CHAPTER – V

MINORITY RIGHTS IN THE SOUTH ASIAN COUNTRIES –
PAKISTAN AND BANGLADESH

5.1 Introduction

In the contemporary world, there would not be a single country without minority and ethnic groups. And, there would be very few countries free from religious and ethnic violence. In the world, almost all the countries have one or more minority groups within their territory characterized by their own ethnic, linguistic, religious identities which differ from majority community. In the South Asian Region, because of its diverse population, conflicts and violence became a day-to-day phenomenon. The problems of the South Asian Region can be attributed to the uneven economic development, colonial and post-colonial policies of the government as well as religious intolerance.¹

Minorities in any state remain a vulnerable component of a society. Minority communities are never considered as one of the integral parts of the state by majority community. In advanced countries, minorities are relatively better than in developing countries and enjoying all rights equally with majority people. In the South Asian scenario, the majority population always try to impose their values, cultures, religion, language, etc., on the minorities.

Minority rights have always been an issue of great debate not only in Pakistan but also in the whole world. Many see the mixing of Islam in the polity of Pakistan to be the source of all ills with regards to minority rights. They are of the view that the exclusion of Islam from politics is the only panacea for the marginalisation of minorities in Pakistan. It may be an over-simplified view. Things are not that easy. It is also important to understand how Islam protects minority rights.

5.2 Pakistan – A Brief Profile

The Islamic Republic of Pakistan became an independent sovereign state on 14 August 1947, as a result of the partition of the former British India. Pakistan was formed with the aim to fulfill the right to self-determination of India’s Muslims, on the basis of a “two-nation theory” put forth by the All India Muslim League, which described Hindus and Muslims as two different nations living in India. The creation of Pakistan meant carving out a state encompassing Muslim majority areas from the subcontinent, which also entailed massive transfers of Hindu, Sikh and Muslim populations from areas where they were in the minority, often to provinces where they constituted a clear majority. At the time of independence, Pakistan inherited those parts of undivided India that had a majority Muslim population, which resulted in a country divided into two wings of unequal size. In 1971, East Pakistan became the independent state of Bangladesh following a bloody civil war.

The country has an area of 310,527 square miles and a population of 180 million. Ninety-five percent of the population is Muslim (75 percent Sunni and 20 percent Shia). Groups composing 5 percent of the population or less include Hindus, Christians, Parsis/Zoroastrians, Bahais, Sikhs, Buddhists, Ahmadis, and others.

Mohammad Ali Jinnah, clearly declared that non-Muslims would be equal citizens in the new country and that every person living in the country was an equal citizen irrespective of his or her community, caste, color or faith.2

The partition of India in 1947 led to the creation of the state of Pakistan (Islamic Republic of Pakistan), and the Union of India and Bangladesh gained independence from Pakistan in 1971.

Pakistan’s constitutional history has been repeatedly disrupted by successive military regimes stagnating the flourishing of meaningful democracy. At its very birth it faced the difficult task of keeping true to its founder’s vision of a secular and democratic state, when it was, in essence, the expression of Muslim

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2 Mohammad Ali Jinnah’s first Presidential Address to the Constituent Assembly of Pakistan (11 August 1947); http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html
self-determination. Governance was further complicated by its territorial bifurcation into East and West Pakistan. One sided policies emanating from West Pakistan and a failure to share power eventually drove Bangladesh to secession. In the immediate aftermath, the 1973 Constitution laid special emphasis on provincial autonomy in fear of further disintegration of the newly formed idealistic state.

In the Constitution of the Islamic Republic of 1973, the state of Pakistan recognises such fundamental rights to every citizen irrespective of race, creed, colour and religion. Apart from the basic right of life, liberty and property, the Constitution also recognises and safeguards the religious beliefs of all the citizens of Pakistan. According to Article 22 of the Constitution, which provides safeguards as regards to educational institutions in respect of religion, “no educational institution can force the individual to receive religious instruction or take part in any religious ceremony other than his own.” This is the reason why it is not compulsory for non-Muslims to study Islamic Studies while Muslims are compelled to study it. Articles 26 and 27 of the Pakistan Constitution states that there shall be no discrimination in respect of access to public places and services respectively on the basis of religion.

Along with the international community's recognition the need to protect minorities from discrimination, has been accepted by providing 'special measures' to protect their rights.4

The Preamble of the Pakistani Constitution, also known as the ‘Objectives Resolution’, was incorporated as a substantive part in the form of Article 2A through the 8th Amendment in 1985 by the then President, Zia-ul-Haq.

However, when it was incorporated as a substantive part of the Pakistan Constitution in the form of Article 2A, the word ‘freely’ was omitted. It may be

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3 The National Assembly of Pakistan passed the Constitution on 10th April 1973 and authenticated by the president on 12th April 1973.
argued that this omission did not have a tangible impact as Article 2A also talks about safeguarding the ‘legitimate interests of minorities’.\(^5\)

It was only under the 18th Constitutional Amendment, passed in 2010, that the term ‘freely’ was reinserted into Article 2A. Even though the 18th Amendment reinserted the term ‘freely’ in Article 2A, ‘correcting [a] historic wrong’,\(^6\) none of the other discriminatory provisions of the Pakistan Constitution were removed, amended or rectified; thus implying that the pre-amendment jurisprudence, as well as the respective biases and discrimination, still prevail. It must also be noted here that Article 2 of the Pakistan Constitution declares Islam as the ‘state religion’. While this provision is not discriminatory in itself, it may be seen as the foundation of several other mooted articles, which shall be discussed subsequently.

