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STATUS OF MINORITIES OF PAKISTAN AND INDIA: A LEGAL AND CONSTITUTIONAL COMPARISON

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ABSTRACT

The protection of the rights of minorities remains an important challenge for both Pakistan and India. There are many violent public events towards minorities coupled with the failure of the Government to ensure the protection of their life and properties in both countries on various occasions. This study aims to investigate the constitutional and legal status of minorities in Pakistan and India. Since the nature of the topic is immeasurable in nature, a qualitative research approach through comparative analysis is carried out. The population of minorities in both countries is quantified through Pakistan's population census in 2017 and India's population census in 2011. The study highlights the presence of various provisions that are discriminatory in nature and presents a comparison of textual differences and similarities between the current constitutional provisions related to minorities in both countries. The study further indicates that the Constitution of the Islamic Republic of Pakistan, 1973, specified the minorities as religious minorities and ensured freedom in religious, social, and political matters, and the State is made liable to guarantee such freedom to the minorities. The Constitution of India, based on the philosophy of a secular state, assures equal opportunities to minorities, but the separate laws and regulations in different states make the religious minorities concerned about the secular philosophy. On the ground, both countries need to revise the constitutional provisions that lack clarity with regard to the rights of minorities. It is also important for both countries to ensure the implementation of current fundamental rights given in the Constitution, realize the importance of the welfare of minorities, and take the right policy and legislative interventions to protect the rights of minorities in Pakistan and India.

Keywords: Protection; Rights; Religious minorities; Comparative analysis.

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INTRODUCTION

The problem of minorities remains one of the most baffling challenges that confront modern democracies (Wilson et al., 2020). The problem of minorities in the sub-continent was born and originated during British rule in India (Young, 2006). The very nature of problems associated with minority rights is not the same everywhere, but they exist only in the realm of a democracy. Prof. Humayun Kabir in his book "Minorities in a Democracy," observed and highlighted that:

"There can be no question of minorities except in a democracy. Unless there is a democracy, the problem would not arise in that form at all" (Kabir, 1968).

The reason behind this is that it is only in a democracy where the recognition is given to equal duties and rights for all, including the minorities. The rights of minorities were granted under the Universal Declaration of Human Rights in 1948, as well as the two United Nations Covenants on Human Rights in

1966. In 1992, the United Nations General Assembly adopted the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. In a totalitarian state, minorities are not allowed to keep their separate identities, as everything exists for the State. The minorities in totalitarian regimes dissolve their identity in the identity of the State (Singh et al., 2020).

In the present era, the term “minority” has been deployed upon partial or completely distinctive groups which are subjugated by a majority group while living in the same State. In spite of numerous allusions to minorities which are present in international legal instruments, there is no widely recognized definition of the term “minority”. The attempt at giving a definition that is unanimously accepted has always been an arduous task. This task has demonstrated such complexity and exertion that no one to date has been able to finish it. The efforts include those which were initiated by the organs of various United Nations agencies and the experts in this field. One reason behind this may be attributed to the variety of diverse aspects of the minorities and their protection (Fazal, 2017).

On the foundation of this mindfulness of dissimilarity, certain political claims may be made by minorities. In every instance, minorities desire the gratification of all fundamental and extended human rights. Besides it, minorities also want affirmative provisions and support from the State so that their distinctive characteristics can be preserved. There are some cases where they even want partial or complete autonomy, and in some extreme instances, succession from the State has also been sought after. Since this standard is declared unambiguously and indisputably in the United Nations Charter, Universal Declaration of Human Rights 1948, and the two 1966 United Nations Covenants on human rights, the full spectrum of these requirements and the minority claim to application of non-discrimination principle cannot be questioned (Jain & Goel, 2019).

Religious minorities are considered as religious, ethnic, or linguistic minority groups comprising of people who constitute a lesser amount of half of the total population in a specified state or a territorial jurisdiction, whose members enjoy communal features of religion or language or culture or the blend of all these characteristics. Every individual or human being residing in any part of the globe, regardless of caste, color, or creed, enjoys certain fundamental, legal, and constitutional rights (Wilson et al., 2020).

