



Global Cultural Security Governance and Constitutions of Islamic Republic Of Pakistan: An Appraisal

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Abstract- This study mainly revolves around the efforts of the global community, security thinkers and strategic leaderships in framing laws to promote peace in the world and to protect the legitimate rights of every person in the world without any discrimination. In addition, the Constitutions of Pakistan have taken as case studies with special reference to cultural rights and cultural security of the citizens of Pakistan. An analytical approach has adopted to discuss the cultural rights of the citizens granted in various Constitutions of the Country.

Keywords: global community, security, legitimate rights

I. INTRODUCTION

Global Security Governance is a broader phenomenon composed legal, procedural and institutional apparatus to legitimise some basic claims (in shape of rights) of every person in the world irrespective of gender, caste, creed, colour, age, territory, sect, and religion. Constitution at national level is a socio-political contract between the ruled and ruler; and it provides a broad legal and institutional framework to protect the fundamental rights of the common man or electors against the tyranny of ruling elites.

II. METHODOLOGY

Legal-cum-constitutional approach has applied to address this selected study. Besides this, qualitative data analysis based on content analysis is also followed. The data is mainly secondary in nature. Original International Documents (downloaded through official websites) have been consulted. Similarly, Original Constitutions of Pakistan have also been consulted for this study.

III. LITERATURE REVIEW

Khan, et al. (2021) has discussed cultural rights and cultural security of the Kalash community in Pakistan. This study in comprehensively and comprehensibly highlighted the problems of this minority community and also suggested some possible solutions of those problems so as to protect the legitimate rights of the members of this community.

Sanaullah & Arab (2018) have also discussed the issues of Kalash community and very briefly discussed the laws related with cultural rights of the Kalash community.

Khan (2009) has discussed the evolution of constitution in Pakistan before independence and after independence of Pakistan. He highlighted the various political issues which affected the constitution making process in the country and vice versa.

Ahmad (1993) discussed the relationship between constitution and democracy; and he highlighted the importance of constitution in the promotion of a democratic culture wherein the fundamental rights of the citizens are protected. However, this is a general discussion.

Choudhury (2006) and **Mahmood** (2003) also shed lights on various political constitutional issues in the country.

IV. DISCUSSION

A. Global Legislation on Cultural Rights

The world community has felt the sensitisation of the existential threats to fundamental rights of people especially neglected classes – women, children, Scheduled Castes/minorities, disabled people – of the society.

United Nations Charter

United Nations Organisation (UNO) has a comprehensive charter to promote peace in the world and to protect the rights of the weaker nations against the aggressors. However, this study is mainly concerned with the cultural rights of people. Article 61 of UN Charter establishes the Economic and Social Council, which is responsible to submit its reports regarding international socio-economic, cultural, educational, and health; and to make recommendations in this regard to the General Assembly, UN, and to its other specialized agencies. This Body has also jurisdiction to make recommendations with respect to human rights and fundamental freedom of all people (UN Charter, 1945).

Universal Declaration of Human Rights

United Nations Organisation is the universal institution to protect the legitimate rights of the weaker nations against the stronger ones and to promote peace in the world by discouraging all sorts of causes of war. The UN General Assembly adopted Universal Declaration of Human Rights (UNDR), 1948. The very essence of this Declaration is to protect and promote dignity and rights (economic, social, cultural, political and civil) of all human beings across the world without any discrimination. It promotes gender equality by protecting the women's rights against any kind of discrimination. Article 2 of UNDR discourages discrimination on the basis of race, sex, colour, religion, language, territory, political, and birth. Article 3 of UNDR ensures the right to life, liberty and security of person. Article 7 of UNDR promotes equality before law of all citizens so as to protect them against arbitrary exercise of powers. Similarly, Article 9 of UNDR also protects men against arbitrary detention, arrest or exile. Article 13 of UNDR gives every citizen in a state the right to freedom of movements and residence. Article 16 of UNDR guaranteed to every man and woman the right to marriage and family without any religious, racial or national restriction. In addition, Article 18 of UNDR ensures the right to freedom of thought, conscience, and religion (UNDR, 2015).

Likewise, Article 19 of UNDR protects some political rights of people like right to freedom of opinion and expression. In addition, Article 20 of UNDR protects the right freedom of peaceful assembly and association. Similarly, Article 21 of UNDR also guarantees everyone the right to take part in the government either directly or through his chosen representatives; and the right to participate in electoral process; and the right to franchise. Moreover, Article 22 of UNDR guarantees to each member of the society the right to social security and social and cultural rights through national and international cooperation. Article 23 of UNDR guarantees economic rights – right to equal pay, freedom of employment/profession, and right to work – to everyone so as to promote human dignity. Likewise, Article 25 of UNDR guarantees standard living with social services – health, clothing, housing, medical care, and special care of Mother and child. Article 26 of UNDR guaranteed right to education – elementary, technical, professional and higher – to all citizens for personality development and to promote tolerance, understanding and friendship among all racial/religious groups and nationals to promote peace in the world (Ibid).

