

Rights of Minorities in India and Pakistan: A Comparative Study

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Abstract

At the verge of the independence, two separate dominions were established by the British Government on the basis of religion. Although two major communities are divided on religion, a large numbers of minorities are living at either nation. Pakistan constitutionally declared as Islamic Nation whereas India declared herself as secular nation. However, Muhammad Jinnah had guaranteed that minorities are free to profess and practice their religions and develop their cultures. Consequently, the Constitution of Pakistan guaranteed some basic rights and fundamental freedoms under the Constitution. Unfortunately, these constitutional guarantees were not implemented in reality inspite of Jinnah's assurance. Presently, Pakistan is one of the most hostile states for the minorities in the world. The reasons behind that after 1977 Pakistan became more orthodox and tried to Islamized the entire nation and political campaigned was focused on religious hatred.

This paper endeavors to comparatively analyze the status of minorities in India and Pakistan and their respective constitutional safeguards. It further focused on Constitutionalism which is original and real sprite of the nation towards execution of noble ideas on ground reality. Therefore, written constitution has a very little impact, it is the constitutionalism or the sprite and willingness of the political parties and people who govern the state and execute the rights in reality.

Key words: *Minority Rights, Constitutionalism, Human Rights, Constituent Assembly Debate*

I. Introduction

In 1947, on the basis of the religion the unified British colony, India has been divided as Union of India and Pakistan. The partition of India was merely a political decision which was not supported by the public opinion. No public opinion was taken before creation of Pakistan. Until 1947, the two major

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religious communities Hindu and Muslim were living in undivided India with complete harmony. This religious harmony and tolerance had been historically witnessed at the time of the Partition of Bengal. In 1905 both the community fought together to unsettle the settled British policy of Partition. The Partition of Bengal which was recommended by the Morley Minto Reform Act, 1905. Finally, the decision of the partition was withdrawn by the British Government in 1913 due to the immense public movement and agitation.²

It is quite surprising that the two religious communities with strong co-operation who have successfully fought against British Raj had changed their motives and claimed for two separate nations after 40 years. The reason behind this change there was only one person i.e. Muhammad Ali Jinnah (1876-1948). He has started his political career in the year 1913. Jinnah was an English educated lawyer who joined the Indian National Congress in 1913. At that time the political stand of the Muslim League was parallel running with the Hindu community with complete harmony and co-operation. After Jinnah was elected as the President of the Muslim League in 1916, gradually, the claims of separate Muslim State became prime agenda of the League.³ Although the two religious communities Hindu and Muslim had fought together for the independence, they became divergent on the demand of separate statehood for Muslim. In October, 1916 the Muslim League presented a reform memorandum which claimed for separate electorates for Hindus and Muslims and they claimed to have one-third representation of Muslims in Central Government. The National Congress had accepted the demand on the basis of proportionate representation of the minority communities and the same has been ratified in Lucknow Pact in 1916.⁴ However, at the end of 1927, the National Congress Party has claimed for complete independence from Britain. On 28th August, 1928 Motilal Nehru as the President of the Congress Party has presented the Nehru Report in the Central Assembly. The Nehru Report has rejected the policy of separate electorate for the Muslims and also

² BIPAN CHANDRA & MRIDULA MUKERJEE et al., INDIA'S STRUGGLE FOR INDEPENDENCE, 133-134, (Penguin Books 2016).

³ JUDITH E. WALSH, A BRIEF HISTORY OF INDIA, 178-179, (Infobase Publishing House 2006).

