



## In this Issue

The need for affirmative action in enhancing political participation of minorities in Pakistan

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### Political integration and affirmative legislation for minorities in Pakistan

#### Executive Summary

The recent spate of violence against Pakistan's religious minorities culminated in the dehumanizing murder of Shama and Shehzad – a Christian couple from Kot Radha Kishan. The couple were beaten and subsequently burnt to death in the brick kiln where they worked over a purported blasphemy allegation that was used as a cover for a financial dispute. This incident – along with others such as the destruction of Joseph Colony and the Gojra riots – sheds light on a disturbing schism that has crystallised in Pakistani society, with religious minorities being relegated to the position of socio-religious Other. This pervasive antagonism needs to be tackled on multiple fronts. The negligible presence and participation of minorities in the public sphere is one such front. The Supreme Court attempted to rectify this discrepancy in a landmark decision delivered on the 19<sup>th</sup> of June 2014, which strongly emphasized the need for minority integration and offered a somber observation on the treatment meted out to minorities in Pakistan:

“It requires a strong moral courage for an individual or a nation to apologize for having wronged a community. It is time for us as a nation and as individuals to have a moment of reflection, a moment of soul searching and perhaps a moment of reckoning to ask ourselves; have we lived by the pledges made in...the Constitution and by the vision of Quaid-e-Azam Mohammad Ali Jinnah”<sup>1</sup>

The idea of integrating minorities in the political life of a country gained wider currency globally as it became apparent that progress required institutional responses to rid societies of different forms of discrimination. Inclusive political participation of minorities contributed to sustainable development, peace and justice.

As minority integration was mainstreamed, the need for equality necessitated affirmative action. While the application of the principle of non-discrimination implied an emphasis on equality, the concept of social justice necessitated affirmative action in public policy.

This policy brief evaluates political participation of minorities in Pakistan and examines the challenges that impede their participation in the political processes. It contextualizes the environment in which minorities can participate in the political system, emphasizes the need for an affirmative approach, analyses the imbalance and lack of transparency in selection of minority representation, and discusses the implications of a separate electorate.

The brief also provides recommendations to make political participation more effective. These include normative commitments for affirmative action; formulating policy for the protection of minority rights and adopting legislation for establishing institutions for implementation mechanisms. Finally the paper recommends enhancing the number and quality of minority representation by adopting measures such as intraparty elections, cadre education and resource allocation.

### **1. Defining affirmative action and social justice**

Affirmative action means giving section(s) of society space which they could not occupy through ordinary circumstances. Injustice in economic, social and political systems perpetuates vicious cycles of poverty, illiteracy, social backwardness; whereas measures taken under the affirmative approach create alternative merits for compensating marginalized sections for historical injustices. These interventions are aimed at creating genuine equality in the long run.

Discrimination - be it on the basis of origin, orientation or status - is an instrument of marginalization. Therefore the principle of non-discrimination has been recognized in international customary practices, as part of general international law, judicial decisions and treaty law.<sup>2</sup> Nations are increasingly introducing policies to enable the fulfillment of rights that raise the quality of political participation of disadvantaged groups.

Affirmative action is a policy response linked with the concept of social justice. The constitution of Pakistan in its chapter on Principles of Policy offers a remarkable legal and conceptual resource. Article 37 carries a special reference to the *Promotion of social justice and eradication of social evils*, ensuring that; "The State shall: (a) promote, with special care, the educational and economic interests of backward classes or areas." Whereas, Articles 20, 21, 22, 25, 26 and 27 prohibit discrimination on the basis of race, religion, caste, sex, residence or place of birth, Article 36 states;

"The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services." Hence the constitution approves a focused approach concerning the positive rights of disadvantaged groups and outlaws discrimination on various grounds.