Reciprocally, the country of birth or his/ her residence has certain responsibilities and functions to perform for the protection of lives and properties of its citizens. The State is believed to be acting as a mother for its citizens and every mother loves her children; takes good cares of their foods, clothes and shelter. There are different categories of the rights of human beings, however, two of them are of prime importance including; 1) protection of life, 2) protection of properties (Shiva, 2001). The two forms of these rights are awarded to each national of any state across the world based on mutual interest and unsigned or signed agreement between the State and the individual (Keith et al., 2009).

Pakistan and India since its partition have been facing challenges in protection of rights of minorities. In Pakistan historically, the pluralistic nature vision of Jinnah was echoed in the speech of 11th August 1947. However, unfortunately, some governments in Pakistan, in pursuit of their vested interests have thrown his statements and the essence of his speeches in the backburner. This essentially caused intolerance and xenophobia, thereby endangering the plural society of Pakistan. Religious minorities are defying frequent challenges with the inclusion of protection of their fundamental rights, even when the country has a heterogeneous society where essential human rights are bound to be associated with the ethnic and religious minority groups. The State has debarred the religious minorities from the state contraption and they are fighting for their persistence and survivability (Quong, 2011).

METHODOLOGY

This research aims to compare the legal and constitutional status of minorities in Pakistan and India, utilizing both the qualitative and quantitative data. The study is designed to provide a comprehensive

analysis of minority rights within the respective legal frameworks, incorporating both primary and secondary sources of data. The research begins with an extensive literature review to understand the historical context, existing legal provisions, and policies related to minority rights in both countries. This review forms the basis for contextualizing the subsequent analysis. Population data for Pakistan is sourced from the Pakistan Bureau of Statistics, focusing on the religious composition of the entire country and its four provinces according to the census of 2017. For India, religious population data from the 2011 census (which is last conducted census) is utilized to capture the demographic landscape.

The primary focus is given on qualitative examination of legal and constitutional documents, policies, and amendments that influence minority rights. A comparative legal analysis is conducted, aiming to identify similarities and differences in the legal frameworks governing minority rights in Pakistan and India. Relevant case studies are selected to illustrate practical implications and nuances within the legal systems. Challenges and opportunities faced by minorities in both countries are identified through a combination of quantitative data, legal analysis, and qualitative insights. Recommendations for policy changes or improvements are drawn from the research findings. Throughout the research process, ethical considerations are prioritized to ensure the respectful and unbiased treatment of information related to minority communities. The study acknowledges its limitations, such as data constraints, and suggests potential avenues for future research to build upon the findings.

ANALYSES AND DISCUSSIONS

Status of Minorities in Sub-Continent

The conditions of human rights or fundamental rights are quite different or at least vary from states to states or country to country in the sub-continent including Bangladesh, India and Pakistan (Chowdhury & Ali, 2011). Each country in the sub-continent has introduced and enacted different fundamental human rights to safeguard the liberty, life and property of its nationals. In each country, there is a huge population which is in accordance with the religion, creed, culture, rituals and norms of the State. For instance, in India the majority of its nationals belongs to Hindu religion, accordingly, the major part of the population practice culture, customs and rituals as per Hinduism, whereas there are different minorities residing in India that belong to other religions including Islam, Jainism, Buddhism, Christianity, Sikhism, Bon, Judaism, Baha-i-faith, and other religions (Haluza-DeLay, 2014). India is a heterogeneously populated country across the world having over 1.2 billion populations (Creegan, 2012). According to historical perspective, the sub-continent granted sanctuary to various ethnicities including Hebrew Jews, who took shelter in the sub-continent after they fled from Babylonia, Aramaic Christians who fled from Islamic rule in Syria, Zoroastrians of Persia, who took shelter in the sub-continent after they fled from Persia in wake of Muslim rule in Persia, and many other nationals who belong to other religions including Jains, Jews, Christians, Sikhs, Hindus and Ahmadiyyas (Sanneh, 2007).

Although, almost 94 percent of Hindus across the globe are residing in India but there is a huge presence of the followers of other religions including Islam, Sikh, Jainism, Buddhism and others (Van-der-Veer, 1994). Accordingly, India has declared herself as a secular country which is inhabited by a large number of followers of other religions who are called as minorities (Jaffrelot, 2010). In order to protect the fundamental and human rights of its minorities, India has introduced several articles in its Constitution and subsequently several laws have been introduced and enacted to protect the rights of her minorities (Jaffrelot, 2017).

