

INPUTS ON INSTITUTIONAL ARRANGEMENTS OF STATES THAT ENABLE MINORITY RIGHTS TO FLOURISH

Submission to the *Special Rapporteur on Minority Issues* for the
Report of the Special Rapporteur on minority issues, which is to be presented at the 79th
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The Centre for Legal Aid Assistance & Settlement (CLAAS) submits this document in response to the call for inputs issued by the Office of the High Commissioner for Human Rights to inform the report of the Special Rapporteur on minority issues to the 79th session of the UN General Assembly. CLAAS, which is a Christian charity dedicated to helping persecuted Christians in Pakistan, would like to put forth our experience working to protect the rights of a minority religious group in Pakistan. This submission is not an exhaustive account, but only draws on the relevant experience from the organisation's work and related research on these matters.

Introduction

CLAAS-UK is a Christian organisation founded in 1998 committed to addressing ongoing religious persecution in Pakistan. The staff, which includes lawyers and volunteers have worked to support thousands of poverty-stricken and traumatised victims of religious persecution.

Our website also systematically documents incidents of violence against Christians and others from minority religious communities. Our main areas of focus include the misuse of blasphemy laws, forced conversions of Christian women and girls, bonded labour, and emergency relief in natural disasters and attacks on people of minority religions.

In this submission, we hope to highlight a few institutional arrangements taken by the State of Pakistan to address minority issues in Pakistan. We will also be shedding some light on the discriminations that the minorities in Pakistan continue to face, while responding to the specific questions 1, 2, 4, and 5.

The following are the observations that CLAAS would like to put forth, as Special Rapporteur on Minority Issues prepares its report to the General Assembly ahead of its 79th Session:

Introduction

The Islamic Republic of Pakistan today constitutes of 96.28% Muslims, 1.60% Hindus, 1.59% Christians, 0.25% Scheduled Castes, 0.22% Ahmadis and 0.07 other minorities.¹ And although the Shia Muslim community is not considered a religious minority, they constitute 20% of the population and have also been targeted by the Sunni groups.²

After the bloodshed during the partition, a bi-lateral agreement signed between India and Pakistan recognising the need to provide a framework for the treatment of minorities. This was felt necessary in the post-partition period as both nations witnessed massive communal rioting at the time of the partition.³ Both countries agreed in the agreement after communal disturbances and tensions took place when about a million people, belonging to minority communities from both States migrated to the other. The agreement sought to ensure religious minorities in both countries “complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality.”⁴

However, even after seven decades of the Nehru – Liaquat Agreement, religious intolerance against the religious minorities in Pakistan have not really abated. In fact, things took a turn for the worse when the government of President Zia ul-Haq (1978–88), who amended the blasphemy law and introduced several other Islamic laws and ordinances. Religious minorities such as Christians, Ahmadis, Hindus, and Sikhs have been victims of violent attacks in recent years and have been targeted by the majority vigilante groups. These include attacks by the Islamic groups and the State. Attacks by private individuals have become commonplace, and

¹ ‘POPULATION BY RELIGION | Pakistan Bureau of Statistics’ (*Pakistan Bureau of Statistics*) <<https://www.pbs.gov.pk/sites/default/files/tables/population/POPULATION%20BY%20RELIGION.pdf>> accessed 13 August 2023.

² Maheen Pracha, ‘HRCP Calls Attention to Continued Marginalisation of Religious Minorities’ (*HRCP*, 7 February 2023) <<https://hrcp-web.org/hrcpweb/hrcp-calls-attention-to-continued-marginalisation-of-religious-minorities/>> accessed 8 April 2023.

³ ‘What Was the Liaquat-Nehru Pact, Due to Which Syama Prasad Mookerjee Resigned from the Union Cabinet?’ (*The Indian Express*, 23 June 2023) <<https://indianexpress.com/article/explained/explained-history/liaquat-nehru-pact-syama-prasad-mookerjee-resigned-8682347/>> accessed 10 August 2023.