The Constitution also ensures to preserve the language, script and culture of all citizens, irrespective of their religion and creed. Article 2A of the Constitution bars the legislature from making any law repugnant to Islam as the sovereignty of the entire world, including Pakistan, belongs to Allah. This implies that the government, which fails to prove protection to minorities, is disobeying Allah’s orders. Furthermore, no government can ever commit any alteration in the Constitution with the intention of reducing minority rights since such rights are ensured to them by Islam. So, it can be said that it is not Islam that is the cause of persecution of minority groups but it is bad governance and the failure of the security apparatus to protect vulnerable communities. Even if you de-Islamise Pakistan, the majority would still be Muslims and the ‘other-classes’ would still be vulnerable. People would still (mis)use the religion and with the greater impunity. The solution lies in improving governance and ensuring the state’s writ so that minorities and other vulnerable communities are protected. Minority issues in this region, involve administrative, political and cultural issues at all levels. In India alone, it is estimated that about 200 languages are spoken by people belonging to diverse minority groups all over the country.

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The constitution of Pakistan establishes Islam as the state religion, and it requires that laws be consistent with Islam. The constitution states that "subject to law, public order, and morality, every citizen shall have the right to profess, practice, and propagate his religion;" in practice, however, the government limited freedom of religion. Freedom of speech was also constitutionally "subject to any reasonable restrictions imposed by law in the interest of the glory of Islam." Pakistan is a diverse society with various ethnic and religious minorities.

Pakistan recognizes religious minorities like Hindu, Sikh, Christian and Ahmadiyya. Many Hindus and Sikhs, nevertheless, feel insecure and many have migrated to India. These religious minorities are scattered all over the country with Christians in Punjab, Hindus in Sindh, Parsis in Karachi, Sikhs in Baluchistan, Behais in urban centers, etc.,

Though the Pakistan’s Constitution provides few rights and protections to religious minorities, they are often either misinterpreted or simply ignored while dealing with issues concerning minorities.

Although the government has imposed laws favoring minorities, religious minorities still suffer from blasphemy charges, conversion of religion, illegal detention, custodial killing and many more in every part of the country.

For example, Christian minority has initiated welfare activities pertaining to education and health and other public needs in Ludhiana, Sialkot, Lahore and Peshawar and the provinces of Sindh and Balochistan. The missionaries in the united provinces did splendid work among the people for their education and provided a large number of primary schools for them.

Many educationists from Christian community contributed tremendously in the development of the Pakistan. Michael M. R. Chohan, Principal, St. Patrick College Karachi is one of them. 7 Technical training institutions play very important role in progress of a country. Christians established technical schools in all the fields for members of all the communities. Since the inception of Pakistan, Christians have established four technical training institute in Karachi. These includes, St. Francis

Technical School, Patrick Technical School, St. Francis Technical Institute and St. Patrick Technical School.

Christian is the second largest religious minority community in Pakistan after Hindus. The total number of Christians in Pakistan is approximately 28,00,000 in 2008 or 1.6% of the population. Of these, approximately half are Roman Catholic and half Protestant. There also is sizeable minority of the new Apostolic church. Non-Muslim minorities are discriminated against the constitution of Pakistan.

Although the founder of the nation had said on August 11, 1947, “The religion has nothing to do with state affairs” but now the religion of Islam has a dominating status in the constitutionalised political, judicial, social, cultural and governmental system. Islam is the official state religion. Being enforced as the supreme law of the land is the Islamic Shariah, the judiciary, legislature and executive and also working under the constitutionalised law. All the laws are being modified and reframed according to the injunctions of the Quran (the Holy Book of Muslim). The present constitution, political system and government is no more democracy.

Under this system, the Christians of Pakistan have neither equal political, socio-economical status, nor the equal access to available opportunity in playing leading role in the national setup. The Christian Educational Institutions which were running and managed by the churches were taken over by force and nationalized by Z.A. Bhutto government in 1972. Recently Pakistan government handed over some major institutions to the Christians by denationalized process.

Due to the nationalization of Educational Institutions and abolishing of the reserved seats for minorities in government institutions in 1972, there has been an increase in illiteracy and poverty among non-minorities.

Articles 20-22 of the Pakistan Constitution provide for the freedom of professing, practicing and propagating religion but not of changing. However special safeguards are extended in the fields of taxation and for the establishment of religious institutions as well as those for education. Freedom of expression is
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granted in Article 19 but limited by the glory of Islam. Religious minorities continue to be excluded from many aspects of public life in Pakistan by law, such as the office of Prime Minister and President and the Federal Shariat Court only entertains Muslim judges and lawyers.