For instance, India is housed by 80 percent Hindus and 20 percent of India is inhabited by its minorities, including 172 million Muslims, which is the third largest population of Muslims after Indonesia, and Pakistan. Furthermore, 27.8 million Christians, 20.8m Sikhs, and some 4.5m minority residing in India belong to Jainism. After seeking independence from the UK, India introduced several secular laws to protect its citizens belonging to various minorities. However, Indian Government and different states in India have

altogether ignored its secular laws to protect its minorities especially the minority rights have been severely violated by the government functionaries in recent past by Indian governments led by an orthodox radical Hindu party in form of Bharatiya Janata Party (Shahbaz, 2020). Although, the deterioration of minority rights under Congress Rule was not less than inhumane but the incumbent Indian Government led by BJP having roots in a pure radical and extremist militant party Rashtriya Swayamsevak Sangh commonly known as RSS or Sangh Parivar. Established in 1925, RSS preached for 'Hindu Raj' earlier across the sub-continent and now in India.

Needless to mention here, a Hindu militant Nathuram Godse belonged to RSS who gunned down Mahatma Gandhi, Father of the Nation of India, in 1948 on the pretext of voicing about Muslims rights in India and Pakistan (Mukherjee et al., 2008). The militants associated with the RSS attacked on Babri Masjid and demolished it. Although, the attack received massive criticism from various parts of the world, but Indian Government did nothing rather the incumbent Government has announced to build Hindu Temple on the place of Babri Masjid.

Status of Religious Minorities at time of Partition

Pakistan was the first country that emerged on the global map which allotted a white strip in its national flag to denote minorities of the country (Riedel, 2012). According to the founding fathers of the country and peace-lovers, the white color generally is the symbol of peace and Pakistan assumed its minorities would remain in the country peacefully and coming up to the expectations of the founding father of Pakistan Quaid-e-Azam Muhammad Ali Jinnah, the minorities in Pakistan have been residing peacefully (Jain & Goel, 2019). In India, the term 'minority' was unknown before the Quaid encompasses the term. According to 29, 30, 350A and 350B Articles of the Indian Constitution, the authorities have failed to define the term 'minority'. The Supreme Court of India in 2002 during a hearing made an effort to define minority that a religious minority or by linguistic was a determinable to the State but not against the State as a whole (Sikand, 2004). After acquiring recognition at the state-level, the minorities in India have struggled a lot to get such recognition at the national level. In connection with their efforts, the Jains have been recognized as the religious minority in Indian states of Jharkhand, Uttarakhand and Uttar Pradesh, Maharashtra, Himachal Pradesh, Madhya Pradesh (Panagariya & More, 2014). After seeking state-level recognition, the Jains filed a petition in the Supreme Court and demanded national-level recognition by the national government of India. However, the supreme court debated a lot but returned the petition to the national government while asking it to decide the matter since then the matter is pending (Garg, 2018).

The struggle of religious minorities in India is not without moral and legal justification. The minorities demand freedom of observing religious duties, sacred obligation and practice their cultural rights, but the orthodox philosophy led by radical Hindus including RSS, the religious minorities are passing through critical phase (Lincoln, 2010). The Muslims minority in India has not been allowed to slaughter cows on Eid-ul-Adha days as Hindus believe cow as their 'mother'. Muslims are even not allowed to perform their religious duties openly. The Indian Government has introduced several laws to prevent Muslims performing their religious duty of slaughtering cows as sacrificial animals on Eid-ul-Adha.

The radical Hindus attack Muslims, kidnap them and even victimize their women as gang rape if they perform religious duties (Hussain, 2011). The other minorities like Jains, Buddhist and others have fought a battle to get religious rights, accordingly, different states of India including Arunachal Pradesh in 1978, Chhattisgarh in 1968, Gujarat in 2003, Himachal Pradesh in 2006, Rajasthan in 2006, Madhya Pradesh in 1968, and Odisha got religious freedom in 1967 through Freedom of Religious Acts in these seven states (Harel-Shalev & Levy, 2019; Huff, 2009). Accordingly, the anti-conversion laws have been introduced in India to enforce ban on the forced conversion, regardless, the Article 25 of the Indian Constitution is yet to be interpreted or explained by the supreme court (Coleman, 2008).

