



## **JINNAH'S PAKISTAN AND CONSTITUTIONAL STATUS OF MINORITIES**

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### **Abstract**

Muhammad Ali Jinnah the founder of Pakistan envisioned the country as a home for the people of the sub-continent, irrespective of any religion caste and creed. He reiterated many times that the country would provide equal rights to all its citizens and avoid meddling the personal and religious beliefs of people. However, the state failed in protecting minorities and honoring those principles on which it was established. Jinnah's vision of a liberal and democratic Pakistan shattered very soon after his demise. Discriminations against minorities were formalized in the country's first Constitution in 1956 and subsequently reinforced in later constitutions. This article signposts the constitutional status of minorities and displays the discriminatory provisions in the constitutions against them.

**Keywords:** Constitutions, Minorities, Rights, Equality.

### **Introduction**

#### **Jinnah's Vision about the State and Minorities**



Jinnah strived for a state where the values like pluralism, acceptance, co-existence and equity could be embedded. He urged the religious communities and minorities to respect each other and work together for a stronger and united nation where the former would not affect the latter. Scholars have debated and presented different arguments about Jinnah's vision of the state (Singh J. , 2010). Liberals as well conservatives have gathered profound arguments in their respective support regarding Jinnah's understanding of Pakistan. It is, however, still an unsettled question whether Jinnah wished a secular or an Islamic state. Liberals present Jinnah's views about the state (Gandhi, 1986, p. 180):

Pakistan would not be a theocratic country ruled and governed by priests only. The country has many non-Muslims and they are all citizens of Pakistan. Hindus, Christians, Parsis and other minorities will equally enjoy all the rights and civil liberties like other citizens of the country and henceforth will perform their duties in all affairs and matters of Pakistan.

Jinnah expressed similar views regarding the state on 11 August 1947 (Singh M. P., 2009):

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.

On the contrary, Islamists believed that Jinnah wanted to have a separate territory for the Muslims of India to perform their activities freely and independently according to the principles and culture of Islam. Islamists present Jinnah's vision of a state (Dani, 1981, p. 156):

I am not certain about the ultimate nature of Pakistan's constitution, but unquestionably it would be democratic, personifying the core principles of Islam.

Islamists present another argument regarding Jinnah views about state formation (Dani, 1981):

Islam and its core principles teach us democracy. Islam teaches us justice, equality of man, equity, tolerance and fair play to everyone. We the Muslims are the inheritor of such magnificent traditions and are fully alive to our responsibilities and obligations as framers of the future constitution of Pakistan.

Jinnah and his colleagues believed that Pakistan would improve the socio-economic conditions of its people, and people of each belief and religion would surely live as equal citizens. On 11 August 1947, in his often-quoted speech to the first Constituent Assembly of Pakistan, Jinnah said (Allana, 1969, pp. 407-11):

... You are free; you are free to go to your temples, you are free to go to your



mosques or any other places of worship in the State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State...

It is a coherent and influential manifestation of Jinnah's political ideology and wisdom. This address to the Constituent Assembly is a summation of Jinnah's views on the role of religion and the state, however, it has not been applied in any of constitution-making. The liberals and minorities in the country cite this particular assertion as the central principle of Pakistan's political realm. The liberal and secular quote this statement to back their vision of Pakistan. There are numerous arguments about the nature and formation of Pakistan's constitution, but Jinnah had a clear picture of the status of minorities. Jinnah knew that minorities have distinct traditions and culture and such variations in Muslim dominant society make the minority a separate entity and that separate entity needs special attention and protection (Jalal, *The Sole Spokesman: Jinnah, the Muslim League and the demand for Pakistan*, 1985, p. 14). Jinnah persistently reiterated that the non-Muslim minorities in Pakistan would have equal rights, privileges and social justice as the Muslims in the country (Ahmad, 1992, p. 121; Ali, 1967, p. 239). Jinnah demonstrated his secular faith with the appointment of Zafarullah Chaudhry an Ahmadi as Pakistan's first Foreign Secretary (Zaigham, 2014). It was very unfortunate that in the very formative phase of Pakistan, some members of the Constituent Assembly started to present an unfair, illiberal and regressive political structure for the country. A majority of lawmakers from West Pakistan argued that minorities in the Islamic republic could not be treated as equal citizens.