⁴ JAMES WYNBRANDT, A BRIEF HISTORY OF PAKISTAN, 30-33, (Infobase Publishing House, New York, 2009).

eliminated any weightage given to minority communities and making Hindi as national language. Moreover, it claimed for reducing Muslim representation in the Central Assembly from the one third to one-quarter. The Muslim Community refused to accept the report and attempt to find out an alternative path. In the reaction to the Nehru Report, Muhammad Ali Jinnah drafted his fourteen point's agendas in 1929 which became the core demands of the Muslim communities for the future course of the Muslim community. The main objections framed by the Jinnah as well as Muslim League were mainly two folds. *Firstly*, they claimed the separate electorates and weightage as per the Congress-Muslim League agreement in Lucknow Pact provided these to the Muslim Community were rejected.⁵ *Secondly*, they claimed that the residuary powers would be prevailed to the provinces because the Muslim community realized that they would be a majority in the provinces of North-East and North-West of India and hence would control their provincial legislatures and they could able to preserve their minority interest. Addressing before a huge crowd, at the Lahore Resolution in March 1940 Jinnah told, "*Muslims are not a minority as it is commonly known and understand...Muslims are a nation according to any definition of a nation, and they must have their homelands, their territory and their state.*" As a result of continuous agitations for the separate Muslim state led by Jinnah the British Parliament decided to create two separate dominions i.e. India and Pakistan. On the 18th July, 1947 the British Parliament passed the Indian Independence Act, 1947 which provided the foundation for establishment of Pakistan and India as two dominions the British Commonwealth. Thus, due to the religious provocation and on the basis of the ideology of two nation's theory the new nation Pakistan came into existence. However, the demography of the newly established Pakistan certainly not homogeneous and huge numbers of non-Muslim communities was residing in Pakistan at that time. Jinnah and his modernist Muslim colleagues believed that they would able to improve the social-economic conditions of both Muslims and Non-Muslims equally without being a secular state.⁶ On 11th August 1947, in his quoted speech to the first Constituent Assembly of Pakistan, Jinnah addressed the minority communities as "...*you are free; you*

⁵ *Id.* at 34.

⁶ The Report on Religious Minorities in Pakistan, (Minority Rights Group International), at 6-7.

are free to go to your temples, you are free to go your mosques or to any other places of worship in the state of Pakistan that has nothing to do with the business of the State.”⁷

II. The Protection of Minorities in Indian Legal Framework

In respect of religion, among the South Asian nations India is the most diverse. It is the peaceful abode of religious majority and minorities. Virtually, all the major religions in the world are residing in India. The majority community is Hindu with 79.8% of the total population and all other religious communities together constitute 20% and are collectively considers as minorities.⁸ Among those minorities Islam is largest minority group with 14% of the total population and followed by the Christianity (2.3%), Sikh (1.72%), Buddhism (0.70%), Jain (0.37%) and others (0.9%).⁹ The Islam is the largest religious minority constitutes above 14% of the total population of the nation and scattered all over the country.¹⁰

Since the ancient times India is a place of religious tolerance and pluralism. Therefore, the framers of the Indian constitution were well aware of that and thus they introduced the concept of secularism by the Constitution of India, 1950. The Constitution declares that there shall be no state religion. Religious tolerance and equal treatment of all religious communities are the essential parts of secularism. Secularism in India does not mean anti-religion. It respects the all religion and faiths but does not identify itself with any particular religion. There is no state religion and all religious groups enjoy the same constitutional protection without any favour or discrimination.¹¹

Article 25(1) guarantees to every person the freedom of conscience and the right freely to profess practice and propagate religion. It should be noted that this right is not confined only to the citizens; any person is entitled to get it even foreigners. However, it is clear that the rights conferred on the persons and

⁷ IAN TALBOT, *FREEDOM’S CRY* 30-35 (Oxford University Press 1996).

⁸ Census of India Report, 2011.

⁹ *Id.*

¹⁰ Editorial, *Religious Communities Census 2011: What the number say*, The Hindu, Apr 26, 2016, at 12.

¹¹ S. RADHAKRISHNAN, *EAST AND WEST: SOME REFLECTIONS* 40-41 (George Allen and Unwin Ltd, London, 1955).

religious denominations by Article 25 are not absolute. Their exercise is subject to maintenance of public order, health and morality. This guarantee under the Constitution of India, not only protects the freedom of religious opinion, but it protects also acts done in pursuance of religion.¹²

Articles 25 to 28 of the Indian Constitution confer certain rights relating to freedom of religion not only on the citizens but also on the all person in India. These constitutional provisions guarantee religious freedom not only to the individuals but also to religious groups.