The situation can be analyzed from the explanation of the Article 25(1) where the lawmakers say it only discusses about the 'freedom of conscience' but it does not discuss about forced conversation etc. (Josh, 2009). Dating back to history, a Congress lawmaker Harikarishna Joshi moved a bill pertaining to forced conversation in 1954 and the bill was opposed by Christian because it was against the rights of minority. The said bill was not only opposed by Christian but a Muslim lawmaker Pocker Sahib Bahadur also opposed the bill on the pretext that it was legalizing the registration of conversion with the authority of the State which was against the spirit of Article 25 of the Constitution of India (Sinha, 2017). Even, then powerful Prime Minister of India Pandit Jawaharlal Nehru also went against the proposed bill and maintained that if the Constituent Assembly passed the bill it would legalize the power of local bodies to cause widespread harassment of the minorities across the country (Jha). Nehru stated that we [Indian legislators] should step forward and sort out a peaceful solution which must create an atmosphere of brotherhood, peace and happiness for the minorities of India based on mutual respect and tolerance regarding the faith of each other (Chacko, 2013).

Vision of Quaid e Azam regarding Status and Rights of Religious Minorities

According to the vision of Quaid-e-Azam, the efforts for acquiring a separate homeland of Pakistan were just to safeguard the religious rights for Muslim minorities of India. Quaid-e-Azam believed the religious, as well as political and social rights of the Muslims and other minorities in the sub-continent were being discriminated with the hand the British rulers and Hindus. Thus, he presented the concept of two-nation theory explaining his concept that the sub-continent was the residing place for two nations including Hindus and Muslims and according to any definition of the nation, the Muslims residing in the sub-continent were a nation by all means of religion, social patterns, lifestyles and even observing religious duties. Quaid believed that every nation in the world has moral as well as legal right to live in accordance with its own religion, culture, and practice religious duties, perform social and cultural activities (Tomalin, 2013).

In order to acknowledge the services rendered by the non-Muslim members or the minorities for creation of Pakistan, the Founding Father Quaid-e-Azam Muhammad Ali Jinnah declared 11th August as the Day of Minorities in Pakistan. Accordingly, Pakistan was the first Muslim country across the world which provided absolute freedom of expression of belief to minorities to practice their religious rituals and customs as per their religions (Jacobson, 1997)

While addressing the first session of the Constituent Assembly of Pakistan (Khalid et al., 2018), Quaid-e-Azam said as;

“You are free; you are free to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion, caste or creed—that has nothing to do with the business of the State” (Quaid-e-Azam Address on 11th August after being elected as President).

As Quaid was well aware with struggle and efforts of the minorities for a separate homeland of Muslims where minorities could also enjoy their full rights, therefore, after achieving the independence, the Quaid announced absolute freedom for all minorities and even included a white strip in the national flag of the country which was unprecedented across the world (Qalb-i-Abid, 1999). Furthermore, the country is a signatory of dozens of international pacts and treaties which safeguard the rights of the minorities and award liberty with religious context to all the nationals of the country. The love and respect minorities for Pakistan can also be gauged from the situation of division of Punjab, that the entire Christian Community was favoring Pakistan. The Christian leaders favored Pakistan and advocated everywhere that the entire Punjab should be part of Pakistan and at one stage when voting was tied the then Speaker Punjab Assembly SP Sinha cast his final vote in favor of Pakistan, thus, a huge part of the Punjab was annexed to newly established State of Pakistan (Copland, 2002).

Therefore, after achieving the independence, several minorities including Christians played a vital role in establishing a powerful military of Pakistan. According to available records, 52 Christian brave soldiers laid down their lives to protect and safeguard the honor of their homeland – Pakistan. Despite some untoward discriminatory incidents against the minorities, their love and respect for the homeland is unquestionable. Reciprocally, the country has also safeguarded their rights in accordance with the vision of the Founding Father of Pakistan. Dr. Ruth Pfau, a German nun, was awarded the title of ‘Mother Teresa of Pakistan’ by the Government of Pakistan as the lady travelled to remote districts of Pakistan especially in Sindh and established hospitals for treatment of leprosy patients (Aziz, 1993).

