

MARGINALIZED SECTIONS OF PAKISTANI POPULATION: HOW LAW MAY COME TO RESCUE?

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ABSTRACT

There is increasing marginalization of many communities in Pakistan that requires perfecting. This article aims to propose solutions for the marginalized sections through relevant amendments to the constitution and law. The methodology adopted for the research is the doctrinal, analytical, and critical analysis of the issues involved. The findings mandate revision of constitution, statutes, and case laws in the interest of minority and marginalized sections of the Pakistani population. The result limitation is comparable data from other countries. The results of the study mandate imperative revision of laws in the interest of the marginalized, justice, and the future of Pakistan.

Keywords: Marginalized, Minorities, Constitution, Land Reforms, Justice

INTRODUCTION

The topic aims to explore legal solutions for relieving the annihilation of marginalized communities in Pakistan. It calls for legal and constitutional reforms for perfecting the grievances of marginalized communities in Pakistan. This research proposes a cumulative solution for the minority problem. There is research on the subject but isolated issues. No research has cumulatively dealt with the issue of legal reforms for minorities except the present research. The main objective is to look at ways and means of amalgamating minorities in the mainstream of national strata under legal reforms. Limitations inter-alia includes comparable reforms in other countries.

METHODOLOGY

The study examines the problems affecting Pakistan's marginalized groups from a doctrinal, theoretical, and critical perspective in order to indicate how the law can help (Atewologun, 2018)¹. This includes assessing related papers, cases, journals and articles. The articles are sourced from scholarly journals and papers from different websites which include Google Scholar and EBSO websites, where reliable researched information is posted. The use of keywords has been used to search for the key and related information about the problem (Muangmee, Dacko-Pikiewicz, et al., 2021; Muangmee, Kot, et al., 2021; Muangmee, Kot, Meekaewkunchorn, Kassakorn, Tiranawatananun, & Khalid, 2021; Khalid & Kot, 2021; Khalid, Lis, et al., 2021; Khalid, Chaveesuk, et al., 2021; Meekaewkunchorn, SzczepańskaWoszczyzna, et al., 2021; Chaiyasoonthorn et al., 2019; Chaveesuk et al., 2019; Chaveesuk, Chaiyasoonthorn et al., 2020; Chaveesuk, Khalid et al., 2020; Sawmong, 2020; Wall, Khalid, et al., 2021). The

sources are credible and provide details on Pakistan marginalization and the impact of constitutional and law reforms on the matter. It involves use of qualitative research method, which allows the reporting of the research findings in a descriptive format. The qualitative method used therefore is the textual analysis which involves looking for information from the available literature, from which conclusions are drawn. The process of data analysis starts with the generation of different arguments from established literature. The main type of argument used in this case is inductive argument which bases the conclusion on the data collected in the throughout research. This is because each source demonstrates different issue regarding marginalization in Pakistan. To relate to the subject, all the data will be triangulated. Data collected is analyzed through the content analysis method, which allows comparison of the various data collected from the research and drawing conclusion.

ANALYSIS

Marginalization connotes vulnerability of a section of society and is a process that drives individual to periphery, fringes, and margins, which leads to exclusion from state or non-state institution and activities, contributing to oppression, disempowerment and voicelessness (Bari, 2016)². Moreover, number of scholars opined that marginalization is the outcome of socio-cultural and politico-economic structures (Bari, 2016). Based on this classification, several sections of the Pakistani population can be categorized as marginalized e.g., the Gujjars, Hazardous, Saraikis, Balochi, Hazaras, females, and religious minority groups. Each section of the marginalized population in Pakistan has its reason of feeling deprived which will be minutely discussed in the present study. Numerous provisions in the constitution and law affect marginalized sections of the society. The analysis will proceed from the constitution of Pakistan to other provisions of the law to gauge the efficacy of law in protecting the marginalized society. Provisions in the constitution affirm the cause of protection of the sections. The preamble to the constitution is most lucid in this regard and completely in accord with the statement Quaid-e-Azam Muhammad Ali Jinnah (founder of Pakistan) on 11th September 1948 to the first constituent assembly wherein he committed to the cause of marginalized sections of society so that all people merge in Pakistan. The preamble states as follows:

"Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before the law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to the law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes ("The Web for Pakistanis", n.d.)³"

The preamble to the Constitution of Pakistan only serves as an introductory portion and has no binding effect. Coming to the substantive part of the Constitution of the Islamic Republic of Pakistan, 1973, article 3 of the constitution obligates the state to end exploitation from each section of society ("Part I: Introductory", n.d.)⁴. Principles of policy in the constitution which have been listed to aid the government in running of its affairs and are not enforceable by the courts delineate the most important provisions relating to marginalized sections of the population. Article 32 in this regard mandates the government for adequate representation of peasants, workers, and women in local government institutions ("Chapter 2: "Principles of policy" of part II: "Fundamental rights and principles of policy"', n.d.)⁵. Similarly, articles 37 and 38 of the constitution in the chapter principals of policy calls on the government to promote economic and social justice in the state ("Chapter 2: "Principles of policy" of part II: "Fundamental rights and principles of policy"', n.d.). These have been in practice inconsequential sections due to their non-enforcement and judicial overlook by the judiciary. However, protection of minorities and marginalized sections could have become meaningful after the objective resolution *i.e.*, the

ground-norm for the constitution became a substantive part of the constitution in the cognizance of the judiciary under insertion as article 2-A through a military dictator. The objective resolution guarantees protection to minorities besides enforcement of Islamic norms. The founding fathers' guideline of protection of minorities however remained elusive as the judiciary might have slipped in this regard if we go through some of the verdicts of superior courts in Pakistan. The foremost judgment in this regard that affected the marginalized section of peasants is *Qazalbash Waqf vs Chief Land Commissioner*,⁶ that while declaring land reforms as un-Islamic also made the adverse possession of tenants on such longstanding tenancy and by way of paying nominal compensation un-Islamic. This meant that the tenants could no longer become owners by adverse possession and payment of compensation to the landlord. This has negatively affected poor peasants of big landowners and a kind of servitude has been created resulting in socio-economic imbalance. The reason proffered by the leading judge Mufti Taqi Usmani in nullifying land reforms was that the state could only do the same in case of necessity that involved danger to life and limb (Zubair, 2018)⁷. Justice Naseem Hassan Shah preferred a different opinion while dissenting and declared that necessity could be interpreted differently in changing circumstances according to the intellect of man (Zubair, 2018). There are other judgments too on the restrictive rights of tenants in the property,⁸ however; all these judgments fail to propose a solution to the socio-economic issue and how to alleviate it. The contention of petitioner in *Sardar Muhammad Yousaf* case, was highly vindictive due to plausible animosity of tenants against landlords, as unsubstantiated and assumed history of landlords contrary to some facts narrated in *Hazara Gazetteer* was put forth, however, irrespective of petitioner argument the problem of tenants *viz* a *viz* big landlord concerning their socio-economic condition was left unattended by the apex court in Pakistan that has led to the marginalization of peasants in the country. Islam contains eternal principles of goodness which makes it an endeared religion to millions of Muslims across the world. However, constitutional principles of enlightenment containing fundamental rights and other provisions which are present in all the constitutions of the world have taken a back seat and trivial details of orthodoxy negating the essence of religion are prevailing and one such example is of land reforms judgments. The judgments as referred have completely ignored the spirit of Islam which was aimed at lifting the socio-economic and spiritual status of individuals and instead trifle details have prevailed overlooking the spirit of the religion. Such interpretation is manifestly against the cause of Islam and danger to the life of Muslims across the world that will continue to live in servitude. Prophet Muhammad (P.B.U.H) of Islam focused on relieving people from bondage and encouraged the freedom of slaves throughout his life. However, no such declaration was made even once. If analogizing on the same principal jurist argue that keeping slaves is inconsonance with shariah then that is manifest injustice to Islam in present times as humanity has reached a stage where the declaration of the ending of slavery can be conveniently made. Similarly, in the case of land reforms judgments, it was expected of the superior courts in Pakistan that constitutionalism would take the front seat as representing the conscience of Islam and minor details ignored however, the Mufti judge preferred the latter. Article 253 of the Constitution of Pakistan authorizes the state to prescribe maximum limits as to property⁹. *Hakim Khan Case*¹⁰, is also of ready reference here which was negated under the land reforms judgments by the constitutional courts as said judgment gave equal importance to constitutionalism *vs* Islamic principle in Pakistan ("*Hakim Khan vs. Govt. of Pakistan* PLD 1992 Supreme Court 595", 1992). It is imperative that some problems may be finds for the tenant problem as the community harbors vengeful feelings against the landlords for being left behind in today's time. The same is evident from the plentiful litigation pending against big landlords where tenants have forcefully acquired ownership against the landlord's wishes in agricultural land. It is averred that tenant of agricultural land be brought into the mainstream by the colonization of state land to tenants on showing their proof of tenancy. Moreover, the limit should be fixed to huge holdings of land and