Further, Article 26 lays down that every religious denomination or a section thereof has the rights to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion. However, this right is subject to public order, morality and health.¹³

Article 25 and 26 are general in character its grant the religious freedom to minority as well as majority religion. To say more precisely, these Articles do not intend to deny the same rights to the Hindu majority. Therefore, protection under Article 25 and 26 is available to Hindus as well.¹⁴

Whereas Article 25 and Article 26 are general in character Articles 29 and 30 are specific to the protection of the minorities. Under Indian Constitution Articles 29 and 30 protect and guarantee certain cultural and educational rights to various cultural, religious and linguistic minorities reside in India. According to Article 29(1) , any section of the citizen residing in the territory of India or in any part thereof having a distinct language, scripts or culture of its own shall have the right to conserve the same. Therefore, this constitutional right is conserved for “any section of the citizen” irrespective of their minority status. In order to invoke the Article 29(1), all that is essential that a section of citizens, residing in India should have a distinct language, script and culture of its own. If they possess these conditions they have the right “to conserve the same”.¹⁵

¹² Sri Lakshmana Yatendru v. State of Andhra Pradesh, A.I.R. 1966 S.C. 1414, (India).

¹³ INDIA CONST. art. 26.

¹⁴ M.P. JAIN, INDIAN CONSTITUTION 1216 (5eds. Wadhwa, Nagpur 2005).

¹⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1221-1224 (5eds. Wadhwa 2005).

Under Article 30(1) two rights are provided to the linguistic or religious minorities, they are as followings: -

- a) The right to establish, and
- b) The right to administer educational institutes of their choice.

The benefit of the Article 30(1) extends only to linguistic or religious minorities and not to any other section of the citizens. This is the major difference between Article 29(1) and Article 30(1).

However, the term “Minority” itself has not been defined in the Indian Constitution. The expression “minorities” in Article 30 also remains undefined. Though the Supreme Court in *Re Kerala Educational Bill Case*¹⁶ has observed that this term is not defined in the Constitution, normally it refers to any community which is numerically less than 50 per cent of the population of a particular State as a whole therefore when a law about which the question of minority right is to be determined is a state law.¹⁷

A minority could not also be determined in relation to the entire population of the country. If the law that is questioned under Article 30(1) is a state law, the “minorities” must be determined in relation to the population of the State.¹⁸ In *D.A.V College v. State of Punjab*¹⁹, the Supreme Court rejected the contention of the State of Punjab that a religious or linguistic minority should be a minority in relation to the entire population of India.

In *State of Bombay v. Bombay Educational Society*²⁰, the Supreme Court observed that the Anglo-Indians constitute a religious as well as a linguistic minority. They thus enjoy the right to conserve their language, script and culture under Article 30(1). The theosophical society is not a religious minority.²¹

III. The Protection of Minorities under Pakistani Legal Framework

¹⁶ 1959 1 SCR 995 (India).

¹⁷ *Re Kerala Education Bill Case*, A.I.R. 1958 SC 956 (India).

¹⁸ *D.A.V. College v. State of Punjab*, A.I.R. 1971 SC 1731 (India).

¹⁹ *Id.*

²⁰ AIR 1954 SC 561 (India).

²¹ *Choudhary Janki Prashad v. State of Bihar*, A.I.R. 1974 Pat 187 (India).

