

## Protection of Religious Minorities and Women: The Impact of Islamic Law in Pakistan

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The concept of international protection of minority rights is one of the most striking developments of international law. With the acceptance of democratic ideology, it became even more important to ensure protection to minorities, without which democracy and popular rule would come to mean the same thing. If democracy is not to become to mean the tyranny of the majority, it must provide the highest place to the protection of minority rights in order that they receive due priority. As such minority rights should form one of the basic principles of a democratic polity. Yet unlike other doctrines, minority rights are not accepted readily. Even in the Universal Declaration of Human Rights, the rights of minorities received a low profile. Hopefully, with the development of the concept of human rights world wide, the awareness for the need to provide more effective protection to minorities will increase. However, despite this consciousness among human rights activists and the fact that major global conflicts center around the issue of minorities, activists have not been able to create or mobilize international public opinion on this issue. Particularly in the developing world the minority issue remains a sensitive one, with deep rooted prejudices both towards and by the minorities themselves.

### **Minorities and National Movements**

The issue of securing rights for minorities has become particularly complex in Asia. In countries where self rule and independence is a recent phenomenon, minorities suffer on many counts. The nationalistic

tendencies of the newly independent state tend to dominate the cultural and ethnic practices of the minority in order to reflect a uniform culture, language and practice. Historically, the movements for independence justified their claim for nationhood by emphasizing their common nationality. In many cases these nations had not existed in their current geographical state prior to the colonial era; the Indian subcontinent, for example, was never a single nation but a collection of many smaller nationalities. It was admittedly often conquered and ruled by a strong invader but it had never existed as a nation state until the advent of British rule. The Indian nationalist movement aspiring to replace British rule emphasized common Indian nationhood. Similar events happened in most other Asian nationalist movements as well. The Pakistan movement emphasized Muslim nationhood as a unifying factor, while cultural and ethnic divergences were ignored. This strategy was adopted in order to collect the largest possible number on one platform and to justify their claim of a single nationhood.

An unfortunate corollary to such assertions was the eclipse of minority cultures and religions. Where national movements had a shorter history and lesser depth, the majority felt even more insecure and thereby exaggerated its nationhood even more. In Pakistan the homeland for Muslims became a theocratic state and as the original concept came under threat from modernizing forces and minorities, obscurantist forces reacted even more violently. As they experienced the rough and tumble of regional politics, they felt an urgent desire to fuse the national identity as soon as possible to guard against any fissiparous tendencies. Hence, a normal desire of a region to preserve its individual culture and identity was considered a threat to the nationhood of the whole. This became a vicious circle: the greater the pressure to diminish the importance given to various cultures practiced in the country, the more efforts are made by the minorities themselves to highlight their own cultural practices. This developed into an open confrontation between the so-called "patriots" and the minorities.

Moreover, in a newly independent state, the minorities themselves sometimes jealously guard their own identity in order to preserve themselves from annihilation. Here, either the governments adopt a hands-off policy or the minorities themselves resist integration, hence invoking an adverse reaction from the majority. Where governments are particularly sensitive in interfering in the internal affairs of the minority, their progress is impeded. Legislation affecting the personal status of minorities remains outdated and lacks reform or progressive interpretation by the courts. One such example is Christian personal law in Pakistan. Many petitions from the Christian community beseeching

legislative reforms have fallen upon deaf ears. Until 1975 the Christians in Pakistan were defined as "native Christians" in laws affecting the community—a derogatory term used for Indian Christians by their colonial masters. Presently the Christian community in Pakistan faces an impossible situation in family law. No Christian can be divorced until adultery is proved. Yet by the introduction of the new Islamic Criminal Law adultery is now a serious criminal offense. Hence in every divorce case of a Christian, one of the parties can be held criminally liable. Similarly personal laws of other minorities in Pakistan are equally ignored and have never seen any reform. Such benign neglect by the legislature amounts to infringement on the rights of any community to be governed by just and fair laws.

