Freedom to profess the religion
		Freedom of assembly association, movement, speech, business, profession or trade

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

		Safeguard against taxation for purposes of any particular religions
		Safeguard as to educational institutions in respect of religion
		freedom to manage religious institutions
		Freedom to profess religion
3	Life and Liberty	Security of person and right to fair trial
		Safeguard against to arrest and detention
		Inviolability of dignity of a man
		Protection against self-incrimination, retrospective punishment, and double punishment
4	Culture	Right to preserve culture, script and language
5	Property	No any person will be compulsory divest of his possessions save in accordance with law
		There is right in any part of Pakistan, to acquire dispose and hold of Property
6	Fundamental	Laws inconsistent with
		or in derogation of fundamental to be annulled
7	Social	Right of education
		Right of individual to be dealt in accordance with law
		Freedom from forced labor, slavery and untouchability

(Compiled by Author)

Landmark Framework by Constitutional Provisions for Religious Minorities

In Pakistan minorities are enjoying double rights as compare to Muslim citizens. Such as, the constitution of Pakistan not only guaranteed to their rights being a Pakistani citizen, but also there have been incorporated special provisions in the constitution for the minorities' benefit. According to the Pakistan's constitution, it is allowed for minorities to contest the elections on special seats (which are reserved for minorities) and in addition general seats (UNHCR, January 2017). However, the constitution of Pakistan have guaranteed freedom of speech, belief, expression, thought, worship, equality, social, economic and political justice to all citizens of Pakistan including minorities (Faruqi, 2011). The constitution also guaranteed minorities rights through adequate provisions for depressed and backward classes and legitimate minorities interests. These constitutional provisions briefly summarized here:

Sr#	Certain Provisions	Constitutional Provisions related to Minorities in Pakistan
1	Article 2 A	<p>“This implies that the government, which fails to prove protection to minorities, is disobeying Allah’s orders”</p> <p>“the Constitution bars the legislature from making any law repugnant to Islam as the sovereignty of the entire world, including Pakistan, belongs to Allah”</p> <p>“Furthermore, no government can ever commit any alteration in the Constitution with the intention of reducing minority rights since such rights are ensured to them by Islam”</p>
2	Article 20	“Every religious denomination and every sect thereof shall have the right to

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

		establish, maintain, and manage its religious institutions”
		“Every citizens shall have the right to practice, propagare and profess their religion”
3	Article 21	“No person shall be compelled to pay any special tax”
		“the proceeds of which are to be sent on the propagation or maintenance of any religion other than his own”
4	Article 22	“In respect of any religious institution”
		“there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation”
		“or to take part in any religious ceremony”
		“or attend religious worship, if such instructions, ceremony or worship relates to a religion other than his own”
		“No religious community shall be prevented from providing religious instructions for pupils of that community”
		“No any person attended any educational institutions shall be required to receive religious instruction”
		“No citizen shall be denied receiving aid from public revenues on the ground only of religion, caste, place of birth and race”
		“No citizen shall be denied admission to any educational institution”
		“Nothing in this article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens”
5	Article 25 (1)	“all Pakistani citizens entitled to equal protection of the law”
		“and are equivalent ahead of the law”
6	Article 26 and 27	“there shall be no discrimination in respect of access to public places”
		“and services respectively on the basis of religion”
		“Again, shall will be religion is not meant to be a hurdle for any community”
7	Article 28	“Every citizen having a distinct language, culture, or script shall have the right to promote”
		“and preserve the same and subject of law”
		“They also have the right to establish institutions for that purpose”
8	Article 36	“The state shall safeguard the legitimate interests and rights of minorities”
		“including their due representation in the federal and provincial services”
9	Article 227(3)	“all existing laws shall be brought in conformity with the injection of Islam”
		“Nothing in this part shall affect the Council of Islamic Personal laws of non-Muslim citizens or their status as citizens”
		“or their status as citizens”

(Compiled by Author)

Conclusion

Fundamental rights and its guarantee for all citizens, proved very crucial for the progress and prosperity of every state. So if minorities also became its part to enjoy these fundamental rights then such a state easily go ahead on the road of progress and development. In Pakistan, constitutional guarantee has been provided to the minorities about their fundamental rights, irrespective of religion, race, color, and creed. As Muslims are enjoying their fundamental rights, preserve and promote their cultures, likewise minorities are also free to celebrate their festivals and promote their cultures without any discrimination. Religion Islam and the Pakistani

Al-Qalam Vol 25. No.1 Minorities Rights under the Islamic Provisions

Constitution don't bane the minorities civil rights. The state of Pakistan hastaken many practical steps for minorities to give them protection in society. Consequently, it became easy and reliable for minorities to spend their lives according to their culture and religion. However, minorities' contribution is visible in every walk of life. Such as non-Muslim teachers, bureaucrats, politicians, judges, lawyers, philosophers, and engineers all are performing their active role and serving for a sacred homeland because they are enjoying here freedom of speech, religion, profession, thought and association. Rana Bhagwandas ("former Chief Justice of Pakistan") was Hindu, but without any discrimination, he was appointed as a Chief Justice of Pakistan (top judicial post). Over the Chief Election Commissioner's appointment issue, all political as well as religious parties were also in favour about the nomination of Rana Bhagwandas. Beside it, there are several people belonging to minorities who have served for Pakistan in the military and civil bureaucracy. In Pakistan, don't have any public place, where quoted such type of terms like "Non-Muslims and dogs are not allowed" as it was written in United India by British rule "Indians and dogs are not allowed". In actual, religion means don't have to create a hurdle for that community. Blasphemy laws in Pakistan always remain a decisive issue, so in case of such act Pakistani courts are here for justice rather than mob justice. The government should give the top priority to the minorities for their protection and should encourage them for being a part of that state with other citizens. Toward minorities, the government of any state should also have a dire need to change the people attitude at the public and institutional level.

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