Pakistan generally conceived as a homogenous Muslim nation as 90 per cent of its 142 million inhabitants are Muslim.²² Officially, Pakistan does not recognize the existence of any ethnic and linguistic minorities and declared it as purely Islamic and Urdu speaking state.²³ However, various studies reveal that Pakistan has ethnic, linguistic and religious minorities and highlights its rich cultural diversity. As per the Fourth Periodic Report of Pakistan to the Committee on the Elimination of All Forms of Racial Discrimination: “In Pakistan there were no racial or ethnic minorities but only religious minorities”.²⁴

Although Pakistan declares itself as homogenous society, there are almost five major ethno-regional communities in Pakistan: Baloch, *Muhajir*, Panjabis, Pushtuns and Sindhis as well as several smaller ethnic groups. There are also religious non-Muslim groups such as Ahamadis, Christians, Hindu, Kalasha, Parsis and Sikhs and Shia Muslim sects including Ismailis and Bohras.²⁵

The Constitution of Pakistan declares Islam as the state religion. However, one of the basic principles proclaimed in the ‘Objective Resolution’ says, “Adequate provision should be made for the minorities to freely profess and practice their religions and develop their cultures”.²⁶ Further, the Constitution of Pakistan, 1973 states, “all citizens are equal before law and are entitled to equal protection of law”²⁷ and Article 20 states “every citizen shall have the right to profess, practice and propagate his religion and every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”²⁸ Part II of the Constitution deals with the fundamental rights guaranteed to every person within the territory of state. It

²² Census of Pakistan, 2017.

²³ PAKISTAN CONST. Art. 251 cl. 1.

²⁴ Twentieth Periodic Report of Pakistan to the UN Committee on the Elimination of Racial Discrimination, CERD/C/PAK/20, March 19, 2008, Paragraph. 93.

²⁵ Dr. Iftikar H. Malik, *A Report on Religious Minorities in Pakistan*, 3-5 Minority Rights Group International, (Aug, 2002).

²⁶ Md. Nazeer Khel, *Status of Non-Muslim Minorities in Pakistan*, 23, (1), Islamic Studies, 45-54 (Spring, 1984); also see, Tayyab Mahmud, *Freedom of Religion and Religious Minorities in Pakistan: A study of Judicial Practice*, 19 (1) I, FILJ 40-44, (1995).

²⁷ PAKISTAN CONST. Art. 25.

²⁸ PAKISTAN CONST. Art. 20 (a) & 20 (b).

guarantees the freedom of association,²⁹ the freedom of speech,³⁰ the freedom to profess religion and to manage religious institutions,³¹ safeguard against taxation for purposes of any particular religion,³² safeguard as to educational institutions in respect of religion,³³ equality before law,³⁴ non-discrimination on the basis of religion, race, caste, sex, residence etc. in access to public places and services,³⁵ and preservation of language, script and culture.³⁶ Moreover, the Constitution provides that the State shall safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services.³⁷

Although the term ‘minorities’³⁸ has been referred several times in the Constitution, no definition of whatsoever has been provided.³⁹ Although Pakistan has Muslim majority at present day, historically it was a centre of Hinduism, Buddhism and Sikhism. After the partition demographic and religious position of that region has been substantially changed.⁴⁰

According to the official statistics of Pakistan, religious minorities constitute about 3.72 per cent of total population.⁴¹ Among the religious minorities, the Hindus constitute 1.9 per cent, the Christians constitute 1.6 %, the *Ahmadis* constitute 0.1% and Parsis, Buddhists, Sikhs, Baharis together constitute 0.12% of the total population of Pakistan.⁴²

²⁹ PAKISTAN CONST. Art. 17.

³⁰ PAKISTAN CONST. Art. 19.

³¹ PAKISTAN CONST. Art. 20.

³² PAKISTAN CONST. Art. 21.

³³ PAKISTAN CONST. Art. 22.

³⁴ PAKISTAN CONST. Art. 25.

³⁵ PAKISTAN CONST. Art. 26.

³⁶ PAKISTAN CONST. Art. 28.

³⁷ PAKISTAN CONST. Art. 36.

³⁸ PAKISTAN CONST. the Preamble, art. 2(a) & 2(a), and 36.

