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## **Protection of Minority Rights: An Analysis of Implementation of Statutes, Policies and Illegalities in Pakistan**

### **Abstract**

*This paper investigates the worth of minorities by discussing the ideology of Pakistan. The main purpose of the paper is to examine the several articles related to minorities formed in constitution 1973 of Pakistan and Islamic provisions as well as other statutes, laws, acts and policies which adopted periodically. It probes into the question, to what extent these are adopted in true sense for preservation of minorities' rights and religious freedom. It also gives an explanation to balance investigation by exploring the felonious and illegalities in implementing laws and regulations towards religious minorities' safeguards.*

**Key Words:** Ideology, Freedom, Religious, Laws, Minority Rights, Constitution.

### **Statutes, Laws, Policies and Preservation of Religious Minorities Rights**

Partisanship associated with religious minorities is tied up with discrimination and laxity by the government. Different laws, acts and policies have been formulated since the framing of first constitution of Pakistan. Persistent demur and objections are made by the minorities about the futility and uncertainty along violent behavior, pressure, threats and denial to admit disparity. Many significantly devoted to their faith are in position to integrate and they subsist with others religious groups in hushed and peaceful way. On the other side, a few felt themselves in danger on the restricted unassertive situation in Pakistan. In all fairness it must be said that among religious minorities some people feel that they are divested from social and cultural mainstream. It is noteworthy that many people belonging to different religious minorities proclaim that they are emancipated to discern their cultural and religious matters with other acolytes of other religions.

Christians, Sikhs, Hindus, Qadianis and small number of other religious groups like Parsis, Jews and Budhists are living in Pakistan as religious minorities. According to the census of Pakistan 1998, Muslims consisted of 96.28% of the total population<sup>1</sup> whereas the Punjab, North Western Frontier Province (now Khyber Pakhtoonkhwa) and Balochistan were mostly Muslim provinces each

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having 99.44%, 97.22% and 98.75% of the Muslim populace, respectively Sindh subsisted different groups within province 91.32% Muslims and 6.51% Hindus. Among them 9.77% existed in the rural areas and 3.08% lived in cities.<sup>2</sup>

Jinnah's inclination for making the constitution of Pakistan endows with equal rights to all citizens separately from their religion. By designating Zafarullah Khan (an Ahmadi) as Pakistan's first foreign minister, Jinnah showed this belief. The task of formulating a constitution was done by setting up different committees and sub committees. Among these committees the Basic Principles Committee was most significant. On 12 March 1949, Objective Resolution was approved by the legislature. It demonstrates 'adequate provisions to be made for the minorities to profess their religions, to develop their cultures and to safeguard their legitimate interests'. Other committees like 'Fundamental Rights of the Citizens of Pakistan' and on 'Matters Relating to Minorities'<sup>3</sup> were important committees.

Under the constitution of 1956, it named Pakistan 'the Islamic Republic of Pakistan' and contained the 'Objective Resolution' as the preamble to the constitution. 'Directive Principles of State Policy were included in part three. It debarred non-Muslims from assuming the office of head of state. Article 198 stated; no law shall be ratified which is repulsive of Islam according to Holy Quran and Sunnah, in a subsequent part of this alluded to as commands of Islam and prevailing laws shall be escorted compliance with standards of such directions. It was included by the words; nothing in this Article shall affect the personal laws of non-Muslim citizens, or their status as citizens, or any provision of the Constitution.<sup>4</sup> The preamble, hitherto the Islamic charter of the constitution 1962 was dealt; it was about same with that of the 1956 Constitution. Directive Principles and Principles of Policy were also laid down in it.<sup>5</sup> A program of nationalization was introduced by government in January 1972, with the purpose of public 'takeover' of thirty-one large firms in ten 'basic' industries.<sup>6</sup> Nationalization of private schools and colleges critically thumped the Christian minority.