Owing to her hectic efforts, the Government of Pakistan formally announced that leprosy was under control in 1996 and this happened just because of Dr. Ruth. Furthermore, Justice A.R Cornelius, Justice Durab Patel, and Justice Rana Bhagwan Das rendered meritorious services for the judiciary of Pakistan. In a recent development, the establishment of a modern Complex at Kartarpur Corridor for Sikh community and another modern complex for Hindu pilgrims at Katas Raj Temple is eye-opening examples for the entire world that how much Pakistan does care for its minorities in true letter and spirit.

Status and Rights of Minorities in Pakistan

Pakistan emerged on the map of the globe with the vision and foundations of Islam. Quaid-e-Azam knew about the problems confronted by the non-Muslims, therefore, he provided them surety that their rights would be protected by the State (Shabbir, 2012). According to Quaid, Hindu and Muslims would cease to be the Hindu and Muslims respectively not in religious affairs but they would have firm faith in the State which will safeguard their rights. Soon after achieving the independence, the Govt. of India Act, 1935 was adopted by the State of Pakistan with certain modifications and Quaid gave the task to the Constituent Assembly to frame the Constitution of Pakistan. The Assembly passed the Objective Resolution in 1949 which is believed to be the foundation stone for the new Constitution of Pakistan.

The Objective Resolution guaranteed the protection of fundamental rights i.e., freedom, tolerance, equality, and social justice (Blanke, 2012). The minorities were provided assurance they could profess and observe and perform their religious obligations and develop their individual cultures in accordance with their religion. The minorities were empowered to enter into government services and server their homeland. After passing of Objective Resolution, several committees including Basic Principles Committee, Fundamental Rights for the Citizens Committee and Minority Rights Committee etc., were established to work for the Constitution. The Constituent Assembly declared that minorities would be provided generous rights and would be treated as citizens of Pakistan (Bajpai, 2000). The minorities were guaranteed the rights of equal protection, non-discrimination, rights of induction into civil services of Pakistan, freedom of expression, association, occupation, business or trade and minorities were provided assurance that they would hold preaching institutes to spread their religious activities. The report carrying all these things discussing all the affairs of the minorities were tabled before the Constituent Assembly and was highly appreciated by the members of the Assembly.

Accordingly, in both of the Constitutions of Pakistan including of 1956 and 1962, the rights for minorities were visibly spotlighted and minorities were provided a guarantee that they would be awarded due rights equally in the footprints of the rights of other citizens of Pakistan. The Constitution of 1973 itself is a charter for minorities in which minorities enjoy absolute freedom to practice their rights – religious, social and political with complete protection of the State’s bodies (Rehman, 2000). The Constitution of 1973 has discussed the term ‘minority’ at several occasions, however, the minorities in Pakistan have been labeled as ‘religious minorities’ as none of the constitutional bodies have yet discussed or considered ‘ethnic, cultural etc.,’ minorities.

All the Constitutions the country provides equal rights to religious minorities in parallel to other citizens of the State. Minority’s members have absolute freedom to worship, perform religious obligations, and live

according to their own cultures and rituals. The 1973 Constitution also provides the fundamental rights to all citizens which provide imperative and guaranteed protections to all the religious minorities (Wilson et al., 2020). As per the fundamental rights given in the Constitution,

“All citizens are equal before law. No person should be deprived of life and liberty. There should be no discrimination on the ground of religion, caste, creed, sex or place of birth.” (Article 25 (1), (2))

The Constitution of Pakistan provides absolute freedom to all the minorities including Hindus, Sikhs, Jains, Ahmedies etc., residing in Pakistan regardless of their ethnic origin or religious or political affiliation (Mehfooz, 2021). The Constitution of Pakistan 1973 provides a concrete cover to all minorities to live in country, enjoy full rights of a citizen of the State, participate in religious ceremonies, cultural activities and perform their religious, socioeconomic and political events with empowered sense of safety and protection. The Constitution of Pakistan has visible ratio of representation of the minorities in the lower house – the Parliament, the upper house that is the Senate, judiciary, armed forces or any section of the society (Waseem, 2010).