Any reform means discussion, difference of opinion and possibly turmoil within the community. Where minorities are concerned members of the legislature normally prefer to shut their eyes to any requirements for change in order to avoid confrontation. They would rather not expend any energy or devote any time to the betterment of the minority, especially when it may lead to criticism. An eminent case in point is the famous Shah Bano case in India, discussed also in the earlier chapter by An-Na'im. Here a divorced Muslim woman asked for maintenance from her husband through the courts. The Indian Criminal Procedure Code gives the right to claim maintenance from a former spouse in case the claimant becomes financially destitute. Shah Bano was granted a nominal sum of \$10 per month. Her husband appealed against the order of the magistrate and lost his case at the Supreme Court level. The maintenance provision in the secular Criminal Procedure Code, which could be utilized by all wives (including divorced Muslim women), was clearly a valid piece of legislation since it related to public order and morals and was designed to prevent vagrancy and immorality of women in economic penury. Nevertheless the Muslim Community of India was outraged and the legislature conveniently enacted a Muslim Women (Protection of Rights on Divorce) Act 1986 to pacify Muslim sentiment. Ironically, even in a secular state like India, communal sensitivities prevail over secular concepts.

Owing to this particular neglect of personal laws the disadvantaged groups within the minorities suffer on two counts, as a minority and as a depressed class in their own community. Minority women, for example, suffer the rigors of a male-dominated society and the discontent of a minority group. Where minority women struggle for equality they face opposition from their own community and are taken as traitors to the cause of the community as a whole.

### Minorities, National Stability and International Tensions

In countries where democratic principles have not taken root, minorities are normally under constant pressure on many counts. Their status changes with the formulation of renewed policies towards them. Sometimes they are victims of normal practices of dictatorship where public attention has to be constantly diverted and the oppressed communities made easy targets of these tactics. To avoid such a possibility, the communities become dependent on pressure groups or on the goodwill of an autocratic system. As such they are exploited by both. The minority groups have sometimes little choice in such circumstances but to go along with the system for survival. Owing to their insecurity they do not openly identify any violation of their rights. They end up becoming a submissive class of society and do not contribute any force to the movements against arbitrary rule. Often human rights activists, with regard to the protection of minorities, lack in intensity owing to their resentment against such groups which strengthen the prevalent force in power or refrain from taking part in the general human rights struggle. Unfortunately, the role of some minority groups during the colonial period has also not been forgotten or forgiven. Many of these groups actively cooperated with their colonial masters and hence lost credibility.

On the other hand minorities play an important role in a democratic system. Their support can determine electoral results. This power has often been misused by the minorities themselves. Their politics become inward looking and their sole goal is to protect their own group even at the cost of national interest.

Modern states no longer consist of a homogeneous mass but are often collections of various ethnic groups. Hence a state may find itself at war with the "parent state" of its own minority. In such circumstances of external tensions or conflict, the states sometimes begin to suspect the loyalties of their own minorities. Witness the arrest of ethnic Japanese in the United States after Pearl Harbor, which must have been as much of a surprise to them as to the United States navy, the discomfort of the Muslims of India whenever the relationship between India and Pakistan or Bangladesh is questioned or the awkwardness of the Chinese Malaysians in their relations with Singapore or Malay Singaporeans in their own country. Such suspicions obviously arouse estrangement among the minorities and the initial doubts about their loyalty are an irritant to them. Thus these minorities lose all confidence and shy away from taking any position in national politics.