Countries have applied affirmative action in diverse ways to eradicate social and institutionalized discrimination. These measures include strengthening the rule of law to guarantee that persistent violations of rights are curbed. Special redress mechanisms - such as Commissions for Minorities and Equal Opportunity Commissions - are established to protect deserving candidates from discrimination, corruption and nepotism. Quotas or reservations for jobs, admissions and political representation are introduced to ensure that marginalized sections can participate in the social, economic and political mainstream of the country.<sup>3</sup>

According to a survey sponsored by Inter-Parliamentary Union and United Nations Development Programme in 2010, at least 40 percent parliaments in the world have arrangements for special or reserved representation.<sup>4</sup> New Zealand is a classic example that endeavored to end the "estrangement" of indigenous Maori people in the 19<sup>th</sup> Century.<sup>5</sup> Another interesting model exists in the reservation for Dalits and Scheduled Tribes in India.

Some countries made progress in securing political representation of immigrant communities by raising awareness among the electorate and incorporating effective representation of the naturalized population within party ranks. New Zealand and India are examples of institutionally secure minority representation. Conversely, in countries such as the United Kingdom, Netherlands, Germany, Norway, USA and Canada, the political process was used to ensure minority representation.<sup>6</sup>

A study on political reservation in India for Scheduled Tribes and Scheduled Castes demonstrated that the arrangement helped contain poverty in rural areas because it helped better redistribution

of resources. Chin and Prakash conclude that “minority political reservation is a policy that is both pro-minority and pro-poor.”<sup>7</sup> As Amartya Sen explains, the desired outcome in political representation of the respective communities entails enhancing “human capabilities.”<sup>8</sup>

The judgment delivered by the Supreme Court of Pakistan in June highlights the importance of an affirmative approach vis-à-vis religious minorities. The Court directed the Federal and Provincial governments to create institutions for monitoring and enforcing laws that are meant to protect minorities. Furthermore, they suggested the creation of a National Council for Minorities whose terms of reference should include making policy recommendations.<sup>9</sup>

## **2. Criticism**

The affirmative action approach is debated,<sup>10</sup> even challenged through legal suits by individuals who lose out opportunities due to this “special treatment” of a marginalized group.<sup>11</sup> This criticism is based on fears and perceptions of “discrimination in reverse”<sup>12</sup> against the majority or dominant groups. While this criticism helps clarify the objectives of measures related to affirmative action; progress achieved through affirmative action continues to enrich societies.

## **3. Public policy and minorities**

It is important to recognize that religious minorities were part of the political struggle for the creation of Pakistan. The vote for Pakistan in Punjab and Bengal Assemblies relied on vital support from minorities’ in 1947.<sup>13</sup> In this respect, the first Cabinet formed by the founders of the country had an Ahmadi Minister for Foreign Affairs and a Hindu Minister for Law and Justice.<sup>14</sup> However the socio-political environment of the country has changed dramatically since then.

At present there is no documented policy for minorities, albeit some constitutional guarantees and Ministries that lack evaluation and oversight. Two different approaches have been used in statecraft. The first is based on the idea of integrating religious minorities. The second approach emphasizes the exclusivity of the majority of the population. This is exemplified in the Objectives Resolution, Separate Electorate and parts of the constitution of Pakistan. The minorities’ struggle for joint electorate<sup>15</sup> explains their political ethos rather than government’s policy choice. Hence, looming confusion about policy choices partially explains the underperformance of government initiatives.

### **The institutional arrangement of minorities’ participation**

#### **a) Important features**

Four seats in Senate, ten in National Assembly, eight in Punjab, nine in Sindh and three each in Balochistan and Khyber Pakhtunkhwa Provincial Assemblies, are reserved for minorities.<sup>16</sup> These are filled by nominees of political parties in proportion to seats secured by respective parties in the general elections. The contesting political parties submit a *priority list* of minority candidates before the general elections to the Election Commission. The Election Commission then notifies successful members from the *priority list* according to the abovementioned criteria.

The separate electorate limits the choice of voters on the basis of religion did while the current mode of reservation provides for minimal minority representation in the Federal and Provincial legislatures. So voters have equal standing in the general elections along with reserved representation in the elected bodies for minorities.