Fundamental Rights directly related to religion are provided in Articles 20 to 27 of the Pakistani Constitution. For instance, Article 20 of the Constitution deals with the freedom to profess and practice religion ‘subject to law, public order and morality’ (Art 20). The term ‘subject to law’ is vague. There can be three possible interpretations of this clause: ‘law’ here may refer to other provisions of the Pakistani Constitution; to the laws enacted by the legislature; or it may refer to both. Since constitutional jurisprudence stands at a higher pedestal as compared to laws promulgated by the legislature, one may take the position that constitutional law, especially Fundamental Rights, cannot be subjected to lower forms of laws. Even if this view is accepted, there are multiple discriminatory provisions within the Pakistani Constitution which may be used for legitimizing restrictions on Article 20.

The fundamental rights enunciated by the Pakistan Constitution included among others, equality of all citizens before the law; equal protection of law to all citizens; no discrimination on grounds of religion, race, caste, sex, or place of birth with regard to access to places of public entertainment, recreation, welfare or utility; every qualified citizen should be eligible for the services of the State irrespective of religion, race, caste, sex, descent or place of birth; every citizen was guaranteed freedom of speech, conscience, expression, association, profession, occupation, trade or business.

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8 Art. 19: Freedom of speech, etc. Every citizen shall have the right to freedom of speech and expression and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court (commission of) or incitement to an offence.


10 This view was expressed by Justice ShafiurRehman in the Zaheeruddin.

As regards the safeguard against the fundamental rights D. Ghosh commented as:

“As regards the economic and cultural safeguard, it was pointed out that ‘much can be done to safeguard the interest of the minorities and to instill sense of confidence into them if the fundamental rights of equal and impartial treatment of all citizens are strictly enforced.”

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Final report regarding minorities' rights added the following safeguards for the fundamental rights:

(i) Any minority residing in the territory of Pakistan shall not be prevented from conserving the same.

(ii) The State shall not discriminate in granting aid to educational institutions.

(iii) There shall be a Minister for minority affairs both at the centre and in the provinces governments.

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5.3 Religious Minorities

In an Islamic state, non-Muslims are viewed as:

i. Mu'ahidin

Those who have come under an Islamic state on account of a treaty and have resolved to become a willing part of it without any political, ideological or social pressure.

ii. Dhimmiyyin

Those who have come under an Islamic state on account of being subdued in a battle and, thus, have no other option.

According to the Qur'an Dhimmiyyin can become citizens and have their rights protected by the state.


13 Pakistan, Report of the Basic Principles Committee (as adopted by the constituent assembly), 1954, p. 89.
"There is no differentiation between Mu'ahidin and Dhimmiyyin regarding their citizenship but both these groups have different rights. The rights of the Mu'ahidin cannot be decided solely by the Islamic government; instead the final decision lies in the pact concluded between the two parties. On the other hand, the rights of the Dhimmiyyin have been decided by the Islamic law. These rights are a permanent part of the Islamic law. Just as the other decrees of the law are important in an Islamic state, in the same way protection and fulfillment of these rights is also essential and violation of these would be equivalent to deviation from religion".14

Therefore non-Muslims have the right to their life, wealth and honour and the state is liable to protect these rights. In this context, the role of Pakistan as an Islamic state must be to practice time tested of Islam by ensuring its responsibility as the sole protector of its non-Muslim communities whether Christian, Buddhist, Hindu, Parsi or any other.

The Ahmadi sect was declared non-Muslim by the Second Amendment to the Constitution in 1974. In the following years further “offences relating to religion” amendments were made to the penal code specifically targeting Ahmadis. Article 298 made it a criminal offence to pose as a Muslim, thereby preventing the self-identification of Ahmadis as Muslims. Furthermore Blasphemy Laws are still in place today and disproportionately used against religious minorities such as the Hindu, Christian and Ahmadi.

Article 25 guarantees the equality of citizens and is buttressed by Articles 26 and 27, which offer equality in access to public places and safeguard against discrimination in public services.

The Pakistan Constitution which seems accommodating towards religious minorities include the right against discrimination in access to public places (art. 26); and rejection of citizens for ‘service of Pakistan…on the ground only of race, religion...’ (art. 27).

The list of prohibited grounds is limited and exhaustive. It includes race, religion, caste, sex, residence or place of birth but excludes nationality, ethnicity, descent or belonging to a minority group.

In Pakistan by and large the various linguistic minorities also form ethnic minorities. In this sense they are ethno-linguistic minorities. The dominant group is Punjabi at 44%. The non-dominant ethno-linguistic groups are the Pakthun (15%), Sindhis (14%), Siraiki (11%), Mohajir (8%) and Balochis (4%). They are not given the same formal protections as religious minorities. The ethno-linguistic diversity of the country is supposed to be managed by way of provincial autonomies. However this federal system fails to protect the various non-dominant minorities for two main reasons. Firstly not all these groups, like the Siraiki of Southern Punjab, have their own provinces. Secondly, there is no provision for accounting for the relative disadvantage of regional minorities in each province, as in the Indian system.

There are six major and over fifty-nine minor languages. Article 28 of the Constitution prescribes the preservation of language, script and culture and the set of institutions for the teaching and learning of languages. However it is limited by Article 251 which dictates that Urdu must be the national, and English the official, languages of the state. It does, nonetheless, allow for the provincial assemblies to legislate so as to teach, promote and use the provincial language. The provision has failed to live up to minority expectation. Schools do not teach any of the regional languages and their use in courts is not permitted. This has a detrimental effect on access to justice of ethnic minorities.