³⁹ JAVAID REHMAN, *THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS*, 136, (Hague, Kluwer Law International, 2000).

⁴⁰ Tariq Rahman, *Pakistan's Policies and Practices towards the religious minorities*, 3(2) SAHC 303-305, (April, 2012).

⁴¹ Twentieth Periodic Report of Pakistan to the UN Committee on the Elimination of Racial Discrimination, CERD/C/PAK/20, 19 March 2008, Paragraph. 93.

⁴² The Census of Pakistan, 2017.

Although the protection is given under the Constitution of Pakistan, the ground level reality is quite different. Due to the reluctance by the subsequent political leaders, the Constitutional rights to the minorities are merely lip service. The situations of minorities are very miserable and they are suffering with the forcible conversions⁴³, religious discrimination and mob violence etc.⁴⁴ Today, Pakistan is a hostile state for the all religious minorities but the vision of Pakistan at the time of its formation was very different from what Pakistan has become. Later on the fundamentalist Islamic leaders, the military and civil bureaucracy and political parties began to define the nature of Pakistan and re-interpret the Islam according to their own vested interest.⁴⁵ Under the influence of military and reactionary religious parties, Pakistan shifted from supporting paradigm of equal rights for all citizens to defining citizenship on demand of majoritarian Islamic population.⁴⁶ Entire legal system of Pakistan is bias towards the religion. For example, according to the Constitution a non-Muslim is disqualified to adorn the post of the President of Pakistan and also Prime Minister of Pakistan.⁴⁷ Further, Article 260 of the Constitution of Pakistan, 1973 declared Ahmadi's as non-Muslims and offered an exclusive definition of Islam.⁴⁸ Ahmadi's are the most oppressed of the religious minorities in Pakistan. By the amendment⁴⁹ of the Constitution the Ahmadi Community among some other communities has been excluded from the Muslim religion. It is quite obvious that the amendment was done on the influence of Muslim fundamentalist parties.⁵⁰ Unlike, the Indian Supreme Court, the Supreme Court of Pakistan has failed to protect the minority rights. Under the regime of

⁴³ Hamza Ameer, *Hindu Girl Abducted, forcibly married off to Muslim man in Pakistan*, India Today, Islamabad, January 24, 2019, at 24.

⁴⁴ M.G. CHITKARA, *HUMAN RIGHTS IN PAKISTAN* 88-90, (A.P.H. Publishing Corporation, New Delhi, 1997).

⁴⁵ Muhammad Riaz & M. Wakil Khan, *Structural Violence and Christian Minority in Pakistan: The Monolithic Image to be Blamed*, X (4), *The Dialogue*, 340-345 (October, 2015).

⁴⁶ Dr. Abdul Majid, *Religious Minorities in Pakistan*, 27 (1), *JPUHS*, 2-5, (January, 2014).

⁴⁷ INDIA CONST. art. 41.

⁴⁸ Iftikhar H. Malik, *A Report on Religious Minorities in Pakistan*, *Minority Rights Group International* 17, (2002).

⁴⁹ The Constitution (Second Amendment) Act, 1974.

⁵⁰ ADIL HUSSAIN KHAN, *FROM SUFISM TO AHMADIYYA: A MUSLIM MINORITY MOVEMENT IN SOUTH ASIA*, 91-93, *Indiana University Press*, (2015).

General Muhammad Zia-ul-Haq, the President of Pakistan the Ordinance XX has been passed which has which effectively prohibited *Ahmmadis* from practicing and profession their faith and beliefs.⁵¹ Further, on the pretext of preventing ‘anti-Islamic activities’, the ordinance has forbidden ‘*Ahmadis*’ to be called themselves as Muslim or practice the Islamic customs and usages. This prohibition excludes them from practicing any Islamic creed publicly or entered into their places of worship i.e. mosques. *Ahamadis* in Pakistan are also prohibited by law from worshipping or practice their own religious creed and they have prohibited using traditional Islamic greetings in public, publicly quoting from the Quran, publishing and distributing their own religious materials. Such acts are punishable by imprisonment up to three years as per the Ordinance XX. In the case of *Zaheruddin v. The State*⁵², a statute prescribing punishment for public practice of their religion by *Ahmadiya* community was challenged as opposed to fundamental right to freedom of religion. However, the Supreme Court of Pakistan upheld the impugned penal provisions and further restricted the *Ahmadiya* community to practice freely their own religion. Therefore, legislature and judiciary have jointly contributed to the continuous persecution of the *Ahmadiya* community.