⁴ ‘Agreement Between the Governments of India and Pakistan Regarding Secy and Rights of Minorities’ (*Nehru-Liaquat Agreement*, 8 April 1950) <<https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf>> accessed 10 August 2023.

minority communities are often deprived of their rights to life, liberty, and identity. This has resulted in the political disenfranchisement and their social and economic marginalization, with many pushed into working in the sewer cleaning work.⁵

1) Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country? If yes, how? If no, why?

Rights enshrined in the Constitution

While the State of Pakistan was established on the ideology of Islam and the constitutional framework of the country was laid on the principles of Islam, the constitution also explicitly guarantees fundamental rights to its minority citizens.

The fundamental rights of citizens include provisions for the guarantee of religious freedom or belief. Article 20 grants all citizens the freedom to profess, practice and propagate their religion and for all religious denomination and all sects to establish, maintain and manage their religion. Article 22 also safeguards against students being forced to undergo religious instruction in educational institutions.

Persecution under Blasphemy Laws

The United States Commission on International Religious Freedom (USCIRF) in its Annual Report for the year 2021 reported that there were 30 Christians were jailed in Pakistan under charges relating to blasphemy.⁶ These included seven who were on death row. The report also points to a rise in targeted killings, blasphemy cases, forced conversions, and hate speech against religious minorities including Christians, Ahmadis, Shi'a Muslims, Hindus and Sikhs. In its 2022 Report, the USCIRF continued to recommend that the U.S. State Department designate Pakistan as a country of particular concern (CPC) for its 'systemic, ongoing, and egregious religious freedom violations.'⁷ In 2024, the report continues to recommend Pakistan as a Country of Particular Concern (CPC).

Passing of more stringent blasphemy laws

⁵ Saad Zuberi, 'How Death and Despair Haunt Pakistan's Christian Minority' <<https://www.aljazeera.com/features/2023/4/9/how-death-and-despair-haunt-pakistans-christian-minority>> accessed 11 August 2023.

⁶ 'Annual Reports | USCIRF' (0713:05:40 2023) <<https://www.uscirtf.gov/annual-reports>> accessed 8 April 2023.

⁷ United States Commission on International Religious Freedom, 'USCIRF Releases New Report Highlighting Religious Freedom in Pakistan | USCIRF' (1013:14:05 2023) <<https://www.uscirtf.gov/release-statements/uscirtf-releases-new-report-highlighting-religious-freedom-pakistan>> accessed 11 August 2023.

The blasphemy law initially came to be in British India under the Indian Penal Code of 1860. Sections 295 to 298 of the Code were added to protect the minorities from the Hindu majority in a bid to offer equal protection to all religions. Section 295A was added to the Penal Code through an amendment after tensions emerged between the various religious groups in 1920s Lahore over the publication of a pamphlet with scandalous references to the Prophet. However, even as the committee was framing the amendment, Muhammad Ali Jinnah stressed on the importance of only applying this provision to genuine cases of deliberate and malicious intent and those engaged in bona fide criticism should be protected.⁸

Subsequent amendments were made between 1980 and 1986 to this section of the Pakistan Penal Code under General Zia-ul-Huq. This led to the addition of new provisions specific to Islam, including the defiling of the Holy Quran and insulting the Prophet.⁹ In 1991, after the Federal Shariat Court's judgment, the option of awarding life imprisonment was removed in cases concerning defiling the Quran.¹⁰ Therefore, from 1 May 1991, the death penalty was the only sentence for those convicted for blasphemy.¹¹

While the State of Pakistan stated in its second report that 'the offense of blasphemy in Pakistan is non-discriminatory'¹², the law is disproportionately applied against the minority communities. While Christians and other religious minorities make up only about 4 percent of the country's overwhelmingly Muslim population, about half of the people charged with blasphemy are people from the minority communities.¹³

In an atmosphere where the civil societies have been calling for changes in the law that prevent persecutions under blasphemy laws, however, the Criminal Laws (Amendment) Bill to broaden the scope of the blasphemy laws has been passed by both the National Assembly and the Senate.