Constitution 1973 of Pakistan provides that significant Islamic provisions also declared like 'no law shall be enacted which is repugnant to the injunction of Islam as laid down in the Holy Quran and the Sunnah and the existing laws shall be brought into conformity with injunctions of Islam as laid down in the Holy Quran and Sunnah.<sup>7</sup> All laws are subject to the Constitution 1973 of Pakistan. Islam was declared the state religion of Islam. Reserved seats are granted to minorities in legislature and provincial assemblies of Pakistan under the constitution. In National Assembly, 10 seats are reserved for them, on the other hand, 8 seats in Punjab Provincial Assembly, 9 seats in Sindh Provincial Assembly, 3 seats Khyber PakhtunKhwā Provincial Assembly and 3 seats have reserved in Balochistan Provincial Assembly. Appropriate representation in the Federal and Provincial services is vouchsafed to them and their legal rights have safeguarded by the state.<sup>8</sup> Article 20 of the Constitution states the 'subject to law, public order and morality, (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious

institutions.<sup>9</sup> Article 227 reads that all existing laws shall be brought in conformity with the injection of Islam; however, Article 227(3) declares: “Nothing in this part shall affect the Council of Islamic Personal laws of non-Muslim citizens or their status as citizens. Few argue that these stimulating words do not indicate the true picture regarding the prevailing situation of religious minorities in Pakistan. It is evident by the newspapers and stories made by media that mistreatment with minorities, abduction with their daughters and forcefully conversion to Islam is encrusting for organized savagery against them.<sup>10</sup> Article 36 of constitution 1973 reads with: The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services. Clause 3 was included to Article 260 by describing who is a non-Muslim. This article is concerned to definition of Muslim under the constitution. The clause asserted that “a person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (PBUH) as the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (PBUH) or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of constitution or law.<sup>11</sup> During the Bhutto’s rule , in 1974, Ahmadis were declared non-Muslim by making second amendment in the 1973 constitution. Although the clarification regarding the definition did not particularly allude towards Ahmadies yet it was illustrated in the article with the motive of reserving special seats for them. The formation of provincial assemblies and issuance of the seats in assemblies<sup>12</sup> was changed to refer the Ahmadies among the non-Muslim believes.

### **Enforcement of Laws and Policies towards protection of Minority Rights**

Throughout, Several measures have been taken by the government with the professed aim of inscribing religious discriminations in different areas like education, political participation, employment and jobs yet there is lack of effective organization. On the other side, they have been escorted by antithetical actions which has aggravated the insecure situation of religious minorities in Pakistan.<sup>13</sup> A small number of illegalities and misconducts have come across towards the religious minorities for putting into effect the laws and policies but it would not be fair to say that overall minorities are mistreated or abused.

By looking the role and status of religious minorities since the inception of Pakistan, it is palpable to view these statutes, laws and policies regarding their implementation. The first foreign minister Sir Zafarullah Khan belonged to Ahmadi sect. It was perceived that he and other Ahmadis were disseminating their faith and forming themselves for important positions in the administrative and political structure of country. After establishment of Pakistan, a campaign against the Ahmadis was started. The campaign against the Ahmadis from 1948 to onwards had assumed a clear scheme. Religious leaders frequently rationalized the killing of Ahmadis and called Zafarullah as dissenter and renegade. This campaign acquired steady impetus and several religious leaders demanded to announce the Ahmadis as a minority and that Zafarullah and other Ahmadis removed from their offices. Muslim League government at the central and provincial level was concerned regarding the gathering momentum of campaign and escalating anxiety

but did not take strong verve against the movement till the very end. Hamid proclaims that Objective Resolution has been reconstructed (sixth paragraph) in the appendix with minor modification. Minorities feel some apprehensions regarding this change.<sup>14</sup>

Under the constitution of 1956 of Pakistan Non-Muslim could become the president as head of state. Ayub's self confessed gracious despotism did not offer relief in opposition to the course of bigotry. From the perspective of religious minorities, their consideration was determined by the ruler's prospect. Ayub did not consider the Christians as a peril to the country so situation ameliorated for them<sup>15</sup> and it resulted in getting higher position in government. Hamid Khan argues that minorities were not ill-treated till the dismemberment of East Pakistan in 1971. They had special seats in National and Provincial assemblies and played role in national life and politics owing to joint electorate and their rights were protected. After anti Ahmadi movement of 1953, government imposed martial law but the calls of rabble-rousers were not taken out. After 1971, things became different radically.<sup>16</sup>

Bhutto initiated the policy of nationalization. The nationalization of private colleges was introduced in September 1972. The following month this was extended to schools, the process being phased in over a two years period. Up to this point the private school sector, fed by the middle class, demand was growing rapidly in the main urban centers. There was opposition to this policy from missionary run institutions which had traditionally maintained high academic standards and feared that these would fall in the absence of sufficient financial support.<sup>17</sup> This policy of nationalization made completely explicit perception. Under Zia in 1979, it may have intercepted absolute egress from this vision. Nevertheless, this policy identified cultural and social the state of being diverse<sup>18</sup> and recommended harmonization with the rudimentary doctrines of the country.