### **Minorities Constitutional Status after Jinnah**

After Jinnah departure, politicians did not endorse Jinnah's principles and vision of the state. Political leaders who came to power did not grant minorities equivalent rights and status as Muslims (Rais, 2004, p. 451). Political establishment after Jinnah's demise was too weak to build a strong democratic system that could provide minorities and ethnic identities equal representation in all sectors of Pakistan. Weak establishment created a political vacuum. This political vacuity was brusquely filled by the Islamists. The Islamists did every tread to make minorities second-class citizens against the wishes of the country's founder. Some of the prominent Ulema of that time conceded that only an Islamic government is the future of Pakistan, if it is not then it's not a democratic state. A famous Ulema and also a member of the Constituent Assembly stated that the Islamic state only endorses traditional principles of Islam. People who cannot associate or compromise with pure Islamic values cannot be subscribed to structure the specific policies of the state regarding its security and integrity (Choudhury, 1955, p. 590). Some of the Ulema even argued that the non-Muslim minorities in Pakistan have no voice in the law-making process and administrative structure and hence cannot hold public offices. A systematic approach to marginalize minorities started with the introduction of Objectives Resolution (OR) only a year after Jinnah's death. Political establishment sidelined minorities by introducing OR in 1949 (Rizvi, 2000, pp. 1-16). The OR placated the Muslim clerics and presented harsh attitudes towards



minorities (Jalal, *Ideology and the Struggle for Democratic Institutions*, 1997).

### **The Objective Resolution and 1956 Constitution**

The OR was condemned and opposed strongly by minorities. Minorities objected to the doctrine of OR because it established Pakistani nationhood on the principle of religious conformity. It revealed that every rule was to be made according to the principles of Islam. The Islamic principles were made compulsory for any constitution-making in Pakistan. It also gave a greater role to the Islamists. Minorities feared that entitling Pakistan as an Islamic state may alter minorities' status to second-class citizens. This fear became more obvious when the Islamists openly demonstrated against Ahmadis in 1953 (Malik I. H., 2002, p. 14). Firstly they demanded to declare Ahmadis as non-Muslims and insisted on the withdrawal of Chaudhry Zafarullah (an Ahmadi) from the office of Foreign Minister (Rafique, 2012, p. 103). Many Islamists also doubted the loyalty of the Pakistani Hindus and disgraced them openly (Majeed, 1998, p. 56). Conservative religious parties in the assembly even refused to grant minorities equal constitutional rights. Religious parties compelled the Constituent Assembly to issue a separate electorate for the minorities. The leaders of East Pakistan had different views from those of the leaders of West Pakistan. This difference between the leaders was mainly because of a considerable Hindu minority in East Pakistan. The West Pakistani leaders favored separate electorates, while the East Pakistani leaders preferred joint electorates. Members of the minority communities also endorsed the joint electorate because they believed that separate electorates would exclude them from mainstream national politics. Minority communities demanded equal civic, political and legal rights that could be assured and certain only under the joint electorate system. The majority of Eastern leaders and minorities communities also considered separate electorates incoherent with the two-nation ideology of Pakistan (Rais, 2004, p. 451; Ahmar, 2011, p. 49). Minorities argued that separate electorates would leave them disenfranchised in both parts of the country, and such measures would not work for national unity. Meanwhile, the first Constituent Assembly failed to reach any agreement on the issue of a separate or joint electoral system for the newly formed state. After the promulgation of the 1956 Constitution, a rather strange resolution was passed by the Assembly, West Pakistan for separate electorates and East Pakistan for joint electorates. The military imposed martial law in 1958 when Pakistan's first ever elections were going to held in both wings. The 1956 constitution was abrogated. The military establishment promised to formulate a new constitution that would be suitable and aspiring for the people of the country. The issue of separate or joint electorates was still unresolved and kept lingered on in political debates (Malik I. H., 2002, p. 15).

### **1962 Constitution**

In 1962, Ayub Khan devised the second Constitution of Pakistan. The Objectives Resolution was maintained as a preamble however the word 'Islamic' from the country's title was deleted (Malik I. H., 2002, p. 15). The Constitution suggested separate electorates for non-Muslim minorities. The military ruler General Ayub Khan, nevertheless did not endorsed the propositions took the decision



to hold joint electorates first time in the history of Pakistan. In successive elections under joint electorates, marginalization of minorities ended in his rule. In 1962 constitution Ayub Khan also reinforced his efforts to reverse the trend towards Islamisation. Objective resolution was included at first with some modifications. Thus it accepted that the sovereignty only belongs to Allah over the universe. As for the non Muslim were concerned it was held that no law could prevent any community from practicing or propagating their religion nor could a law compel a citizen to practice any religion other than his own (Pande, 2005, p. 150).