the overdue land should be used for the colonization of poor peasants which are living as such tenants for centuries. There is mass migration of population from rural to urban areas in Pakistan and such a solution as aforesaid for tenants can stop this large-scale movement to prevent overpopulation in cities. In the same vein, it is proposed that preemption laws which have been legislated by all the provinces to prevent the outsiders from the community to acquire land may be reconsidered in light of fundamental right that allows settling anywhere in Pakistan to any citizen, as marginalized can be the victim of preemption laws dragging them to courts and expensive litigation on their acquiring land in a particular area from their life long savings.

Article 27 of the constitution of the Islamic Republic of Pakistan, 1973 provides for quota in service for underprivileged sections of society for forty years since its commencement. The quota continues although, the period has now expired ("Chapter 1: "Fundamental rights" of part II: "Fundamental rights and principles of policy"", n.d.)¹¹. This quota for marginalized sections of society through promulgated in good faith is largely misused. Influential persons from underprivileged areas whose sons usually study in elite public schools and universities are the beneficiaries of such a quota which is totally against the spirit of the law (Fatima, 2018)¹² In this regard, it is averred that the quota for marginalized sections may be made mandatory in the constitution giving the increasing polarization of marginalized sections in juxtaposition to the elite class.

Another issue that confronts the marginalized communities in Pakistan is that their representatives never reach the top echelons of power corridors. The chief executives of the country are repeatedly the same people. In this regard, lead can be taken from an American example where the office tenure of the chief executive is limited to two times thus, leading to a more democratic setup. There is a constitutional dictatorship whether the government is run by a military junta or otherwise. To combat this situation, article 90(5) of the Constitution of the Islamic Republic of Pakistan, 1973 requires a suitable amendment limiting the term of office of chief executive of the country to twice from no perimeter of time. This will encourage other people in the same party to vie for the coveted spot other than the lifetime party heads promoting a democratic dispensation rather than the autocratic rule that is now marring the system. There is able leadership in all sections of society and their presence needs to be countenanced in the interest of a more egalitarian society as promised to the citizens by its forefathers and reflected in the objective resolution that was considered as the ground norm for Pakistani constitution by Chief Justice Hamoodur Rehman in the famous case of Asma Jilani vs. Government of Punjab (Shuvo, 2020)¹³. Without striving for an egalitarian constitutional scheme and legal dispensation, the vision of Pakistan can dwindle as we are seeing now that various groups are feeling aggrieved and voicing their concerns as such. The marginalization can only end if uniformity is brought to the whole constitution and laws in conformity with the objective resolution and promises of the founding fathers decrying modern welfare constitutionalist state. Local governments are one of the cherished aims of the Constitution, 1973 as in vogue and delineated in principles of policy to the said constitution. However, the practice soon on introduction by a military regime of Pervez Musharraf has been disrupted by the political governments. This has resulted in serious damage to the cause of marginalized communities as power was directly transferred to deprived sections limiting their annihilation. Now the provincial government runs the roost with funds at its disposal to be disbursed based on nepotism increasing the annihilation of marginalized populations (Al-Rasheed, 2010)¹⁴. It is proposed that the local government system be brought back in the interest of marginalized sections as was present in the military dictator times of Pervez Musharraf. However, the system may be resumed with efficient resource allocation and accountability mechanisms to ensure transparency. It is an irony that military regimes with all their faults have done more for empowering people at the grassroots level than the so-called democrats. General (r) Ayub soon after taking power, by the year 1962 nearly a decade after the

making of Pakistan, was the first, with his military regime to introduce local governments. However, the champions of democracy have always done away with the local government system introduced by their military patriarchs in their interest compromising the most vulnerable and marginalized which puts a question mark on the objectives of the proclaimed democratic forces. Local bodies can also suppress provincialism and achieve the constitutional goal of removing it as outlined in the principles of policy. Article 140-A of the constitution makes it mandatory for the provincial government to establish local governments but the mandate is going un-heed presently (Khan, 2010)¹⁵.