⁸ Shoaib Daniyal, 'A Short History of the Blasphemy Law Used against Wendy Doniger and Why It Must Go' (*Scroll.in*, 18 February 2014) <<http://scroll.in/article/656608/a-short-history-of-the-blasphemy-law-used-against-wendy-doniger-and-why-it-must-go>> accessed 8 April 2023.

⁹ Asad Hashim, 'Explained: Pakistan's Emotive Blasphemy Laws' <<https://www.aljazeera.com/news/2020/9/21/explained-pakistans-emotive-blasphemy-laws>> accessed 8 April 2023.

¹⁰ 'PAKISTAN' (*Human Rights Watch*) <<https://www.hrw.org/reports/1993/pakistan/>> accessed 22 September 2023.

¹¹ *ibid.*

¹² Second Periodic Report submitted by Pakistan under article 40 of the Covenant, Human Rights Committee (16 June 2022) (paragraph 94)

¹³ 'Pakistan's Anti-Blasphemy Laws' (*World Watch Monitor*) <<https://www.worldwatchmonitor.org/pakistans-anti-blasphemy-laws/>> accessed 11 August 2023.

2) Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities?

Ensuring participation of Pakistan's minorities in governance

While the Peoples Party might have created the minority ministry, the Convener of the World Minorities Alliance and Former Federal Minister and Nominee Nobel Peace Prize, Mr. Julius Salik observed that this was not a gift to the minorities, as it was created after the government had taken away properties including the Gordon College and FC college, belonging to the minority community.¹⁴ Further, he called on the government to restore the federal minorities ministry which was abolished under the 18th amendment to the Constitution of Pakistan.¹⁵

This raises a question regarding the violation of Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010. This Article protects the right of members of the minority communities in Member States to enjoy their own culture, to profess and practise their own religion, or to use their own language. In the case of Pakistan's minorities, the events that have transpired since its independence demonstrates the crucial need to establish a strong Minorities Ministry at the Federal stage, to ensure that effective actions can be undertaken to ensure the rights and safety of all minorities within the country.

Further, Mr. Julius Salik has also spoke out against the practices that hamper adequate representation of minorities by the independent minority candidates in elections, as they go on to join the political party that has the maximum seats in the National Assembly.¹⁶ Thus, losing their ability to take decisions independently and speak up against the treatment of minorities in the country.

The right to take part in the conduct of public affairs, directly or through freely chosen representatives is a right covered under Article 25 of the ICCPR. Citizens not only have a right to take part in the conduct of public affairs, but also to vote and to be elected. The article goes further and requires that these are "genuine periodic elections" which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the "free expression of the will

¹⁴ Rubaroo, 'Salik Claims Minority Ministry Was Created after Taking Away All Properties' (*Aaj English TV*, 22:54:20+05:00) <<https://www.aajenglish.tv/news/30357957>> accessed 15 April 2024.

¹⁵ *ibid.*

¹⁶ 'Minorities Are Being Kept Away From Elections, Mr. J Salik. - Daily Parliament Times' (16 January 2024) <<https://www.dailyparliamenttimes.com/2024/01/16/minorities-are-being-kept-away-from-elections-mr-j-salik/>> accessed 15 April 2024.

of the electors”. Therefore, it is important to ensure that minorities are ensured their independence within the legislative system to improve the conditions of the community on the ground.

4) Are there institutional arrangements and/or political practices that de facto exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional level – concerning the minority to which they belong?

Limited Rights of Religious Minorities as Citizens

The Constitution, while guaranteeing representation of minorities in the National Assembly under Article 51 and in the provincial assemblies under Article 106, excludes the possibility of members from religious minorities ever occupying the highest position of the country; that of the President.