### Religious Revivalism and Minorities in Pakistan

The position of minorities in Pakistan has remained subservient to any Muslim citizen ever since independence. Nevertheless prior to Islamization both the government and the politicians paid lip service to their plight. Religious minorities in Pakistan constitute only about four percent of the entire population and are as such no threat to the majority Muslim population of Pakistan. Out of a population (as of 1981) of approximately 84,253,644 Pakistanis, 1,310,416 were Christians, 1,276,116 Hindus, 104,244 Ahmedis, 7007 Parsis, 2146 Sikhs and 2639 Buddhists.<sup>1</sup> Although in the case of Ahmedis the Government figures are disputed, even so, the religious minorities should form no threat to the vast Muslim population of Pakistan. However, in recent years with the so-called "Islamization" process minorities have suffered a serious setback. Not only does the present regime seek to promote a theocratic state based on rigid and narrow interpretations of a few fundamentalists, but efforts are being made to codify all laws in conformity with the beliefs of the majority sect within the Muslim community. Hence even the Muslim minority sects feel threatened and are agitating against such laws. This in turn has made discussion of religion an extremely delicate and explosive issue. Sectarian riots between the Fiqh-e-Jaffria and the Sunnis erupt on every Moharram (religious month of mourning for the Shias). The Government is alleged to be persecuting anyone belonging to Fiqh-e-Jafferia. The leaders of this sect have produced a circular sent out by the Government to identify all government servants belonging to this sect.

The present Parliament introduced an amendment to the Constitution which gave wide powers to the Shariat (Islamic) courts to interpret Muslim Personal Laws, any law relating to the procedure of any court or tribunal. This Ninth Amendment to the Constitution sought to bring all laws of the land into conformity with the injunctions of Islam as laid down in the Qur'an and Sunnah. As a follow-up a Shariat Bill was introduced, promulgated later as Ordinance I of 1988,<sup>2</sup> which gave the Shariat Courts jurisdiction to interpret all laws and to decide whether they were in fact truly Islamic. Even the Parliament was debarred from making any legislation which did not go through the Islamic qualifications of the Shariat Court. Both these proposed laws were opposed by minority Muslim sects and progressive women's organizations. Owing to differences of belief among the various Muslim sects no single codified law satisfied the entire Muslim population. The minority Muslim sects therefore fear an imposition of the official Islamic version which may be contrary to their own beliefs.

The Ulemas desire to see Pakistan as a total theocratic state, yet they are divided in their opinion when they are asked to cite some precedent of an Islamic State in Muslim history. Their position regarding minorities in Pakistan is most disturbing. The government of Pakistan set up an Inquiry Commission to investigate the reasons for sectarian rioting in 1953.<sup>3</sup> The report interviewed Ulemas to determine how they perceived the rights of minorities in a Muslim State. The Inquiry concludes, "According to the leading Ulemas the position of non-Muslims in the Islamic State of Pakistan will be that of 'Zimmies'; they will not be full citizens of Pakistan because they will not have the same rights as Muslims. They will have no voice in the making of the law, no right to administer the law and no right to hold public office."

Some of the leading Ulemas were questioned about the position of non-Muslims in Pakistan in relation to the rights of Muslim minorities in other countries. Their responses were illogical and averse to all concepts of human rights. Portions of their responses are reproduced below:

*(The evidence of Maulana Abul Hasanat Sayyad Mohammad Ahmad Qadrin.)*

Q. If we were to have an Islamic State in Pakistan what will be the position of the KUFFAR (non-Muslims)? Will they have a voice in the making of laws, the opportunity of administering the law and the right to hold public offices?

A. Their position will be that of ZIMMIES. They will have no voice in the making of laws, no right to hold public offices.

Q. In an Islamic State can the head of the State delegate any part of his powers to KUFFAR?

A. No.

*(Mian Tufail Mohammad.)*

Q. Have you read the article on minorities rights in the "Civil and Military Gazette" of 13th October 1953 and [can you] say whether it correctly represents your view of an Islamic State? [It was stated in the article that minorities would have the same rights as Muslims.]

A. I have read this article and do not acknowledge these rights for the Christians or other non-Muslims in Pakistan if the State is founded on the Ideology of the Jama'at.

*(Maulana Abdul Haamid Badayuni, President of the Jami'at-ul-Ulema-i-Pakistan.)*

Q. Have you ever read the aforesaid speech [the speech of the Quaid-e-Azam to the Constituent Assembly of Pakistan on 11th August, 1947]?

A. Yes, I have read that speech.

Q. Do you still agree with the conception of Pakistan that the Quaid-e-Azam presented to the Constituent Assembly in this speech in which

he said that thereafter there would be only one Pakistan nation consisting of Muslims and non-Muslims, having equal civic rights, without any distinction of race, religion or creed and that religion would be merely a private affair of the individual?