Females and transgender also face marginalization due to the misogyny and patriarchal nature of society. Dr. Muhammad Aslam Khaki *vs* S.S.P. (Operations) Rawalpindi¹⁶, is the first case that recognized the legal status of eunuchs and directed the government to create a third column in the national identity card recognizing third sex ("Dr. Muhammad Aslam Khaki. *vs* S.S.P, Rawalpindi-South Asian Translaw Database", 2013). In this case Inter-Alia also affirmed fundamental rights for transgender however, a still lot is desired in Pakistani society for the uplift of women and transgender. To remedy the situation, it is proposed that hate comments against any community should be a crime in Pakistan. This will rid women of misogyny and they will be able to compete freely in the social structure of Pakistan. It is furthermore, averred that female and transgender education should be an incentive in Pakistan with the help of international donors. This will lead to the empowerment of women and transgender¹⁷. Besides, the constitution can be suitably amended to include employment quota for them by categorizing them in the marginalized communities of Pakistan in article 27 of the present. Women and minorities have their reserved seats in the parliament. It would go a long way if transgender is also accommodated based on their population for the reserved seats. Such a move will be akin to the 13th amendment of the U.S constitution for the transgender community.

A case study of the Ahmadiyya is presented by western media as illustrative of repression of minorities in Pakistan; however, this is far from truth and word needs to be said about it here. Independence of judiciary has been trumpeted a lot by the judges in recent times than supposedly any other part of the world but the truth is to the contrary and it is no hidden secret that judges are not so independent being mostly under the clout of executive and the media. Lahore's high court report on the Ahmadiyya disturbances as far back as 1954 termed the harassment of the community as unlawful (Abbasi, 2018; Saeed, 2007)^{18,19}. However, the issue of Admediya being heretic from the Muslim faith was questionably not attended to minutely by the report and the report shied away from dragging into the problem. The reported outcome was digested by the society at that time. In *Abdur Rahman Mobashir v. Amir Ali Shah*²⁰, The High Court of Lahore ruled that no permanent injunction could be issued to prevent Ahmadis from carrying on to practise religious practises linked with Islam as defined by the majority Sunni community ("*AbdurRehmanMobashar vs Amir Ali Shah Bokhari, 1978 PLD-Lahore-High-Court-Lahore 113 (1977)*", as the petitioners claimed. The court ruled that civil law could only be employed to safeguard legal rights and that religious terms or practices could never be considered a proprietary right, adding that a suit concerning such subject is only competent if it involves a disagreement over the right to office or property. "Rights in trademarks or copyrights are matters which are the concern of the statutory law," the Lahore High Court added, adding that religious phrases do not come under the domain of intellectual property law. The Ahmadiyya community is allowed for exercising their freedom of conscience, worship, or naming their worship places however they like. ("*AbdurRehmanMobashar vs Amir Ali Shah Bokhari, 1978 PLD-Lahore-High-Court-Lahore 113 (1977)*", n.d.). This case is a good reference point in the context of constitutionalism. Despite the pervasive nature of the Ahmadiyya movement as the same consider other Muslims to be infidels as responded to by Qadiani leader to the constitutional committee considering the status of the Ahmadiyya community before the promulgation of the second

amendment to the Pakistani constitution which declared the Ahmadiyya/Quadiyani as infidels because Muslims around the world regard this finality of Prophet Muhammad (P.B.U.H) as an established ingredient of their shariah (code of conduct) and faith. Later, after the passing of the second amendment criminalization of the Ahmadiyya started in making comparisons from Islamic faith under the passing of laws in the regime of Gen Zia-ul-Haq²¹. The Ahmadiyya community soon challenged these laws and the case came up for hearing before the Supreme Court which decided against the said community and upheld the legalization of criminalization of Ahmadiyya/Quadiyani using Muslim terms("The centre of Islamic and Middle Eastern law at SOAS", n.d.)²². The majority judgment in this well-known case known as Zaheer-ud-Din Case, drew an analogy from intellectual property laws in criminalizing the use of Muslim terms by the Ahmadiya/Quadiyani group("The centre of Islamic and Middle Eastern law at SOAS", n.d.).