Ayub and Yahya specified Hindus as "the other" and gave special importance to Islam as Pakistan's 'raison d'être'. This legitimated the view that non-Muslims existed only at the sufferance of Muslim majority. Their survival and religious freedom determined by varied elucidations of traditional Islamic law. Consequently, the Islamization of Pakistan was gradational. It paved the way for Zia's grating explication of Islamic law, which was harmful for minority rights.<sup>19</sup> The Ahmadis agonized from the amendment of the Pakistan Penal Code. Zia made far off himself from *Ulema* due to several issues from 1980 onwards. He was excessively conscious to the circumstances of 1953 to stop the tumult in opposition of Ahmadies. In 1983, this took a personally menacing gyrate when religious opponents to the slowness of the Islamisation process unfurl the tittle-tattle that Zia was an Ahmadi. In result, the president was enforced to dint his assertion overtly and condemned the Ahmadis as Kafirs (infidels). Some observers contend that less attention has been paid to impacts of Islamisation on the religious minorities though they were sufferers of intolerance. The influence of Law of Evidence and the instigation of separate electorates for the minorities be incompatible with this reassurance and resulted in fear among the minority leaders that their position would be lessened from that of citizens to the protected *dhimmi*

(non-Muslim taxpayers)status.<sup>20</sup>Non-Muslim minorities did not have the right with Muslims to elect officials to local councils or provincial and federal legislatures during Zia's regime. In each elected body fixed numbers of non-Muslim seats were to be granted to them and they allowed casting vote only of their own community. This action was taken to some extent for divesting less conservative parties against to Zia and martial law, like PPP, of their non-Muslim vote bank. It resulted in decreasing the influence of non-Muslims, as their representatives did not carry any weight within the major political parties. Ahmadies did not admit their specification as non-Muslim, rebuffed to accept electoral representation as a minority and consequently, they were deprived from voting.<sup>21</sup> General Zia introduced authoritarian policies and they escorted to much more sectarian and ethnic fragmentation of the society, women and religious minorities were existed<sup>22</sup> as significant vanquished.

In 1990, during the election campaign, the minorities had indicated concern at being left out of the national mainstream. Hindus, Sikhs, Christians, Parsis, and other minority groups were repudiated the right to cast vote for Muslim candidates under the system of separate electorate.<sup>23</sup>In 1990, IJI government positioned its majority in National Assembly to proceed the Enforcement of Sharia Act. It was ensured to religious minorities that no provision added in the act would cause to religious freedom of the non-Muslims. In 1993, Benazir's government proclaimed to take necessary measures to modify the penal code and the code of criminal procedure to restrain the abuse of the blasphemy laws. The situation became progressively worse before the tactile actions<sup>24</sup> could be taken in this respect. It has observed that in the Muslim world, Saudi Arabia, Egypt, Afghanistan, Indonesia and Nigeria are among the countries that did not have blasphemy laws but Pakistanis scarcely alone.<sup>25</sup>

Like Zia, Sharif sought to assure minorities and women that the new Islamic laws would not violate their rights. But human rights advocates accused Sharif of using Islam to buttress his power at a time when he seemed globally isolated and embattled at home. In regards to protect the minority rights, there are symbols of development and few examples which indicate their situation that is continued to be characterized by defame<sup>26</sup>.

General Pervez Musharraf introduced the enlightened moderation and reinstated joint electorates for all except the Qadianis and some other banned groups. His endeavors to rescind the discriminatory laws could not prove fruitful. His efforts towards amending the blasphemy laws proved ineffective. Christian community was severely affected in regional perspective by the so-called "War on Terror" and position of Pakistan with American-led "Western alliance".<sup>27</sup>

By frequent use of blasphemy laws and occasionally targeting on their places of worship. Such kinds of activities create an environment of insecurity and also result in making them stronger to prevent their entry from political representation and other services. Various laws concerning to religious minorities, socio-economic and political segregation are contemplated encouraging by religious minorities during different democratic rule and military eras. Human rights

commission of Pakistan, newspapers and reports establish the fact that the rights of the religious minorities have been transgressed from 1980 to 2009.<sup>28</sup> Interior Ministry's report explores that under the blasphemy law, no blasphemer had been hanged till December 2010.<sup>29</sup> It shows that blasphemy law was not misapplied.