### **1973 Constitution**

Zulfikar Ali Bhutto assumed power when Pakistan had just passed a crisis (independence of Bangladesh). He imported hope for a stable and strong Pakistan. His government was successful in framing a unanimous constitution. Zulfikar Ali Bhutto presented the 1973 Constitution which was approved form the majority of assembly members. However, subsequent amendments completely altered its will and philosophy. First time in the country history, a definition was incorporated in the constitution as to who would constitute to be a Muslim. According to this definition a Muslim must have a belief in the finality of the Prophet hood. The Islamic provisions in the 1973 constitution were stronger than the previous constitutions. The republic, as in 1956, was again the Islamic Republic of Pakistan, however, for the first time Islam was made the religion of state (Article 2) (Baxter, 1974, p. 1084).

The Article 2 of the 1973 constitution states: The state religion of Pakistan shall be Islam and Article 2-A of the Constitution elaborates that the principle of democracy, liberty, social justice and egalitarianism would be articulated by the true teaching of Islam. Article 41 (2) ordains that the head of the state would only be a Muslim with no exception. Article 91 (3) further specifies that only a Muslim believing in the finality of the Prophet hood shall be the Prime Minister of the country. In addition, Article 227 proclaims that any law against the core principles and teachings Islam can not be passed and enforced in the country. Bhutto government even declared Ahmadis a non-Muslim sect via constitutional amendment. Such inclusions in the constitution gave the Muslim clergy an intervening role (Malik I. H., 2005, p. 210). These articles gave much importance and weight to fundamentalist and discriminated minorities in all fields. Minorities participation in politics was restricted. Any member of the minority community was declared unfit and unsuitable to become the head of state. These measures sidelined the minorities and made them a second class citizen in the country. Such measures against minorities have further institutionalized their inequality. Although Article 33 gives republic the responsibility to protect minorities' rights and privileges' with no discrimination including their participation in all services of Pakistan and Article 36 also clearly indicates that state must protect minorities in performing their religion freely. But events during the passing of 1973 constitution and the threats which minorities faced after Zia ul Haq amendments would not make any Pakistani proud (Rais, 2004, p. 456).



## **Zia ul-Haq's Amendments**

Gen. Zia ul-Haq also removed the word 'freely' from the Objectives Resolution in 1985 in his attempts to Islamicize the country. The word "freely" was part of the 1973 constitution. The clause originally read, "Wherein adequate provision shall be made for the minorities to 'freely' profess and practice their religions and develop their culture" (Daily Times, 2010). General Zia-ul-Haq, shortly after taking power proclaimed himself a true soldier of Islam, articulated many a time that for "genuine national integration" Islamizing Pakistan society would be the only way. On various occasions he also expressed, that Pakistan is only based on true principles of Islam. These principles are integral part of Pakistan ideology as without such principles Pakistan would be a secular state (Rakisits, 1988, p. 79). During General Zia's epoch extremism rose to its apex, moreover his period is considered to be the worst era in the history of Pakistan. The whole fabric of Pakistani society turned intolerant, radical and fanatical and divided which used to be peaceful, moderate and modest (Javaid, 2011).

Zia further amended the Pakistan Penal Code by adding sections 298-B and 298-C. Such provision made havoc on Ahmadis as after that they could not pose themselves as Muslims. Most notably they were even prohibited to propagate or preach the teaching of their religion freely or openly. With the implementation of such provision, Pakistan even violated the Universal Declaration of Human Rights and dishonored minorities who have always remained loyal to Pakistan (Mahmud, 1995, p. 84). Pakistan's failure to understand this situation has given rise to extremism and radicalism in its society. State authorities have never attempted to address the situation that has affected their social fabric brutally. Owing to extremism and militancy Pakistan has become a haven for terrorist, militants and extremists (Ahmar, 2011).

## **How Minorities Status can be Improved**

There is no doubt that minorities in the country face many threats in different aspects of life. Socially as well as politically, minorities endure discrimination and injustices. Minorities are relegated to a position where any individual belonging to a minority group can not hold a superior position like the head of the state or president. The Islamists and prominent political parties would not allow altering this established pattern. Both the Islamists and political mainstream parties have maintained this pattern since the passing of the 1973 constitution. The Islamists and political parties fear that changing this prevailing pattern might cost their vote bank and popularity among its supporters. Minorities' status mainly the political standing as imagined by Jinnah can be improved, however, it requires a holistic constitutional alteration. By effective legislation and amendments in the constitution, the bar of being a Muslim for the positions like the Prime Minister and President can be modified. The Prime Minister or President can not ratify any bill without the consent of the National Assembly. The majority members of the National Assembly and Senet in the country are overwhelmed by the Muslim members, hence a non-Muslim head of the state can never impose or pass any resolution once rejected by the majority Muslim cabinet. Moreover, if



Pakistan gives equal political rights to its minorities by allowing them to hold superior positions, it would enhance the country's overall image as a democratic country.