Article 41 (2) of the Constitution of Pakistan explicitly states that, “A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age and is qualified to be elected as a member of the National Assembly.” This provision essentially excludes any non-Muslim from ever occupying the highest office in the country simply based on religion.

This is further fortified by Article 227 of the Constitution, which stipulates that all laws of the country must be brought into compliance with the Islamic injunctions.

Minority members appointed in Provincial governments

A positive development in recent times has been the appointment of a Sikh minister in the provincial assembly of Punjab, to look over the Ministry of Minority Affairs.¹⁷ Similarly, in the Sindh provincial assembly, Anthony Naveed became the first Christian to take oath as a deputy speaker.¹⁸

Such representation in the power corridors of Pakistan is crucial to ensure meaningful representation and participation of people from the minority sectors. This also holds the potential in addressing the problem of representation in other sectors of society and addressing the underlying institutional discriminations that hold back others from minority communities.

¹⁷ Hawwa Fazal, ‘Small Victories — Minorities in Power Corridors in Pakistan’ (*DAWN.COM*, 14:18:06+05:00) <<https://www.dawn.com/news/1823706>> accessed 14 April 2024.

¹⁸ *ibid.*

5) Are there legal, administrative or other barriers that prevent persons belonging to minorities to participate effectively in cultural, religious, social, economic or public life?

However, when it comes to the aspect of cultural, religious, social, economic and public life, religious minorities continue to be treated as second class citizens.

Systemic discrimination against minorities

The systemic discrimination in employment opportunities. The government's method of filling in the minority quota in jobs has been to advertise jobs like that of sewage cleaners. The Christian minority faces difficulties such as only finding jobs that involve severe labour hardships. Consequently, Christians and other minorities face limited employment opportunities.¹⁹ These job openings for sanitation workers mean that those engaged in menial and dangerous jobs that could expose them to toxic fumes and result in death. There have also been instances of sanitary workers dying after being refused treatment by doctors because they were unclean when brought into the hospital.²⁰ This was the case of 31-year-old Irfan who stepped down into a manhole and fainted due to suffocation and had to be rushed to the civil hospital in Umerkot. Such treatment of minorities in government job opportunities was also addressed by the National Commission for Human Rights in its fact-finding report, "Unequal Citizens: Ending Systemic Discrimination against Minorities".²¹ The report included a startling finding that almost half of the posts reserved for minorities lie vacant, and that 80% of non-Muslims are employed in low paid work.²²

A report by Minority Rights Group International considered how the exclusionary nationalism in Pakistan (with a focus on Balochistan province) curtailed the employment rights of religious minority members in the country.²³ The survey conducted for this report underline the issue of discrimination faced by minorities in the workplace which start from the point of finding a job

¹⁹ 'Pakistan Job Quotas for Non-Muslim Qualifies for Sanitation Work Only' <<https://www.pakistanchristianpost.com/head-line-news-details/7036>> accessed 15 April 2023.

²⁰ Hanif Samoon, 'Umerkot Sanitary Worker Dies after Doctors Refuse Treatment of "unclean" Patient' (DAWN.COM, 18:51:35+05:00) <<https://www.dawn.com/news/1336977>> accessed 15 April 2023.

²¹ 'NCHR Launches Fact-Finding Report on Minority Rights – National Commission for Human Rights Pakistan – NCHR Pakistan' <https://www.nchr.gov.pk/press_release/test/> accessed 1 June 2023.

²² *ibid.*

²³ 'Survey Report - 2021 : Discrimination and Harassment in Employment Against Minorities in Balochistan, Pakistan' (Minority Rights Group International, commissioned by Health and Rural Development (HARD) Balochistan 2021) <<https://minorityrights.org/wp-content/uploads/2022/04/Annex-1-HARD-MRGI-Survey-Report-2021.pdf>> accessed 31 May 2023.

to salaries and promotions.²⁴ About 95% of the respondents stated that persons belonging to minority communities find it difficult to find jobs.