#### **b) Analysis**

The following table shows whether measures meant to facilitate the political integration of minorities have been implemented along with evaluating their effectiveness. The scope of analysis is limited by factors such as pending legislation and elections of local bodies, delayed devolution of the Ministry for Minorities Affairs, the Federal Ministry for Religious Affairs assuming its functions and a lack of data about the performance of respective institutions.

Affirmative action	Body	Since	Legal status	Implementation	Effectiveness; brief comment
Reservation of seats in elected bodies	National and Provincial Assemblies	1974	Constitutional provision	Yes	No significant legislation achieved by minority representatives, though a number of laws were passed that minorities have reservations about – Shariat bill in 1998 was an exception when minority MNAs voted against a bill.
Reservation	Senate	2012	- do-	Yes	Too early to assess, positive step in essence.
Reservation	Local bodies <sup>17</sup>	1979 / 2000	Ordinances	Dysfunctional since 2007	The representation through separate electorate up till 2000, the electorate was gradually moved closer to universal adult franchise during 2000-2001, devolution plan. The post 2008 laws and drafts for local bodies undermine the essence of devolution and representation of minorities.
Representation in cabinets,	National and Provincial Cabinets	1947	Customary /non-statutory	YES (by and large)	Seven Federal Ministers, <sup>18</sup> some others appointed as State Ministers / Parliamentary Secretaries. Likewise in provinces. Effectiveness; fifty /fifty.
Special bodies	Commission on Minorities	1993 <sup>19</sup>	Non-statutory	Occasional	Nothing significant - no evaluation at governmental level
-do-	Provincial and district Minority Advisory Councils	1980	Non-statutory	Occasional	Nothing significant – no evaluation at governmental level

Besides this, members of minority communities have worked in committees of the National and Provincial Assemblies and as Deputy Speakers in Baluchistan and Sindh. Furthermore, a few minority women have occupied seats reserved for women.

Apart from political reservations, a five percent quota was reserved for minorities in 2009 at Federal and Provincial government jobs. Its implementation and effectiveness is questionable, since there is no regulatory or monitoring authority.<sup>20</sup> Nevertheless the step was politically significant.

The question that arises is how effective is the existing arrangement of political participation in integrating religious minorities in the mainstream and what measures can be taken to make it more effective?

### c) Issues and challenges

The existing arrangement provides for minimal political participation of minorities. However, it is hard to claim that Pakistan has achieved or is even close to achieving minority – majority political integration. Factors such as religious intolerance, embedded discrimination in the statute,<sup>21</sup> hate speech in textbooks, abuse of blasphemy laws and forced conversions, forced labor, low literacy

rate and high infant mortality rate<sup>22</sup>, marginalize and render minorities powerless against social discrimination.

The recurring violence against minorities and delayed justice in assassinations of leaders like Minister Shahbaz Bhatti and Governor Salman Taseer deepens the sense of insecurity among minorities. This has contributed to persistent internal displacement and migration from the country.<sup>23</sup>

The minority political representation was neither equipped nor empowered to deal with these issues that were otherwise directly linked to the objectives of affirmative action. The situation led to questions about the effectiveness of the current mode of electorate. Many began to question whether the joint electorate was worth pursuing in the future.

Besides the hostile environment in general, the following factors contributed to low performance of the institutional arrangement:

a) The public at large and the government has a cursory appreciation for affirmative action as a redemptive tool for improvements in the political system. Thus political reservations are generally viewed as a concession rather than a serious measure for integrated development.

b) Bracketing all minorities in a homogenous category and making the entire country / province a constituency has consequences. These include an imbalance in geographical and communitarian representation, outreach and the availability of representatives. It left a serious gap in the scheme of minority representation. For instance, Bahais, Buddhist, Sikhs, Scheduled Cast and regions like Balochistan and South Punjab did not have representatives in Assemblies.