In this respect law relating to blasphemy in Pakistan must be mentioned. The blasphemy law in Pakistan is most detrimental to interest of minorities. The Penal Code of Pakistan, 1860 states the blasphemy as punishable offences up to death.⁵³ It is obvious that behind the rigid and harsh penalty was made against the offence of blasphemy is only to discriminate and persecute minorities.⁵⁴

After 1977 the Pakistan Government became more orthodox and tried to islamization of the entire country that makes the Christians and others minorities of Pakistan more vulnerable.⁵⁵ The conditions of Christian were also vulnerable under the islamization of the state power. In the *Ayub Masih v. The*

⁵¹ Mujibur Rehman v. Federal Government of Pakistan, PLD 1985 FSC 8 Also see, Capt. (Retd.) Abdul Wajid v. Federal Government of Pakistan, PLD 1988 SC 167 (Pakistan).

⁵² 1993 SCMR 1718, See also, Khurshid Ahmad v. The State, PLD 1992 Lahore (Pakistan).

⁵³ Section 295C of the Penal Code of Pakistan, 1860 states that whoever use of derogatory remarks against the Holy prophet shall be punished with death.

⁵⁴ Kaleem John, *Christians and the Blasphemy Laws in Pakistan*, 17 (1), Transformation, 20-23, (January, 2000).

⁵⁵ *Id.* at 24.

State⁵⁶, a Christian, was convicted for blasphemy and sentenced to death in 1998. Even his property and land were also seized. However, later on his advocate was able to prove that he was not directly involved in offence of blasphemy and he was acquitted accordingly. The most recently the evil of Pakistani blasphemy law came into global scenario in *Asia Bibi Case*⁵⁷. In this case a Christian woman, Asia Bibi, was convicted on the offence of blasphemy by the District Court and sentenced to death by hanging in 2010. The accused Asia Noreen was a catholic Christian living in a small village of Sheikhpura district of Punjab, Asia was the only Christian in the said village. However, on 31st October 2018, the Supreme Court of Pakistan acquitted Asia Bibi on the ground of insufficiency of evidence and false statements of witnesses.

As such laws are misused by the Muslim fundamentalist against the religious minorities; they are concerned about their future in Pakistan. Even the Supreme Court of Pakistan itself remarks, “it is unfortunate fact which cannot be disputed that in many cases registered in respect of the offences of blasphemy false allegations are leveled for extraneous purposes and in the absence of adequate safeguards against misapplication or misuse of such law by motivated persons the persons falsely accused of commission of that offence suffer beyond proportion or repair.”⁵⁸

IV. The Comparative Analysis

The above discussion shows that the statuses of the minorities in two nations are completely different. If we analysis the reasons for such diverse situations between the two countries, we shall find out some specific reasons. *Firstly*, according to the Constitution of the Pakistan it is a theocratic state whereas India is a Secular nation as declared by its Constitution. The preamble of the Constitution of Pakistan, 1973 states that the “*sovereign over the entire universe belongs to almighty Allah alone and the authority to be exercised by the people of Pakistan within the limits prescribed by him.*”⁵⁹Further, the

⁵⁶ PLD 2002 SC 1048 (Pakistan).

⁵⁷ *Asia Bibi v. The State*, the Supreme Court, Criminal Appeal No. 39-L of 2015 (Pakistan).