Article 2-A, in fact not only protects the minorities in Pakistan but in many ways gives double rights to the minorities of Pakistan.

Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes.

The minorities who are citizens of Pakistan enjoy protection of the Constitution and laws of the country and are as such entitle to democracy, freedom, equality, tolerance and social justice, fundamental rights including equality of status, of opportunity and before law, social, economic and political justice and
freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.

According to the Constitution of Pakistan, there is no discrimination in the rights of ethnic and linguistic minorities in Pakistan. They are treated equally and with the same legal status.

Various beneficial provisions for the safeguard and protection of minorities are provided in the Pakistan Constitution. Provisions including relating to constitutional protections of ethnic and linguistic minorities as that of religious minorities.

The Constitution of Pakistan has several Articles that safeguard against any form of discrimination.

Pakistan as a state, is bound to provide a system of governance, protection for the minorities as envisaged by its constitution.

**Article 4** : States that it is the inalienable right of every citizen to enjoy the protection of law

**Article 9** : Guarantees security of life and liberty of every citizen.

**Articles 15 to 20** : Guarantee freedom of movement, assembly, association, speech, profess religion and manage religious institutions to every citizen.

**Article 20** : Freedom to profess religion and to manage religious institutions Subject to law, public order and morality:-

(a) every citizen shall have the right to profess, practice and propagate his religion; and

(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

The Constitution provides for "freedom to manage religious institutions." In principle the government does not restrict organized religious groups from establishing places of worship and training members of the clergy; however, in practice religious minorities suffered from restrictions of this right. District-level authorities consistently refused to grant permission to construct non-Muslim places
of worship, especially for Ahmadiyya and Bahai communities, citing the need to maintain public order.

**Article 21:** **Safeguard against taxation for purposes of any particular religion**

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

**Article 22:** **Safeguards as to educational institutions in respect of religion, etc.**

(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law:

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

So, Article 22(3) of the Pakistan Constitution makes admissions to educational institutions, and allowing religious groups to teach their faith in institutions maintained by them, ‘subject to law’.

**Article 25:** Guarantees equal protection of law to all citizens, irrespective of their caste, gender or creed etc.
Article 26: Guarantees non-discrimination in respect of access to public places.

Articles 27: Provides safeguard against discrimination in appointments in the civil services of Pakistan.

One of the few indicators that Pakistan has diverse elements other than religious diversity in its polity, appears in Art. 28 of the Constitution of Pakistan, where it is conceded that sections of communities possessing a distinct ‘language, script or culture’, shall have the right to preserve the same.

Article 28: Preservation of language, script and culture

Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

Article 33: “The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.”

Article 36: Protection of Minorities

“The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services”.

The constitutional framework and its provisions regarding the status of non-Muslims in Pakistan has been mentioned merely to show that neither state policy nor Islamic teachings deny the basic rights of minorities in Pakistan. Some legalist positions in Islamic states are so strict that non-Muslims find it hard to live normal lives. Blasphemy laws and apostasy laws exemplify the hardships suffered by the minorities as well as illustrate how seemingly democratic ideals of a religious state can easily be used to marginalise religious minorities.

Article 37 of the Constitution makes it the State’s responsibility to ensure promotion of educational and economic interests of backward groups or areas and make higher education accessible to all on the basis of merit.

Article 227: While stating that “all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah”, makes it clear that, “Nothing in this Part (of the Article) shall affect the personal laws of non-Muslim citizens or their status as citizens”.16

Government policies did not afford equal protection to members of majority and minority religious groups. Religious minorities were legally restricted from public display of certain religious images and, due to discriminatory legislation and social pressure, were often afraid to profess freely their religious beliefs. The 2004 establishment of the Ministry for Minorities removed responsibility for protection of religious minorities from the Ministry of Religious Affairs. The Ministry of Minorities is a stand-alone, cabinet-level ministry that has the "aim to protect the rights of minorities as envisaged under the 1973 constitution of Pakistan." The budget of the ministry covers assistance to indigent minorities, the repair of minority places of worship, the establishment of minority-run small development projects, and the celebration of minority religious festivals. These expenses were previously covered by the ministry of religious affairs. Religious minorities claimed that the Ministry for Minorities is underfunded and that localities and villages that were home to minority citizens went without basic civic amenities. There were also indications that the Ministry of Minorities would be dissolved at the federal level in 2011, along with several other ministries, as part of the devolution plan under the 18th Amendment. Minority representatives in the Parliament and minority rights organizations oppose the possible devolution of the ministry to the provinces.

5.4 Discrimination under the Constitution

Discrimination against religious minorities of Pakistan was formalized in the country’s first Constitution adopted in 1956, and was subsequently reinforced in the 1962 and 1973 revisions of the Constitution.