These instances demonstrate the systemic discrimination faced by members of the minority communities. This is also in violation of Article 7(d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which needs State Parties to recognize, “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”

Reference to religion on passport

The Special Rapporteur on Freedom of Religion or Belief, in their report in 1995 following a mission to Pakistan noted how Pakistani passport application forms have an additional column asking holders to identify their religion and require Muslims to state that they do not recognize Ahmadis or Mirza Ghulam Ahmad as Muslim. The report stated that no mention of religion should be included on passports, identity card application forms or any other administrative documents.²⁵ It strongly recommended that the part requiring non-recognition of Ahmadi as Muslims from the passport.²⁶ Further, in 2006, the EU had expressed concerns regarding the continued use of the religion column in Pakistani passports.²⁷

Despite this, Islamabad’s High Court in 2018 ruled that citizens must declare their religion when applying for identity documents. This ruling would affect Pakistani citizens’ right under Article 12 of ICCPR on the liberty of movement and the freedom to leave any country, including his own.

The above mentioned are but two of the many ways in which the administration in Pakistan continues to derogate from its obligations under international human rights treaties and declarations. It is crucial that the State takes measures to rectify this at the earliest, to protect the rights of religious minorities of Pakistan. However, there has also been some positive developments in recent times.

Historic change in Pakistan’s curriculum

²⁴ *ibid.*

²⁵

‘E/CN.4/1996/95/Add.1’
<<https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2F1996%2F95%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>> accessed 29 May 2023.

²⁶ *ibid.*

²⁷ ‘Pergunta parlamentar | Answer to Question No E-2419/05 | E-2419/2005(ASW) | Parlamento Europeu’
<https://www.europarl.europa.eu/doceo/document/E-6-2005-2419-ASW_EN.html> accessed 1 June 2023.

The Ministry of Federal Education and Professional Training in Pakistan has introduced a major educational reform with its new Religious Education Curriculum 2023. The changes include a significant development for minority communities in Pakistan as it makes Islamic studies optional for non-Muslim students and offers a diverse choice, including teachings from seven religions: Bahai, Buddhism, Christianity, Hinduism, Kalasha, Sikhism, and Zoroastrianism.²⁸

This curriculum was officially approved on 22 January 2024, and is an important step in acknowledging minority rights in the country and have been warmly welcomed by minority communities as a milestone in the journey towards equal educational opportunities for all in Pakistan.

It is also a significant measure to foster the plurality in the State and a step towards the full recognition of the rights enshrined under Article 18 of the Universal Declaration of Human Rights (UDHR) and ICCPR, that protects the right to freedom of religion. It also is a positive development towards the rights under Article 27 of the ICCPR on the right of minorities to enjoy their own culture, religion and language.

Way Forward

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) requires State Parties to ensure the right of members of minority groups to enjoy their own culture, to profess and practise their own religion, or to use their own language. The instances mentioned above shows clear instances where Pakistan has failed to protect this right. Additionally, the discrimination against minorities also point to the violation of Articles 2 and 26 of the ICCPR. Further, under Article 3 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Pakistan needs to take effective measures to prevent and eliminate such discrimination on the grounds of religion or belief.

While it is heartening to note that some positive developments have taken place over the last year, it is crucial that the government of Pakistan takes further steps to effectively protect minorities from persecution. The National Commission for Minorities formed in May 2020

²⁸ Nasir Sayeed, 'Historic Change in Pakistan's Curriculum: Islamic Studies Becomes Optional for Non-Muslims' (*Centre for Legal Aid Assistance & Settlement*, 14 February 2024) <<https://www.claas.org.uk/2024/02/14/historic-change-in-pakistans-curriculum-islamic-studies-becomes-optional-for-non-muslims/>> accessed 16 April 2024.

needs to be strengthened and made a truly autonomous body that could implement effective policies to promote religious tolerance, protect religious minorities, and ensure adequate representation of religious minorities in all services.