⁵⁸ The Supreme Court of Pakistan, *The State v. Muhammad Qadri*. Criminal Appeals No. 210 and 211 of 2015 (Pakistan).

⁵⁹ PAKISTAN CONST, the Preamble.

Constitution declares that Islam shall be the state religion of Pakistan.⁶⁰ On the contrary, as per the Constitution of India, 1950, India is a secular nation and all sources of power of sovereign come from the people of India.⁶¹ Its preamble reaffirms that India is a “sovereign, Socialist, Secular⁶², Democratic, Republic”.⁶³

Secondly, although Pakistan is a theocratic and Islamic state, its constitution protects the rights of minorities in explicit forms. The Constitution of Pakistan, 1973 ensures that adequate provision shall be made for the minorities freely to profess and practice their religion and develop their cultures.⁶⁴ Likewise, Constitution of India, 1950 has provided right to freedom of Religion in more explicit manners. To say more precisely, Indian Constitution ensures freedom of conscience and free profession, practice and propagation of religion.⁶⁵ Further, constitution ensures freedom to manage religious affairs such as to establish and maintain institutions for religious and charitable purposes.⁶⁶ Moreover, Article 29 and Article 30 assure specific rights of the minority communities for preservation of their cultural and educational rights.⁶⁷ This specific rights of the minorities are absent under the Constitution of Pakistan, 1973 and no specific rights are provided to the religious minority regarding their cultural rights.

Thirdly, the divergent status of the minority in India and Pakistan is mostly due to the different approaches of the two governments. The Government of Pakistan has failed to initiate inclusive actions for the minorities in order to include them in the mainstream of society. Due to lack of Government’s affirmative action’s, Pakistan becomes a country of the worst persecution and

⁶⁰ PAKISTAN CONST, Art. 2.

⁶¹ INDIA CONST. the Preamble.

⁶² The word secular was not initially enumerated in the original constitution thought it was impliedly exist in the operative parts of the constitution. Subsequently, in 42nd Amendment, 1976 it was inserted in explicit form.

⁶³ INDIA CONST. the Preamble.

⁶⁴ PAKISTAN CONST, Art.20.

⁶⁵ PAKISTAN CONST, Art.25.

⁶⁶ PAKISTAN CONST, Art.26.

⁶⁷ PAKISTAN CONST, Art.29 & 30.

discrimination of religious minorities.⁶⁸The Pakistan's government has forcefully conversion during regime of Zia-ul-Haq in 1977-1988. After the independence some secular and pluralistic movement was started in Pakistan but that was nib in the bud by the military General Zia-ul-Haq in 1977. He changes the school curriculum to impart Islamic ideologies to young minds of the students. In public meeting Zia-ul-Haq said "*I have mentioned it previously that this country had not only been created in the name of Islam but could survive only in the name of Islam.*"⁶⁹ On the contrary, since the independence India has imparted secular education in its school curricula not only that attending the religious instructions or religious worship in any educational institutions which is receiving aid out of state funds is not mandatory.⁷⁰ Moreover, no one is compel to sing the national anthem if it is against their religious belief.⁷¹ In order to study the situation of Muslim minorities, the UPA Government has introduced Sachar Commission in 2005 and the commission submitted their report in 2006. Subsequently, Justice Ranganath Mishra Commission was appointed for identifying criteria for socially and economically backward classes among the religious and linguistic minorities.

Various affirmative actions have been introduced by the government of India to ameliorate the position of the minorities. In India special privileges on the basis of religion, race, caste, sex and place of birth is not permissible.⁷² However, subsequent amendment allows the state to make special arrangement for the educationally and socially backward classes of citizen.⁷³ Thereafter, in India Schedule Caste, Schedule Tribes and other socially and educationally Backward Classes of peoples are given the reservation to government service and admission to the educational institutions.⁷⁴ In the Sachar Commission Report reveals that situation of Muslim is even more vulnerable than the

⁶⁸ MADIHA AFZAL, PAKISTAN UNDER SIEGE EXTREMISM, SOCIETY AND THE STATE, 11-13, (Brookings Institution Press, 2018)

⁶⁹ Jamal Shah, *Zia-ul-Haque and Proliferation of Religion in Pakistan* 3 IJBS 310-311 (Nov, 2012).