According to an analysis of the book titled: Constitutional and Political History of Pakistan by Hamid Khan, the country – Pakistan has passed through several phases of sustainable constitutional framework. The country has witnessed different kinds of constitutional development pertaining to all fields of life including democratic, presidential and military regimes (Diamond, 1999). Different social and political events have given rise to introduction of different constitutional developments with subsequent political and governance history of judges, generals, journalists, politicians and bureaucrats for the enforcement and implementation of the laws.

The leading figures from minorities have served on top positions in country's politics, Parliament, Senate, Judiciary and Armed Forces in Pakistan. Accordingly, as per findings of the study, there are two different views about the minority rights in Pakistan including of religious orientation and cultural diversity. All the minorities in Pakistan take legal shelter under the vision of creator of Pakistan Quaid-e-Azam Muhammad Ali Jinnah, who provided complete freedom to the minorities in Pakistan and no one from politics or military has ever attempted to undermine the minorities in Pakistan (Khan, 2017).

According to a study, Islam safeguards the social, political and religious rights of the minorities and urges upon the followers of Islam to preach peacefully and convince the non-Muslim through dynamic principles of Islam by following those principles by implanting in their lives in true letter and spirit / by (Duggan, 2012), despite all assurances and guarantees, the rights fixed for minorities are always compromised and they become socially, culturally, economically and politically neglected factions of societies. In Pakistan, minorities enjoy all rights under the Constitution but some of the departments or official in their individual capacity violate those rights and minorities have to stage protest demonstration to seek their rights (Skrentny, 2009).

According to data of Pakistan, the entire census conducted in Pakistan has not yet provided any reliable figures of minorities because of different methodology issues. However according to the population census of 2017, the minorities' data for every province is given as in Table 1 to Table 5.

Table 1. Population of religious minorities in Pakistan.

Localities	Muslim	Christian	Hindu Jati	Qadiani Ahmadi	Scheduled Castes	Others
Rural	96.49	1.10	1.80	0.18	0.34	0.08
Urban	95.84	2.59	1.16	0.29	0.06	0.06

Source: PBS – 2017.

Table 2. Population by religion in Balochistan province.

Localities	Muslim	Christian	Hindu Jati	Qadiani Ahmadi	Scheduled Castes	Others
Rural	99.42	0.06	0.15	0.14	0.12	0.10
Urban	96.61	1.49	1.58	0.16	0.05	0.10

Source: PBS – 2017.

Table 3. Religion based population of Punjab province.

Localities	Muslim	Christian	Hindu Jati	Qadiani Ahmadi	Scheduled Castes	Others
Rural	97.66	1.87	0.15	0.19	0.05	0.08
Urban	96.25	3.27	0.06	0.37	0.02	0.03

Source: PBS – 2017.

Table 4. Poulation By Religion in Sindh.

Localities	Muslim	Christian	Hindu Jati	Qadiani Ahmadi	Scheduled Castes	Others
Rural	88.12	0.14	9.77	0.12	1.79	0.06
Urban	94.67	1.84	3.08	0.17	0.14	0.10

Source: PBS – 2017.

Table 5. Population of Muslims and Minorities in Khyber Pakhthunkhwa.

Localities	Muslim	Christian	Hindu Jati	Qadiani Ahmadi	Scheduled Castes	Others
Rural	99.65	0.03	-	0.22	-	0.08
Urban	98.42	1.06	0.11	0.31	0.01	0.09

Source: PBS – 2017.

Some of the research studies have pointed out as highlighted above towards neglected areas where Christians and other minorities are avoided to take on board in policymaking and decision making process. The studies recommended that like Hindus, the Christians and others should also be taken on board in policy and decision making process so that they should also be helping hand and assist the State's institution for national development.