During PPP's rule (2008-2013), though the civilian proclaimed their aim to put an end of terrorism but no remarkable progress has made either for the protection of religious minorities over the subsequent years.<sup>30</sup> In 2013 election, process of change can be perceived when non-Muslims succored for election. Even though the greater number of non-Muslim did efforts but they remained unable to secure remarkable success in Sindh. Peculiarly, Veero Kolhi, a member of Hindu 'Scheduled Caste' and prior to this a bonded laborer, contested in election as an independent candidate for the provincial assembly seat PS-50 from district Hyderabad. Though she was not successful but first time it set up an example for representation by a former bonded laborer in election. Regarding the political participation, promising developments are being initiated for non-Muslims but still they encounter difficulties particularly regarding the minority women in country.<sup>31</sup>

In 2013, Nawaz sharif elected as Prime Minister for the third time, he could not strengthen the position of democracy and not much improvement for the protection of religious minorities can be seen regarding always present threats of violence, pursuit of legal actions for blasphemy and victimization under discriminatory laws.<sup>32</sup> Hindu Marriage Bill 2014 and Punjab Registration of Hindu Marriage Bill 2014 and other steps were taken to modify Personal Laws but due to systematic hold back in term of progress. Owing to division among Hindu community<sup>33</sup> concerning what laws should lay down. A report by Human Rights Commission reveals the persistence of exceedingly ingrained right gaps in the constitution and legal framework. Less political participation, variance judicial procedures and frequent disinclination for executing laws and legal protection against inequity are major hindrances.<sup>34</sup>

Though legal framework ensures the protection for rights to the religious minorities, yet mainly laws are misconceived and sometimes they have to agonize owing to horrific situation. Segregation between Muslims and non-Muslims is another reason. A number of non-Muslims do not find any objection or trouble for doing business with Muslims in Pakistan. But a small number of citizens argue that they find difficulties while dealing with them. They quote the articles 41(2) and 91(3) of the constitution 1973 regarding the bigotry and discrimination towards religious minorities. As head of government and head of state will be a Muslim.<sup>35</sup> They consider it discrimination with them. The religious minorities experienced unpleasant human rights abuses because of more and more motivated to the right in a bid to search for legitimacy and sticking by means of Islamic symbols belong to Muslim community. Trivial gap remains between formally approved policies and its writing implements. Even according the fact, 'Pakistan's internal divisions' restrict political activity by ignoring the concerns of ethnic minorities'' observed Mohammed Ayub, the Zia regime's "the need for establishing domestic legitimacy"<sup>36</sup> government has rendered Pakistan a state of powerful antagonists.

Military dictators and civilians adopted the Strategy to the politicization of religion; it has raised the growing process of religious extremism over the years. Marie and Alan argue that religion play influential role in legitimating the discrimination against minorities. They propose that balanced investigation of the problem faced by religious minorities and its effects on majority should also be under considered. The prospective consequences of these matters are not confined to minorities within either (or both) majorities or minorities<sup>37</sup>but have inferences for wider society at several levels. The judiciary has to encounter threats, frightening and pressure, particularly dealing with blasphemy cases. Consequently, lower courts have sometimes been compelled to convict persons devoid<sup>38</sup> of appropriate corroboration put down before them. Marie and Alan supported that levels of self-reported inequity are raised for Muslims as compared to other religious minorities. In these respects, as in others, the view from the ground looks much more promising than the impression received from mainstream public discourse, whether from government, the press or most academic research.<sup>39</sup>

Few people argue that the constitution 1973 has prejudiced and discriminatory sections by firming the Islam as state religion. Zia modified the constitution to make the Objectives Resolution an essential component as alternate of paltry preliminary as it was the case with former constitutions of 1956 and 1962. The dominant socio political expatiate has been around the principles comprised on Islamic injunctions which regularly became effective in the country as indicated throughout its three constitutions (1956, 1962, 1973). Though there are some illegalities that occurred for achieving the positive outcome towards the religious minorities. It is perceived that the religious minorities do not enjoy human rights freely and experienced abuses because of the majority's trend towards right wing. People are staunch towards Islamic symbols which belong to Muslim community. Eliz Sanasarian elaborates the role of Pakistani government by admitting that Zoroastrian as natives of Iran have no other home country, they were treated as second class citizens and could not enjoy equal in political, military and legal arenas but their rights are protected in Pakistan and India.<sup>40</sup>Due to several facts, the views look much real than the impression of public discourse, whether from government functionaries, the media or academic research.<sup>41</sup>Minor gaps are found in approved policies and its effective implements. Frequently media conducts inessential issues and it becomes complicated to utter minorities in taking into account all sides on their merits without prejudice or favoritism.

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