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16 Pakistan’s Penal Code proscribes such constitutional violations, and defines penalties against perpetrators of such action. Following are the two examples amongst many others:

- Section 153(A) of the Pakistan Penal Code criminalizes promotion of enmity between different groups, on the basis of race, religion, language, caste or community or any other ground. Anyone found promoting such differences, is liable to imprisonment and heavy fines.
- Section 505 (2) of the Pakistan Penal Code criminalizes publication of any material that may incite group differences.
The Constitution of Pakistan, in Article 25 (1), guarantees that “all citizens are equal before law and are entitled to equal protection of law.” Article 5 provides that “adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures,” and article 33 declares that it is the state’s responsibility to discourage parochial, racial, tribal, sectarian, and provincial prejudices among citizens. However, these provisions have never been fully implemented in practice, and are contradicted by other provisions of the Constitution. Firstly, Article 2 declares that “Islam shall be the State religion of Pakistan,” and Article 31 states that it is the government’s duty to foster the Islamic way of life. Article 41(2) provides that “a person shall not be qualified for election as President unless he is a Muslim,” and Article 227 (1) states that “all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur’an and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.” Even Article 20 of the Constitution, which enshrines every citizen’s “right to profess, practice and propagate his religion” and that “every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions”, is “subject to law, public order and morality,” and is thus contradicted in law and practice when it comes to the rights of religious minorities in Pakistan.

In addition to the Constitution, many laws have been passed that formalize the discrimination against Pakistan’s religious minority groups. Under General Zia Ul Haq’s rule (President from 1977 to 1988), the government spared no efforts to bring Pakistan’s civil and criminal laws in line with Shari’a law, thus creating legislation that limits the freedoms of non-Muslims.

### 5.5 Discrimination in Education

The education system in Pakistan is both discriminatory in its content and the level of access to education given to members of minority groups, and has also helped fuel hatred against minorities through the proliferation of negative
stereotypes in school curricula. These curricula, notably those of public schools, have been thoroughly examined by several organisations that have concluded that they portray a society that is not protective of minorities. The way history is taught in Pakistan has distorted realities, and failed to recognize and appreciate the diversity of the country and the role of non-Muslims in the nation-building of Pakistan.

The constitution safeguards "educational institutions with respect to religion." No student can be forced to receive religious instruction or participate in religious worship other than his or her own. The denial of religious instruction for students of any religious community or denomination was also prohibited.

Islamiyyat (Islamic studies) was compulsory for all Muslim students in state-run schools. Although students of other religious groups were not legally required to study Islam, they generally were not offered parallel studies in their own religious beliefs. In some schools non-Muslim students may study Akhlaqiyyat, or ethics. Parents may send children to religious schools, at the family's expense, and private schools were generally free to teach or not to teach religious studies as they choose. Madrassahs, private schools run by Islamic groups, were prohibited from teaching sectarian or religious hatred or encouraging sectarian or religious violence, although some reportedly did so.

Discrimination prevails in the context of admissions to colleges and universities. Several higher education institutions implement a quota system that disadvantages non-Muslim students. For instance, at the Quaid-e-Azam University in Islamabad, each department may only enroll a total of two non-Muslim students. Even if a non-Muslim student achieves high enough scores to be admitted to the University, they are refused admission if they fall beyond the quota, and the University will instead admit a Muslim student with a lower merit score.

The Constitution specifically prohibited discriminatory admission to any governmental educational institution solely based on religious affiliation. Government officials stated that the only factors affecting admission to

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government educational institutions were students' grades and home provinces; however, students must declare their religious affiliation on application forms. This declaration was also required for private educational institutions, including universities. Students who identified themselves as Muslim must declare in writing that they believe that the Prophet Muhammad is the final prophet, another measure that singled out Ahmadis. Non-Muslims must have their religious affiliation verified by the head of their local religious community.

Private schools run by Islamic clerics or madrassahs varied greatly in their curriculum and character. They may offer after-school non-degree Islamic religious instruction, a full degree course in Islamic religious studies based on degree parameters set by one of the country's five madrassah boards, a full degree course in regular studies based either on the government's matriculation standards or the British A level curriculum, certificate courses in vocational training, or some combination thereof. Madrassahs may have students on a part-time, full-time day, full boarding basis, or some combination thereof. In some rural communities, madrassahs were the only form of education available.

Sikh leaders reported they faced restrictions in securing admissions into colleges and universities as they were required to obtain a certificate of permission from the Evacuee Trust Property Board, which they said was a lengthy process that discouraged Sikhs from pursuing higher education.

The public school curriculum included derogatory remarks in textbooks against minority religious groups, particularly Ahmadis, Hindus, and Jews, and the teaching of religious intolerance was widespread. The government continued to revise the curriculum to eliminate such teachings and remove Islamic overtones from secular subjects.

Admissions to professional colleges are also discriminatory. During the admissions exams, between 15 and 20 additional marks (varying from province to province) are given to students who have memorised the Holy Qu’ran. Comparable advantage is not available to minority students who memorise or are otherwise

well versed in their religious scriptures. These additional marks are also available to students applying for secular studies, such as in medical and engineering colleges and universities.

While Article 22 of the Constitution of Pakistan provides that no one is compelled to study religion other than his or her own, the reality is different.

In 2009, the UN Committee on the Rights of the Child noted with concern reports of children of religious minorities having been restricted in studying and practising their religion, and urged the government of Pakistan to ensure that children have the choice whether or not to participate in religious education classes. The committee also condemned the “persistence of discriminatory societal attitudes and discrimination against children belonging to [inter alia] a religious group” in Pakistan, and issued several recommendations to the Pakistani authorities to address this problem. To date, these issues still persist and the government has yet to implement the Committee’s recommendations.