A. I accept the principle that all communities, whether Muslims or non-Muslims, should have, according to their population, proper representation in the administration of the State and legislation, except that non-Muslims cannot be taken in the army or the judiciary or be appointed as Ministers or to other posts involving the reposing of confidence.

Q. Are you suggesting that the position of non-Muslims would be ZIMMIES or any better?

A. No. By ZIMMIES are meant non-Muslim people of lands which have been conquered by an Islamic State, and the word is not applicable to non-Muslim minorities already living in an Islamic State. Such minorities are called MU'AHIDS, i.e. those people with whom some agreement has been made.

Q. What will be their status if there is no agreement with them?

A. In that case such communities cannot have any rights of citizenship.

Q. Will the non-Muslim communities inhabiting Pakistan be called by you as MU'AHIDS?

A. No, not in the absence of an agreement with them. To my knowledge there is no such agreement with such communities in Pakistan.

(*Maulana Abul Ala Maudoodi:*)

Q. Is there a law of war in Islam?

A. Yes.

Q. Does it differ fundamentally from the modern international law of war?

A. These two systems are based on a fundamental difference.

Q. What rights have non-Muslims who are taken prisoners of war in a JIHAD?

A. The Islamic law on the point is that if the country of which these prisoners are nationals pays ransom, they will be released; an exchange of prisoners is also permitted. If neither of these alternatives is possible, the prisoners will be converted into slaves for ever. If any such person makes an offer to pay his ransom out of his own earnings, he will be permitted to collect the money necessary for the FIDYA (ransom).

Q. Are you of the view that unless a Government assumes the form of an Islamic Government, any war declared by it is not a JIHAD?

A. No. A war may be declared to be a JIHAD if it is declared by a national Government of Muslims in the legitimate interests of the State.

(*Amir-i-Shari'at Sayyad Ataullah Shah Bokhari:*)

Q. In your opinion is a Musalman bound to obey orders of a KAFIR Government?

A. It is not possible that a Musalman should be a faithful citizen of a non-Muslim Government.

Q. Will it be possible for the four crores [40 million] of Indian Muslims to be faithful citizens of their State?

A. No.

Q. How many crores of Muslims are there in India?

A. Four crores.

Q. Have you any objection to the law of Manu being applied to them according to which they will have no civil rights and will be treated as MALISHES and SHUDARS?

A. I am in Pakistan and I cannot advise them.

(*Mian Tufail Mohammad of Jama'at-i-Islami:*)

Q. What is the population of Muslims in the world?

A. Fifty crores [500 million].

Q. If the total population of Muslims of the world is 50 crores, as you say, and the number of Muslims living in Pakistan, Saudi Arabia, Yemen, Indonesia, Egypt, Persia, Syria, Lebanon, Trans-Jordan, Turkey and Iraq does not exceed 20 crores will not the result of your ideology be to convert 30 crores of Muslims in the world into hewers of wood and drawers of water?

A. My ideology should not affect their position.

Q. Even if they are subjected to discrimination on religious grounds and denied ordinary rights of citizenship?

A. Yes.

He went to the extent of asserting that even if a non-Muslim government were to offer posts to Muslims in the public services of the country, it would be their duty to refuse such posts. Therefore it is not surprising to see a complete decline in the status of minorities ever since Pakistan's ulemas have taken over the reins of control in the country—developments the Benazir Bhutto government has not fully reversed.

In 1979 the Council of Islamic Ideology recommended a change in the criminal system of the country. The proposed Bill was enacted and enforced in the form of the Hadood Ordinances of 1979,<sup>4</sup> dealing with the punishment and procedures for the crimes of theft, dacoity, rape, extramarital sex, slander and drinking of alcohol. Except in the case of prohibition of alcohol the law applies to non-Muslims as well. However, non-Muslims and women have no right to give evidence in cases where maximum punishment can be awarded to the accused, unless the accused is himself a non-Muslim. Therefore, a Muslim male proved beyond doubt of having raped several women in broad daylight in the presence of hundreds of non-Muslims and women legally cannot get the maximum prescribed punishment. All crimes covered by the Hadood Ordinances are tried in the Shariat Courts where the judges are Muslims. Article 203 E of the present constitution even debar non-Muslim lawyers from appearing in this Court. This article was challenged

before the Shariat Bench of the Supreme Court.<sup>5</sup> The Court granted the petitioner leave to appeal but at present non-Muslim lawyers cannot appear in the Shariat Courts as counsels.