The minorities' representation in the National Assembly, Senate and all four Provincial Assemblies at the highest forums of the country needs to be increased, according to the genuine population of the minorities. The better representation of minorities belonging from all the religious groups would certainly help them in solving the issues of their respective communities. The problem of underrepresentation in the National assembly and Senet can be solved if the Election Commission of Pakistan, through effective legislation compels all the political parties to award a minimum of three percent tickets to minority candidates to contest in general elections. The parties' reluctance to award tickets to their members belonging to minorities, however, has resulted in their systematic relegation and exclusion from mainstream politics. Different minority groups often accused that their population has been kept intentionally low in the official documents. These minorities groups demand that the government should get the exact population of the minorities through a proper census and on basis of their population, the minorities should be facilitated at different public departments like health, police and education etc.

Minorities have become victims of harsh attitudes on several occasions. The government needs to adopt strict measures to avoid religious incidents. The element of extremism and hatred against minorities can be effectively prevented. The first practical step in this direction would be the effective functioning of the Anti-Terrorism Act and severe punishments against those who violate law and order situations. These steps might help prevent violent attacks against minorities and their holy places. The government should also ban derogatory speeches against any religious sect and minority group at public places as offensive remarks eventually results in extremism and attacks against the religious minorities.

There is a need to implement the employment quota reserved for the minorities in different public departments on a factual basis. If the jobs are given as per the quota, the youth from the minorities can have jobs in all the public departments as so far majority of minorities have been reduced to sanitary jobs mainly. There is a dire need to amend the blasphemy laws to prevent their misuse against the minorities. In several cases, it is observed that the cases are filed against the minorities under the blasphemy laws to settle personal scores. The process of registration of a case under the blasphemy law should be tightened through effective amendments and also, the person who is proved to file a case against a member from the minorities in mala fide; he/she should be punished at least three years imprisonment or a fine of worth 100,000 rupees or both. The forced or illegal marriages of non-Muslim women must be dealt with proper attention and such women should be given the choice of returning to their families. In Islam apostasy is outlawed hence government of Pakistan must look forward to abandoning all conversions that have been practiced under compulsion. Pakistan must provide a safe environment where non-Muslim women can follow their religion freely when abducted or forcibly converted to Islam. The state must look into the law of Qisas and Diyat ( Blood money) and no citizen should be compelled to make a declaration of



his/her faith or denounce other's faith. The judiciary at all levels and law enforcement agencies must protect the minorities as under the law all citizens are equals. All the institutions must promote religious tolerance which is essential for all Pakistanis to live as independent citizens. Pakistan's constitution gives much importance and prestige to Muslims, whereas minorities' rights are undermined. Minorities must be given privileges as Muslims. Properties belonging to minorities', shrines and trusts have been taken over under the pretext that the owners have migrated to India while only the managers may have gone away and the community owning these properties is still here. The state must look after the prestigious places of minorities. The minorities many a time are threatened in Pakistan, when Muslims are undermined in foreign countries. For example with the demolition of Babri Mosque in India by extremist Indians, resulted a widespread destruction of temples and churches in Pakistan. Similarly after the September 2011 events Christian came under brutal and severe attacks by Pakistani Muslims. The above cases indicate that Pakistan must guarantee the protection of such sacred places at every cost.

### **Conclusion**

According to Jinnah religion was a personal matter of individuals and he stressed for the equality of religions. He visioned a country, where Muslims and minorities could live freely, independently and practice their believes without any discrimination and restriction. The anti-Ahmadiya riots, the Objectives Resolution, 1956, 1962 and 1973 Constitutions have only emphasized the role of religion (Islam) in the political evolution of the country. There are myriad of arguments either Jinnah visioned a secular or a theocratic Islamic state. However, the critical and acute examination of his statements delivered at different occasions, Jinnah's imagination of the state and its constitution, make us clear about Pakistan. Unfortunately, after Jinnah, constitution making was against his vision. The legislations about the minorities in the all the constitutions of Pakistan depict the regretful story of their persecution. The need of the hour is to modify the odious legislations in the constitution against minorities, and enact new amendments based on the true social and Islamic philosophy.



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