In the 2002 Madrasa Registration Ordinance, the Pakistani authorities committed to registering these madrasas and to introducing secular subjects into their curricula. However, in 2009 the UN Committee on the Rights of the Child noted that a large number of these schools remained unregistered and the introduction of secular subjects in the curricula had only been partially implemented. These issues remain unresolved today.

The most recent census of the Pakistani population dates back to 1998. It states that 96.28 percent of Pakistanis are Muslims, 1.59 percent Christians, 1.6 percent Hindus, 0.25 percent Ahmadis, 0.25 percent are from the scheduled castes and 0.07 are described as “others”.

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Minority representatives refute these numbers and in the absence of a recent census, it is unclear whether the size of the different minority groups has grown or dwindled. A national census weighs particular importance as it ensures that minority population is not under-counted within development schemes, government initiatives, and through proportional quota and representation systems in different government institutions.

The 2008 establishment of the Ministry for Minorities removed responsibility for protection of religious minorities from the Ministry of Religious Affairs. In June the government dissolved the Federal Ministry for Minorities as part of the national devolution plan under the 18th Amendment to the constitution. Responsibilities are now under the purview of the provinces.

Arguably, the Pakistan Constitution takes special care of minorities by establishing a quota for them in each provincial assembly provided under Art 106(1).

Private schools run by Islamic clerics, or madrassahs, vary greatly in their curriculum and character. They may offer after-school non-degree Islamic religious instruction, a full degree course in Islamic religious studies based on degree parameters set by one of the country’s five madrassah boards, a full degree course in regular studies based either on the government’s matriculation standards or the British A level curriculum, certificate courses in vocational training, or some combination thereof. Madrassahs may have students on a part-time, full-time day, full boarding basis, or some combination thereof. In some rural communities, madrassahs are the only form of education available.

In return, the government would recognize madrassah graduation certificates. The agreement was to be followed by legislation at the federal level. Following the devolution of the Federal Ministry of Education to the provinces in May, the legislation stalled and the provinces were tasked with preparing recommendations for reforming the madrassah system.

The public school curriculum included derogatory remarks in textbooks about minority religious groups, particularly Ahmadis, Hindus, and Jews, and the teaching of religious intolerance was widespread. The government continued to
revise the curriculum to eliminate such teachings and remove Islamic content from secular subjects.

The Pakistani authorities have failed to ensure equality, dignity, rule of law and the protection of human rights of all Pakistanis, and thus rendered themselves responsible for serious violations of international human rights law, including the two International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, as well as the Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women.

- Implement effective complaint procedures and accountability mechanisms to ensure that all educational establishments, including primary and secondary schools, higher education colleges and universities, protect all students from discrimination on the grounds of their religion.
- Foster parliamentary consensus for regulating Islamic madrassas and mosques to prevent their use for the promotion and propagation of anti-minority propaganda and hate speech against non-Muslims.
- Revise and screen national curricula and all textbooks from elementary to college levels to ensure no appearances of hate speech or distortions of history that discriminate against minority groups, and to ensure that religious studies at elementary and secondary schools cover all religions.
- Eliminate religious or faith-based questions on forms for admission to educational institutions in order to avoid discrimination on the basis of religious affiliation.
- The scholar has noticed that there is no similar provision which guarantees minorities a right to establish and administer educational institutions of their choice.

5.6 Bangladesh – A brief Profile

Present day Bangladesh was a part of Pakistan until the latter’s dismemberment in 1971. India was partitioned in 1947 on the basis of “two-
nation” theory and Pakistan came into existence as a Muslim state. But this Muslim state was left with a large non-Muslim minority, particularly in East Bengal (now Bangladesh). The non-Muslims made up nearly one-fourth of the total population of East Bengal after partition and accounted for approximately 14 percent of the entire population of Pakistan. Before 1947 the minorities, especially the Hindus were politically, economically and socially dominant in East Bengal. The establishment of Pakistan reversed that dominance. The Hindu minority in East Bengal began its life in the new political system in an atmosphere of communal hatred, distrust and disgrace.

The emergence of Bangladesh in 1971 was obviously the victory of the secular forces and the minority communities took it as an end to the reign of terror and communal tension they faced till the last days of Pakistan. But unfortunately they could not remain free of that nightmare for long. In the post-liberation period also the persuasion of anti-secular beliefs by the political leaders and political elites, incorporation of the highly discriminatory provisions throughout the constitutional amendments, state-sponsored terrorism, unhealthy state policy, enactment and continuation of laws and orders discriminatory for the minorities, abduction, torture, land grabbing, desecration of religious institutions and places, forcible eviction, violation against minority women, electoral violence etc. caused a serious threat to the existence of minority people in Bangladesh and of their rights. And that led them to a huge migration to India and other places.

Though Bangladesh has ratified all major international human rights treaties and conventions and is legally bound to comply with these international human rights treaties, but it does not comply with them so far as the minorities are concerned. Bangladesh is a country of 142 million population and it is predominantly a Muslim country and the population data, of 2004, shows that 89.52% of the country's population is Muslim, and the remaining 10.48% consist

23 Muhammad Ghulam Kabir, Minority Politics in Bangladesh (Delhi, 1980, P. 1-7).
of religious and ethnic minorities.\textsuperscript{26} Of the minorities, the Hindus are the largest group with 9.58\% of the population. The Buddhists are the third largest group with 0.46\%, and the Christian the fourth largest group with only 0.26 \% of the population.