⁷⁰ INDIA CONST. art.28.

⁷¹ *Bijoe Emmanuel v. State of Kerala*, A.I.R. 1986 Ker 32(India).

⁷² INDIA CONST. Art.15.

⁷³ First Amendment of Constitution, 1951, Sec. 2 (w.e.f. 18.06.1951)

⁷⁴ INDIA CONST. Art.15(4).

Schedule Caste and Schedule Tribes.⁷⁵ Although Muslim community constitutes 14% of the Indian population, they comprise 2.5% of the Indian bureaucracy.⁷⁶

V. Conclusion

Since the ancient times India is a place of religious tolerance and harmony. In the Mughal era also some of the Muslim ruler has shown apathy and tolerance to its non-Muslim subjects. To say in precisely, Mughal Emperor Akbar followed the policy of religious tolerance and secularism during his regime.

Unfortunately, after the independence of the India the nation has been divided in two separate dominations. Pakistan a separate country emerged in the name of Islam, has witnessed some of the worst persecution and discrimination of religious minorities inspite of the assurance by the father of Nation of Pakistan Muhammad Ali Jinnah for the freedom of the minorities in his objective resolution. Subsequent political leaders of the Pakistan have failed to carry forward the assurance propagated by Jinnah.

Pakistan is a country which has been directly ruled for almost half of its history by its military elites.⁷⁷ During their rule they use religion for the political interest and provided opportunities to the reactionary forces to increase hatred against minorities and other non-Muslim communities and derailed the civil society from constructive or progressive ideas.⁷⁸ The Ultra-Islamic political agenda of Pakistan's militant Islamic outfits have made life miserable for the minorities, who are often subjected to physical assault, humiliation, forcible conversion and persecution.⁷⁹

The recent demographic situations of Pakistan have reveals the truth. In 1947 there was 23% of the minorities of the total population whereas now it is merely 3-4% of the total population in 2012. Some eminent political scholar

⁷⁵ The Sachar Commission Report, 2006.

⁷⁶ *Id.* at 17.

⁷⁷ JAMES WYNBRANDT, A BRIEF HISTORY OF PAKISTAN, 183-185, (Infobase Publishing House, New York, 2009).

⁷⁸ *Id.*, at 191.

⁷⁹ Muhammad Riaz & M. Wakil Khan, *Structural Violence and Christian Minority in Pakistan: The Monolithic Image to be Blamed*, X (4), *The Dialogue*, 338-339, (Oct, 2015).

blamed successive Pakistani Governments for 'slow genocide' against the religious minorities.⁸⁰

Interestingly, both the countries had guaranteed some basic rights to the minorities under their constitutional framework, but in Pakistan these rights are not implemented in reality. Under the military regime and Islamic outfit of subsequent governments these minority rights are become lip service.⁸¹ Therefore, whenever the idea of constitutionalism is lacking the rights and freedoms of minorities are also lacking behinds. Dr. Ambedkar has rightly remarked on the floor of Constituent Assembly that however good a constitution may be, it is sure to turn out bad because those who are called to work on it.⁸² Thus, the spirit of the nation and constitutionalism is the prime factors which ensure minority rights.

⁸⁰ FARAHNAZ ISPAHANI, PURIFYING THE LAND OF THE PURE: A HISTORY OF PAKISTAN'S RELIGIOUS MINORITIES, 93-98, (Oxford University Press, 2017).

⁸¹ Afshan Jafar, *Women, Islam, and the state in Pakistan* 22, Gend. Issue, 35-55, (2005).

⁸² D.R. AHIR, SELECTED SPEECH OF DR. B.R. AMBEDKAR (1927-1956) 56, (Blumoon Books, 1997).