Shafiur Rahman delivered the minority judgment which held that the restrictions imposed on the Ahmadiyya community regarding the usage of the terms 'Azan,' which means 'call to prayer,' and 'Masjid,' which is an Urdu term for a place of worship, were unconstitutional because they were part of the Ahmadi religion who had been using them for a long time (Moin, 2019)

This (*i.e.*, the Ahmadis' naming of their place of worship as a 'Masjid' and calling of the 'Azan') has been indicated in the Lahore High Court case to be a practise of Qadianis or Ahmadis not of current origin, and adopted not with the intention of annoying or outraging non-Qadianis' and non-Ahmadis sentiments. Because these are an important part of their faith and are not inherently offensive, prohibiting them from using them, making it a crime punishable by fines and imprisonment go against the Fundamental Right of religious freedom of professing, practicing, and spreading [the] Fundamental Right of equality, because only Ahmadis or Qadianis are prohibited from using them to the exclusion of other religious minorities.

Moreover, he found section 298C of the Pakistan Penal Code, as amended by the Ordinance, to be a violation of the fundamental right to freedom of religion since it restricts Ahmadis' ability to preach or spread their religion. Shafi-ur-Rahman wrapped up his argument by stating that putting on badges bearing religious messages on Islam by members of the Ahmadiyya community would not be a criminal offence because "to ascertain its specific meaning and effect one has to reach the inner recesses of the man's mind who wears or use it and to his belief for making it an offence"²³.

The opinion of Justice Shafi-ur-Rehman supra negated the ground realities and literature of the Ahmadiyya community besides being misconceived and out of context (Javed, 2014)^{24,25}. Reference in this regard can also be made to constitutional debates involving the Ahmadiyya community before the passing of the second constitutional amendment. The Ahmadiyya community in Pakistan has been awarded maximum benefit; however, the issue is negatively propagated by the international media. The community enjoys all religious freedom in relevant places where there is no danger of breach of the peace as the Ahmadiyya community faith is based on propaganda against the Islamic faith and shariah. People from the Ahmadiyya community have risen to top echelons of power from foreign minister Sir Zafrullah in the Quaid-e-Azam cabinet to army generals, bureaucrats, and military echelons. However, there is negative propaganda against the state of Pakistan concerning Quadiyanis. The international media should realize that using Muslim terms by Qadianis is bound to bring a reaction from the majority Pakistani population being used religiously by Qadianis to bring shame to the larger Muslim community. The issue of marginalization of the Ahmediya community to authors' opinion is over-blown as the international media has succumbed to their propaganda which they use to get foreign protection.

The capitalist structure of Pakistani economy has contributed to increasing marginalization of poor. It is averred that to alleviate the miseries of poor class, interest free loans may be adopted through legislation as a mode of finance and wherein loan is being awarded for

business purposes then interest on basis on profit and loss basis maybe implemented. This would be a middle way between the classical opinion of jurists and modern experts on shariah satisfying the Islamic principles.

It was averred supra that broad Islamic principles maybe taken as vantage point for analogy in Pakistani Society. Sir Henry Maines concept of moving from status to contract is a good example in this regard for Pakistani people to progress on its basis analogizing on the basis of broad Islamic principles.

CONCLUSION

Minorities have for quite a while felt marginalized in Pakistan. The dismemberment of Pakistan was also the result of the feeling of annihilation in the power corridors by one of the communities. The problem continues to loom large in many communities. It is imperative in present times that the state of Pakistan institute relevant reforms for putting the house in order as proposed in the instant research. This will be following the guarantees provided by the founding fathers to the minorities during the founding days of Pakistan. The creation of Pakistan itself is a minority movement for justice and more rights which is directive of the fact that other minority communities may also be accorded the same respect. Spirit of Islam with its golden principles is the future of Pakistan and if this gets lost in the trifle matters derogating away from justice then the loss will not be that of Pakistan only but that of the whole ummah.

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