c) The percentage of minorities in the general population (3.7%) and their modest social and economic influence indicates that their presence in elected houses was symbolic. Seats for minorities in the National and Provincial Assemblies have not been increased since 1985. During this period, there was a 31 % increase in general seats of National Assembly and a 23% to 30% increase in the seats for Provincial Assemblies.<sup>24</sup>

d) The underperformance of Ministries for Minorities and other special institutions such as Commission for Minorities, Minorities Advisory Councils leaves a huge structural gap. Moreover, hiccups such as delayed devolution of power under the 18<sup>th</sup> constitutional amendment and a lack of funds renders minority institutions less effective.

e) The selection criteria within parties, lacks transparency, accountability and inclusive participation.

f) The potential of a joint electorate has been under utilized. For instance, the Election Commission and successive governments have overlooked the fact that the Ahmadi community remains disenfranchised due to the declaration clause for voters / candidates. Although there is an encouraging number of individuals from other minorities that are joining the ranks of the mainstream political parties; their role and influence in the party structure is largely limited to “minority wings”.

g) The separate electorate has remained in force for 22 years and has bred division and a culture of intolerance. This impacts the perception and treatment of minorities in the business of the state. Protracted exclusion and political marginalization has left religious minorities so weak that their disempowered participation did not add value to the political process or legislation. The arrangement also didn't help in creating an atmosphere that guaranteed their physical protection.

h) With the exception of the job quota, which itself lacks an implementation mechanism, the reservation of minority seats has not led to more affirmative legislation or policy for the integration of minorities.

i) The term minority is narrowly defined in the constitution and national discourse only refers to religious minorities. Other minority groups also need policy and protection.

#### **4. Recommendations for policy on minorities:**

Political participation or integration of minorities is not a task in isolation. Therefore, policy initiatives will have to be planned with a vision of a robust democratic dispensation and with equal and vibrant participation of citizens in general and focused action for the marginalized. The following measures and steps are recommended to achieve these objectives:

1. Federal and Provincial parliaments should chart and adopt a national policy for the integration of minorities. The scope of affirmative action should be expanded to more areas and functions of the state at all levels. Schemes such as quotas for jobs, housing and civic amenities should accompany an implementation mechanism, independent oversight and accountability.

2. The government should educate people about the civic importance and function of affirmative action.

3. Political parties should make plans for a more proactive role of minority representatives focusing on cadre education for quality representation, using accountability mechanisms, just resource allocation and community participation.

4. A statutory National Commission for Minorities be set up with necessary financial and operational autonomy, well-defined policies and terms of reference according to the UN approved Paris Principles.<sup>25</sup> Moreover, the control and autonomy of bodies meant to safeguard the interests of minorities, such as Evacuee Property Trust Boards, should be transferred to the respective communities.

5. The integration of minorities will require political parties to give normative commitments, allocate resources for establishing dialogue with minorities, identify and prepare candidates for political offices.

6. Affirmative action needs to be expanded to more categories of disadvantaged groups, such as peasants and different categories of labourers and minorities of ethnic, linguistic and gender identities. The quota for religious minorities should be enhanced and distributed further so that all communities and regions have their representation.

7. Political parties should choose representatives for reserved seats through intra party elections, preferably a year before general elections to make the process participatory and transparent.

8. New local bodies legislation should ensure that quota for minority reserved seats be filled by direct elections.

9. Political parties should allot party tickets on general seats to members belonging to a minority community in constituencies where minorities form a sizable number.

## References

<sup>1</sup>[http://www.supremecourt.gov.pk/web/user\\_files/File/smc\\_1\\_2014.pdf](http://www.supremecourt.gov.pk/web/user_files/File/smc_1_2014.pdf)

<sup>2</sup> Maniruzzaman, A.F.M.,

[http://www.academia.edu/586566/Expropriation of Alien Property and the Principle of Non-discrimination in International Law of Foreign Investment An Overview](http://www.academia.edu/586566/Expropriation_of_Alien_Property_and_the_Principle_of_Non-discrimination_in_International_Law_of_Foreign_Investment_An_Overview)

<sup>3</sup>Reservation are applied for diverse objectives; national policy objectives, poverty reduction. Quotas are used for advancing the interests of respective institutions, for instance, admission for athletes and kin.