Non-Muslims in Pakistan are also excluded from participating in national politics by way of a separate electorate system. Muslims and non-Muslims are enrolled separately for voting in general elections. Non-Muslims can only vote for candidates contesting elections on their reserved quota seats. At present there are 207 Muslim members of the National Assembly. Ten seats are allocated to the minorities. Twenty seats are reserved for women, who are elected by members of the National Assembly. In 1985 Article 51 of the Constitution was amended to exclude non-Muslims from contesting general elections to the Parliament. This negates the principles of an egalitarian democratic order. In fact its effect is to usher in a system of apartheid based on religious beliefs. Elections can be meaningful only when these are held in a manner that encourages the various sections of societies, including the religious minorities, to join in the mainstream of the national political and economic order. Elections on the basis of a system of separate electorates have the effect of defeating the principle of one man one vote, thereby diluting the political power of the religious minorities. Persons elected under such a system cease to remain responsive to the need for integrating religious minorities in the political and development process.

### The Ahmediya Community

The Ahmediya community needs to be particularly mentioned when considering the position of minorities in Pakistan. Although all Muslim sects have differences in belief, the Ahmedis were singled out owing to a number of reasons. This community is a very good example of a minority sect withdrawing into a shell and turning introspective. Its members felt self-sufficient and believed that only their sect followed the true spirit of Islam. They firmly believed all non-Ahmediya to be inferior Muslims. They actively propagated their belief and constantly tried to convert others to be Ahmedis. Marriage outside their own sect was discouraged and they led a clannish life in every way. They did not offer prayers behind a non-Ahmedi Ulema. In fact when Mr. Jinnah, the founder of the nation died, the Foreign Minister, who was an Ahmedi, did not join the funeral prayers.

Action of this sort invoked a tremendous backlash by the majority sects, who are quite intolerant even in normal circumstances. Public opinion against the Ahmedis grew, and efforts have been made since 1953 to get the Ahmedis declared non-Muslims. In 1974, the legislature

amended the 1973 constitution to define a Muslim; Article 200, (3) (a) (b) was added and the Ahmedis were specifically declared as non-Muslims. Subsequently the Shariat Court also approved of this constitutional amendment.<sup>6</sup> In 1953, however, the Munir Inquiry Commission, set up to look into the reasons for sectarian riots against the Ahmedis, had not recommended that Ahmedis be declared non-Muslims. Similarly a case instituted against Ahmedis in the Supreme Court of South Africa was dismissed and Ahmedis were accepted as a Muslim sect by the court.<sup>7</sup> Nevertheless a vast majority of Muslims consider the Ahmedis to be non-Muslims and are extremely emotional about the issue. For example, the Saudi Arabia Government does not allow Ahmedis to perform the Haj. The 1974 declaration was a serious blow to the Ahmedis, who are passionately convinced of being complete Muslims.

But even as non-Muslims they have not been left alone. Giving them non-Muslim status was not considered enough, and further laws were enacted to humiliate them. The situation today is so extreme that persecution of the Ahmedis is considered an acceptable phenomenon, even by liberals. Muslim Ulemas take pride in threatening the safety of members of this community. Derogatory terms are used for them and newspapers publish these statements prominently. The President of Pakistan, while addressing a group of Ulemas, also vowed to curb this community. Neither judges nor politicians dare to protect this minority. In fact the situation is sometimes so ridiculous that it is almost comical. When the present foreign minister was rumored to be an Ahmedi, the President had to publicly assure the citizens of his Foreign Minister's faith. Every public servant fears being accused of belonging to this sect and conceals any affiliation to an Ahmedi. In fact this has sometimes been exploited to discredit political opponents. Intolerance towards this community is almost on the fringes of insanity.