The new state of Bangladesh emerged as a secular polity with a constitutional embargo on religion in politics. The first Constitution passed on November 4, 1972, abolished: (a) all kinds of communalism; (b) political recognition of religion by the state; (c) exploitation of religion for political purpose; and (d) discrimination on religious ground. The preamble of the Bangladesh Constitution emphasised secularism as one of the fundamental principles of state policy.\textsuperscript{27} It is obvious that Islam, or for that matter, any other religion, as an individual belief system was not interfered with, but its political use and or abuse was barred.\textsuperscript{28}

The 1972 Constitution of Bangladesh gave certain rights to its citizens. These rights are called fundamental rights. There is another category of rights called human rights. Before looking at the fundamental rights, let us see what is the difference between both. The term 'human rights' does not mean any right used in

\textsuperscript{26} Status of Minorities in Bangladesh – 2011, SAHR Annual Minority Report, p. 2.
\textsuperscript{27} \textbf{Preamble} : We, the people of Bangladesh, having proclaimed our Independence on the 26th day of March, 1971 and through a historic war for national independence, established the independent, sovereign People's Republic of Bangladesh;

\textsuperscript{28} Hossain, Dr. Syed Anwar, 1997, Bangladesh Politics: From Secular to Islamic Trend, in Barun De and Ranabir Samaddar (ed.), State, Development and Political Culture: Bangladesh and India. New Delhi: Har Anand Publications Pvt. Ltd., p. 82.
special sense. Human rights are those legal and moral rights which can be claimed by any person for the very reason that he is a human being. These rights came with birth and applicable to all persons irrespective of sex, race, religion etc.

But in practice many rights given to its citizens are being violated. In the Constitution of Bangladesh, it has been mentioned that Jatiya Sangsad (Bangladesh Parliament) has power to take away some rights of its citizens by law. Unfortunately, the Enemy Property Act has been widely misused to take over the properties of the minorities.

Fundamental rights are those which are written down in the constitution and are protected by the constitution. The object of incorporation of fundamental right in constitution is not to make them unalterable in any way but they cannot be taken away by ordinary process of law making. They are placed beyond the reach of executive and legislative. In Jitendra Kishor vs. The Province of East Pakistan, the Supreme Court of Pakistan held that "the very concept of fundamental rights is that it being a right guaranteed by the constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on citizen for the makers the constitution to say that right is fundamental but that may be taken away by the law." 29

The only protective provision for the ethnic minorities that the policy makers often refer to in the context is Article 28 (4), which states that:

Nothing.....shall prevent the state from making special provision in favour of women and children or for the advancement of any backward section of the citizens.30


30 Art. 28 - Discrimination on grounds of religion, etc.: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all spheres of the State and of public life. (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.
The Bangladesh Constitution does not mention the existence of the cultural and ethnic minorities in that country.\textsuperscript{31} It seems that the Constitution is for a homogenous cultural nation, the Bangalee population governed by the majority Muslim as the provision speaks.\textsuperscript{32}

According to Bangladesh government 1991 census, the religious and ethnic minorities stood at 12.6 per cent. The Hindus are 10.5\% (12.5 million), Christian (0.3\%), Buddhist (0.6\%) and other religious minorities (0.3\%) in Bangladesh. Hindus, mostly Bangla speaking is the biggest religious minority community and they are scattered all over the country.\textsuperscript{33}

The country has an area of 55,126 square miles and a population of 154 million. According to the 2001 census, Sunni Muslims constitute 90 percent of the population and Hindus 9 percent. The rest of the population is mainly Christian (mostly Roman Catholic) and Theravada-Hinayana Buddhist. Ethnic and religious minority communities often overlap and are concentrated in the Chittagong Hill Tracts and northern regions. Buddhists are predominantly found among the indigenous (non-Bengali) populations of the Chittagong Hill Tracts. Bengali and ethnic minority Christians live in communities across the country, including Barisal City, Gournadi in Barisal District, Baniarchar in Gopalganj, Monipuripara in Dhaka, Christianpara in Mohakhali, Nagori in Gazipur, and Khulna City.

The Bangladesh Constitution establishes Islam as the state religion.\textsuperscript{34} It provides for the right to profess, practice, or propagate all religions, subject to law, public order, and morality.\textsuperscript{35}

\textsuperscript{34} Art. 2A - The state religion : The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic.\textsuperscript{35}
\textsuperscript{35} Freedom of religion : (1) Subject to law, public order and morality-
(a) every citizen has the right to profess, practice or propagate any religion;
(b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.
The government publicly supported freedom of religion; however, attacks and discrimination against religious and ethnic minorities continued during the reporting period. In general, government institutions and the courts protected religious freedom.