<sup>4</sup>Dr. Oleh Protsyk, "The Representation of Minorities and Indigenous Peoples in Parliament".

<http://www.ipu.org/splz-e/chiapas10/overview.pdf>

<sup>5</sup>Special enactments provided Maori representation in the parliament. The Native Rights Act 1865, Native Commission Act 1865, and Māori Representation Act of 1867, <http://www.parliament.nz/en-nz/parl-support/research-papers/00PLLawRP03141/origins-of-the-m%C4%81ori-seats>

<sup>6</sup> IRENE BLOEMRAAD and KAREN SCHÖNWÄLDER, "Immigrant and Ethnic Minority Representation in Europe: Conceptual Challenges and Theoretical Approaches" West European Politics, 2013, Vol. 36, No. 3, 564–579, <http://dx.doi.org/10.1080/01402382.2013.773724>

<sup>7</sup> The Redistributive Effects of Political Reservation for minorities: Evidence from India, NBER Working Paper Series p 30, <http://www.uh.edu/~achin/research/w16509.pdf>

<sup>8</sup>The Capability approach defines the moral significance of individuals manifested in capability of achieving the kind of lives they have reason to value. <http://www.iep.utm.edu/sen-cap/>

<sup>9</sup>[http://www.supremecourt.gov.pk/web/user\\_files/File/smc\\_1\\_2014.pdf](http://www.supremecourt.gov.pk/web/user_files/File/smc_1_2014.pdf)

<sup>10</sup> <http://www.thecrimson.com/column/the-snollygoster/article/2012/11/2/Siskind-affirmative-action/>

<sup>11</sup> <http://www.nytimes.com/2012/10/09/us/supreme-court-to-hear-case-on-affirmative-action.html?pagewanted=all&r=0>

<sup>12</sup><http://aceproject.org/ace-en/topics/pc/pca/pca03/pca03b/pca03b1>

<sup>13</sup>The declared and unqualified support of Mr. S. P. Singha, the Speaker of the Assembly and a Christian from Sialkot, made the support of few Unionist members possible, including Sardar Khyzar Hayat.

<sup>14</sup> Zafarullah Khan and Jugindarnath Mandal

<sup>15</sup>Introduced by General Zia in 1979 for local bodies and 1985 for the general elections.

<sup>16</sup> Articles 51 (4), 59 (f), 106 (1), Constitution of Pakistan.

<sup>17</sup> The Local government (bodies) Acts and bills of Provinces.

<sup>18</sup>Zaffarullah Khan 1947-1954, Jogindarnath Mandal 1947-1950, Tridev Roy 1973-1977, J Salik 1993-1996, Derick Cyprian 1998 -2001, Shahbaz Bhatti 2009-2011 and Kamran Michael (2013 to the date) were/ is Federal Ministers whereas Ruffin Julius 1988-1990, Peter John Sahotra 1991-1993, L.K. Tressler, 2001-2004, Mushtaq Victor, 2003 2007, Akram Masih Gill 2011-2013, were State Ministers.

<sup>19</sup> Shaheen Sardar Ali and Javaid Rehman, "Indigenous Peoples and Ethnic Minorities of Pakistan: Constitution and Legal Perspective" 2001, Curzon, p. 33-35.

<sup>20</sup>Jacob, "Mainstreaming minorities", <http://archives.dailytimes.com.pk/editorial/19-Jul-2011/comment-mainstreaming-minorities-peter-jacob>

<sup>21</sup> For example; Islam to be the state religion (Article 2), President and Prime Minister to be Muslim (Articles 41 (2), 91 (3), government to promote Islamic way of life (Article 31).

<sup>22</sup> Jennifer and Jacob, "Life on the Margins", NCJP, 2012.

<sup>23</sup><http://tribune.com.pk/story/346184/insecure-minorities-pakistani-hindus-seek-safety-in-india/>

<sup>24</sup>Based on the basis of estimated population. The National Database and Registration Authority assessed minority voters around 2.9 million in 2012.

<sup>25</sup> UN General Assembly resolution, A/RES/48/134, 4 March 1994. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>