Status and Rights of Minorities in India

The protection of the minority rights was guaranteed by the Indian National Congress keeping in view the unconditional struggle for freedom from the British rulers (Liebich, 2008). However, after the lapse of several decades, no serious constitutional effort was made to provide documented rights to minorities. After the lapse of sixty years of achieving independence, the non-Congress Federal Government in India felt the need for establishing a Commission for Minority rights, which tabled a National Commission Minorities Act 1992 and after its approval, it is working an independent body for the rights of minorities in India (Najiullah, 2011). Times and again, the Commission has submitted several recommendations and suggestions to the Federal Government of India, and despite accepting several recommendations, still the Commission has to ask for the right of political participation by the minorities. Indian government has categorized minorities into several Scheduled Castes and considers them as backward castes and even in the Constituent Assembly met in October 1949, the quota for membership in the National Assembly was fixed to represent their minorities based on their populations.

In broader perspective, the Article 30 and Article 29 avoid to directly specify the term 'minority' rather the articles have divided minorities into six categories (Waghay, 2010). According to the Section 2, Clause C, of NCM Act, there are six main minorities in India, which are; i) Muslims, ii) Christians, iii) Buddhists, iv) Jains, v) Sikhs and vi) Zoroastrians.

However, the above mentioned people have been considered as religious minorities, the Articles 30 and the Article 29 have also laid down the characteristics of the linguistic minorities and all those castes and the sections of society in India, who does not speak Hindi or Urdu or any other official language, have been enlisted into 'linguistic minority' (Van-Dyke, 1982). Furthermore, the Article 17 of the Constitution of India justified the concept of 'untouchability' on the pretext that god(s) created all the human beings unequal, therefore, god(s) divided the beings into different classes (Narula, 2008). The unequal distribution of human beings is envisioned into the Hinduism which is the main religion adopted and practiced by the majority of the Hindus. According to the holy scripture of Hinduism 'Bhagwat Gita' [Song of the Lord Krishna], the god created human beings into 4 main types including Brahmins [priests], Kshatriyas [rulers/soldiers], Vaisyas [merchants/ traders] and Shudras [laborers/ artisans]. As per majority of Hindus, the Lord Krishna himself created these four castes by dividing into different upper and lower castes and besides assigning them roles and responsibilities to perform this world. Therefore, according to Hinduism, all men were not equals before the eyes of god (Nadkarni, 2003).

According to the aforementioned discrimination deep rooted in the Hinduism, such religious discrimination has also been legally justified through the affirmative actions widely known as 'reservations'. The Hindu laws have explained these reservations in the system of quota wherein the followers of Hinduism are recognized as the individuals divided into communities of 'Scheduled Castes'. Such religious discrimination has also been legalized through a special Presidential Order issued in 1950 in which it has been categorically stated that whosoever who profess/ shall profess any religion other than Hinduism would fall under 'Scheduled Castes' (Borooah et al., 2015). In continuation of this religious discrimination, the Indian Constitution has also fixed 15 percent quota for jobs/ employment in different civil service departments for Scheduled Castes. According to the Indian Constitution, although every citizen enjoys equal rights but when it is a religious matter, the individuals relating to different religions or Scheduled Castes, they enjoy rights with certain limitations. Under the governments of two main political parties of India including Congress and BJP, the religious minorities have been discriminated to great extents through different discriminatory laws introduced times and again in different states of India. Consequently, the communities belonging to scheduled castes have staged protest demonstrations against the government's discriminatory initiatives for unequal distribution of rights and privileges, but the government seems to have no serious interest to deal with such issues.

According to a study, the condition of religious, ethnic, social and linguistic minorities in India was quite deplorable under Orthodox Hindu rule (Akbar, 2018). The U.S. Commission on International Religious Freedom has pointed out the acute violation of rights of religious minorities in India in its report titled: Constitutional and Legal Challenges Faced by Religious Minorities in India. The Commission reported that religious tolerance was decreasing day by day under Modi-led BJP Government which believes in Hindu rule. According to the report, communal riots were common scenes and communal events originated from organized violence by radical Hindus. After observing the back-to-back communal rights in India, the U.S. Commission declared India as 'a negative trajectory for religious rights' (Edoho-Eket, 2012).