The present regime promulgated Ordinance XX in April 1984; it provides prison terms of up to three years and unlimited fines for any member of the Ahmediya community who uses certain words of address, calls his place of worship a "Masjid," recites the "Azan" (Muslims' call for prayers) or "poses himself as a Muslim, or calls or refers to his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims." This Ordinance also provides for its being effective "notwithstanding any order or decision of any court." The Ordinance was challenged in the Federal Shariat Court, but the petition was dismissed on the grounds of public order and security of peace.

Every Pakistani has to enter a declaration of being a Muslim while filling in any official form. The declaration includes denouncing all

Ahmedis and their religious leaders. This declaration was made in order to compel the Ahmedis to adhere to the law and be given non-Muslim status. However, it is particularly harsh even for those Muslims who may not necessarily believe in the Ahmedi faith, yet who do not wish to be a party to the persecution of this community. They are given no choice but to sign all such declarations if they are to obtain national identity cards, passports or other official documents.

There are numerous reported cases of arrests of Ahmedis who have violated Ordinance XX. In some cases the Ahmedis have courted arrest, while in others they have been convicted for resorting to violence while actually defending themselves. Wherever confrontation has taken place no non-Ahmedis have been apprehended. In early 1989, four Ahmedis were under sentence of death, hundreds were detained and many violently beaten by the public. In 1988 a Magistrate sentenced an Ahmedi tailor to 10 years imprisonment for displaying the 'Kalima' at his shop. During his trial several Muslims gathered in the court room to hear the proceedings of the trial. After hearing the verdict the crowd was jubilant and raised slogans of "long live Islam" and "long live Pakistan."

The international community has protested against the persecution of Ahmedis but these acts are criticized by orthodox religious leaders as interference in the religious beliefs of Muslims. The United Nations Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1895/21 found, inter alia, that Ordinance XX constituted a violation of the rights of Ahmedis to practice their beliefs openly. At the 1986 session of the Commission on Human Rights, many governments and non-government organizations addressed this issue under agenda item 23 (religious intolerance) and agenda item 12 (gross violation). The United Nations' concerns were shared even in the United States Congress. Representative Tony Hall introduced concurrent Resolution 370, asking for the repeal of Ordinance XX. The international pressure is now being felt in Pakistan as some human rights groups and individuals have openly condemned persecution of Ahmedis.

### Conclusion

Minorities should be allowed to preserve their own ethnic and cultural identity, yet encouraged to fight for social reform and change within their own group. They must be encouraged to develop among themselves a consciousness so that minority groups would not be frogs in a well but would have the capacity to unite with national human rights groups to press for change and reform in the society as a whole.

In particular, women from minority groups should be made socially active. In the past, women, especially in minority groups, have failed to raise issues because they did not wish to seem disloyal and insensitive to discrimination directed against their men. The focus should be directed mainly on individual rights while seeking to preserve the humane traditions and practices of minorities.

### Notes

1. *Pakistan Statistical Yearbook 1988* (Islamabad: Federal Bureau of Statistics), 1988, p. 52.
2. *Gazette of Pakistan, Extraordinary*, Part I, 15th June, 1988. According to Article 3, "Shari'ah shall be the supreme source of law in Pakistan and Grund Norm for guidance for policy-making by the State. . . ."
3. *Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953* (Punjab: Superintendent of Government Printing, 1954). Subsequent quotations from pp. 213-14.
4. Hadood Ordinances 1979, promulgated 9th February 1979. *Gazette of Pakistan* No. F.17 (Islamabad: Government Printer).
5. Mohammad Ashraf vs. the State, *1986 Supreme Court Monthly Review* (Islamabad: Government Printer), p. 1785.
6. *1985 Pakistan Legal Decisions, Federal Shariat Court* (Islamabad: Government Printer, 1985), p. 8.
7. Supreme Court of South Africa, Case. No. 10058, decided on 20 November 1985.