5.7 Minorities in Bangladesh

Bangladesh belongs to a multiethnic, multi religious and multilingual pluralistic society. Its people have variety of beliefs. Several languages are spoken in different parts of the country, especially in the tribal areas. And a good number of ethnic groups live in the north and northeastern part of the country. Beside this, a good number of Biharis (stranded Pakistanis) are also residing in different parts of Bangladesh. Therefore the minorities in Bangladesh can be classified under four different heads:

- Religious Minorities;
- Ethnic Minorities;
- Linguistic Minorities; and
- Other minorities

5.7.1 Religious Minorities

In Bangladesh the majority of the population are Muslims. Beside this the major beliefs are Hinduism, Buddhism and Christianity. There are some other people of different beliefs, though in a very negligible quantity. These days a Muslim sect Ahmadiyya or Kadiyani stands in the same footing as to the other minority groups.

The existing minority composition on the basis of religion can well be understood from the latest population census of Bangladesh in the year of 2001:

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(2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.


Table 5.1: Latest population census of Bangladesh

<table>
<thead>
<tr>
<th>Population (000)</th>
<th>Muslim</th>
<th>Hindu</th>
<th>Buddhist</th>
<th>Christian</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number (000)</td>
<td>Per-cent</td>
<td>Number (000)</td>
<td>Per-cent</td>
<td>Number (000)</td>
</tr>
<tr>
<td>123851</td>
<td>111079</td>
<td>89.7</td>
<td>11379</td>
<td>9.2</td>
<td>840</td>
</tr>
</tbody>
</table>

5.7.2 Ethnic Minorities

The ethnic minorities are popularly known as Adivasis in the South Asian region. Bangladesh has at least 27 different ethnic groups residing both in the Chittagong Hill Tracts and in the plain lands.38

The Chittagong Hill Tracts cover 10% of the total area of Bangladesh. And it is the homeland of at least 13 different peoples of which Chakma, Marma and Tripura total are approximately 90%. The Chakma form one of the largest tribes in Bangladesh, accounting for over half of the tribal population of the Hill Tracts. The Murma (also known as Mugh), originated from Arakan and are Buddhists (with some animist beliefs). The Tipura are Hindus. The adivsis of Sajek valley in the north-east, the Lusai and Pankho, were converted to Christianity by missionaries, as were the nomadic Bom of the south. The Mizo are also Christians. The Mru, Sak and Khyang follow indigenous animist beliefs. The remaining tribes are the Tanchangya, a sub-group of the Chakma, and the Brong, a sub-group of the Tripura.

The other important groups may be mentioned as Mandi, Santal, Khasi, Monipuri, Paharia, Rakhaine, Rajbangshi, Koch, Oraon, Hajong, Mahat and Munda.

5.7.3 Linguistic Minorities

Father Timm mentioned six linguistic categories in the tribes of Bangladesh:39 Indo-Aryan, Dravidian (Paharia and Oraon tribes), Austro-Asiatic or Mon-Khmer, including the Khasi and Munda languages; Tibeto-Burmese including the Kubi-Chin and Bara(Bodo) languages. Along with this Shadri,

Rakhaine, Meithei, Kol, Cockborok etc. are the languages spoken by different groups.

In many cases the religious, linguistic or ethnic minorities overlaps each other. At the same time a particular group may be considered as religious minority as well as ethnic and linguistic minority.\(^{40}\) This becomes true mostly in case of Adivasis (tribal people) of Bangladesh.

### 5.8 Right to Education in Bangladesh

Education is a fundamental human right, the responsibility of the state and a core element of national development policy. Securing the right to education is a key in enabling people to secure other basic rights. Article 17 of the national Constitution of Bangladesh mentions free and compulsory education; it articulates that the "State shall adopt effective measures for the purpose of – (a) establishing an uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law and (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs; removing illiteracy within such time as may be determined by law". It basically resonates with Article 26 (1), of the Universal Declaration of Human Rights (UDHR) which states that "everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit". A nation's position and fundamental philosophy around education is basically reflected in its education policy. In Bangladesh a long awaited education policy, which is believed to be inclusive, pro-poor and shared by all, was declared in 2010. This education policy envisages that the transformation of societies through instilling democratic values in the minds of its citizens with the final aim of creating a better future for all can

be realized through the provision of quality education for all. This was a huge step towards the realization of the right to education of all.41

Though Bangladesh Constitution contains 153 Articles, nowhere it contains a provision which protects or safeguards the interest of minorities. Approximately 10.3% of the Bangladesh population belongs to minorities which includes, religious, ethnic and linguistic minorities. Yet the constitution of Bangladesh, 1972 does not provide a right to establish and administer educational institutions of their choice to minority communities.

5.9 Citizen’s Right to Education is at Stake – Policy Recommendations

The basic tone of the draft education law must strongly pursue the rights-based approach aiming to create social justice by overcoming inequity and discrimination in the society through the positive effects of participating in education. Bangladesh constitution does not yet recognize education as “fundamental human right” hence the state and the government are not obliged to protect and fulfill the right to education of citizens.

Article 5(1) on page 4 of the draft law mentions that primary education will be recognized as children’s right. However, defining primary education as children’s right does not actually pledge that the state will be accountable for the fulfillment of education rights of all children.

The proposed education law 2013 doesn’t clearly define the duties, responsibilities and obligations of the different stakeholders such as the state and the government, local government, school authorities, parents, learners, teachers and communities. The education Acts of most neighboring countries have categorically articulated the duties, responsibilities and obligations of different parties, for example, these have been very well defined in the Indian and Vietnamese education Acts.

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