According to findings of a study, 38 persons were murdered in above 275 communal violence incidents in India in starting few months of 2016 and the numbers was 97 in 2015 in related incidents. According to a study, the violence against religious communities was escalating with each passing day in India, which has become a land of sorrows and miseries for the minorities including the Muslims, the Christians, Jains and Buddhists (Deegalle, 2006). The feudal elements in Indian politics are a dominant factor for violation of fundamental rights and basic human rights in India. These feudal elements including Ball Thackeray enter into communal political structure on pretext of religious element and violate minorities. Nowadays, these politicians, bureaucrats and even the common government servants serving Indian elites have communalized the socioeconomic thinking and have communalized the minorities under imperial approach.

The Indian Constitution has been founded on the basic philosophy of secularism, and for a short span of time, the concept of secularism continued and during that period, Indian society flourished in all walks of life. One cannot imagine that a country where Muslim minority is suffering from severe atrocities, a Muslim Abdul Kalam, a nuclear scientist, was elected as its President and completed the term. Besides Abdul Kalam, some of the chief justices of India were also Muslims and that was considered as a golden period of Indian secularism. However, when radical Hindus occupied the high offices, the communal riots, religious violence and religious hatred become the events of the day (Bhargava & Srinivasan, 2007).

The Indian Constitution which has various provisions based on discrimination of caste-system in India can provide religious authority or religious freedom to religious minorities in its territorial jurisdiction. There are also certain provisions, which provides guarantee of equal opportunities by the law to all its citizens without any discrimination of caste, color or creed, and such provisions also negate any kind of discrimination based on religion or ethnicity. According to findings, there are certain provisions in the Constitution and laws in different states of India, which are not only contrary to international laws but they are inhumane in nature (Stohl et al., 1986). The percentage of minorities in India is shown in table 6 as per Census of India 2011.

Table 6. Religious based population data of India.

Religion	Population	Percentage	State Majority by Religion
Hindu	96.62 Crores	79.80%	28
Muslim	17.22 Crores	14.23%	2
Christian	2.78 Crores	2.30%	4
Sikh	2.08 Crores	1.72%	1
Buddhist	84.43 Lac	0.70%	-
Jain	44.52 Lac	0.37%	-
Others	79.38 Lac	0.66%	-
Non stated	28.67 Lac	0.24%	-
All Religion	121 Crores	100%	35

CONCLUSIONS AND RECOMMENDATIONS

The study sheds light on the significant challenges faced by minorities in both Pakistan and India, emphasizing the need for a comprehensive examination of the constitutional and legal status of minority rights in these nations. The analysis reveals that, despite the constitutional guarantees of protection, there are instances of discrimination against minorities in both countries. The comparative analysis underscores the importance of revising constitutional provisions in both nations to eliminate ambiguities and ensure clarity regarding minority rights. It is evident that there is a pressing need for the effective implementation of existing fundamental rights outlined in the constitutions of Pakistan and India. Moreover, both countries should prioritize the welfare of minorities, adopting appropriate policy and legislative interventions to safeguard their rights.

While the Constitution of Pakistan ostensibly grants absolute freedom to minorities, the study highlights the necessity for translating these constitutional provisions into tangible benefits for minorities, including Hindus, Sikhs, Jains, and Ahmedis. The visible representation of minorities in various facets of Pakistani society, such as the Parliament, Senate, judiciary, and armed forces, is acknowledged. However, the study suggests that there is room for improvement in ensuring not only representation but also the empowerment, safety, and protection of minorities in all aspects of life.

In essence, the study advocates for a reevaluation of the constitutional frameworks in both Pakistan and India to align them more closely with the principles of equality, justice, and protection of minority rights. It emphasizes the need for proactive measures to bridge the gap between constitutional guarantees and the lived experiences of minorities, fostering an environment where they can fully exercise their rights and contribute to the social, cultural, and political fabric of their respective nations.

The following measures should be taken by the Governments of both India and Pakistan in the short and long term;

1. Independent inquiries through commission should be made by the authorities for investigating the extreme violent events against religious minorities that has happened over the years in both Pakistan and India. The responsible should be punished as per the International and national norms and laws of justice.
2. The minorities should be given their due representation in decision making. They should have reserved seats in each province and it should be ensured that they are given their due representation at federal, provincial and local level.
3. In both India and Pakistan, it should be ensured that minorities are able to maintain jobs on merit as well as seats on quota basis should be made compulsory.

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