In addition to this, Article 27 of UNDR guarantees cultural right by stating: "Everyone has the right to participate in the cultural life of the community and to enjoy and promote arts; and the right to literary work of an author". However, Article 29 of UNDR imposes certain restrictions on citizens. It states that 'every citizen shall enjoy all those rights which are guaranteed by the law so as to protect the rights of other fellow beings. UNDR gives a comprehensive charter about human rights to states to protect socio-cultural, personal, family/matrimonial, political, economic, and health rights of everyone; and the dignity of man without any discrimination (Ibid).

Vienna Declaration and Programme of Action

The World Conference of Human Rights was held in Vienna on June 25, 1993; wherein Vienna Declaration and Programme of Action was adopted. In this Declaration, all the member states made commitments to protect human rights guaranteed in the UN Charter and UNDR. It made governments responsible to promote and protect these rights. Article 19 of this Declaration makes obligatory on states to protect the cultural, religious and linguistic rights of minorities without any discrimination (VDPA, 1993).

UNESCO Universal Declaration on Cultural Diversity

In addition to this, UNESCO has adopted 'UNESCO Universal Declaration on Cultural Diversity (2001)' in its 31st Session of General Conference held in Paris on November 2, 2001. This Declaration defines 'Culture' as:

“The set of distinctive spiritual, material, intellectual and emotional features of society or social groups; and that it encompasses art and literature, lifestyles, ways of living together, value system, traditions and beliefs.”

Similarly, Article 4 of the Declaration protects the cultural rights of minorities and indigenous people. It states:

“The defence of cultural diversity is an ethical imperative and inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedom in particular the rights of person belonging to minorities and those of indigenous people.”

B. National Legislation on Cultural Rights

Under the International legal instruments, every government has been made responsible to legislate to protect the fundamental rights of its citizens especially of minorities and other neglected classes of the society. The framers of the Constitutions of Pakistan from time to time incorporated various provisions to protect the legitimate rights of the citizens including minorities and indigenous people. The people of Pakistan had had three constitutions – 1956, 1962 and 1973.

Fundamental Rights under 1956 Constitution of Pakistan

The 1956 Constitution was enforced on March 23, 1956. However, due to political instability in the country, it was abrogated on Oct 1958. The Part-III of 1956 Constitution deals with the fundamental rights of the citizens. Some of the significant provisions related with fundamental rights of the citizens including minorities need to be highlighted. Article 4 lays down that the government shall not pass such laws which are inconsistent with the fundamental rights. It manifests that it restricts the authority of the government to law so as to close the doors on it to encroach on the legitimate rights of the citizens. Similarly, Article 22 makes the Supreme of Pakistan (the Apex Court) as the custodian of the fundamental rights of the citizens as enumerated in the Constitution. Likewise, Article 5 deals with equality before law. It means that all the citizens will be treated under the same law of the land without any discrimination (The Constitution of Pakistan, 1956).

Article 9 and 10 deals with the freedom of assembly and association respectively. Article 13 guarantees the religious rights in terms of education; and grants freedom to attend any educational institution to receive religious instructions without any discrimination; and to establish and maintain educational institutions by any religious community. Closely related with this provision, Article 18 guarantees to everyone the right to profess, practice and propagate any religion; and to establish, maintain and manage its religious institutions. In addition, Article 17 protects the rights of citizens against discrimination in the service of Pakistan. Besides, Article 19 protects the right to preserve a distinctive language, script or culture (Ibid).

In addition to fundamental rights, the 1956 Constitution of Pakistan also laid down some policy guidelines for the state known as “Directive Principles of State Policy” consisted from Article 22 to 31. Some important provisions in this regard are following. Article 26 makes obligatory on the State to discourage parochial, racial, tribal, sectarian and provincial prejudices among citizens. Article 27 also bounds the State to safeguard the legitimate rights and interests of the minorities including their representation in the Federal and Provincial Services (Ibid).

Likewise, Article 28 (a) obligates the States to take measures to promote the educational and economic interests of the people of the Special Areas, the backward classes and the Scheduled Castes. It is also noteworthy, that Article 28 (f) permits the consumption of alcoholic liquor to non-Muslims for religious purposes; but not to Muslims except medicinal purposes. Article 29 guarantees and bounds the State to take steps to ensure standard of living, to facilitate for work, and to provide basic necessities of life like food, clothing, housing, education and medical relief to all citizens without discrimination on the basis of race, castes or creed (Ibid).

Fundamental Rights under 1962 Constitution of Pakistan

The Part-II of 1962 Constitution was consisted of two Chapters – Chapter-I dealt with the fundamental rights of the citizens and Chapter-II dealt with Principles of Policy. Chapter-I gave a detailed account of fundamental rights; however, some basic rights of the citizens including minorities are here highlighted. Article 1 of Chapter-I guarantees the right to life to everyone in the country. lays down that the government shall not pass such laws which are inconsistent with the fundamental rights. It manifests that it restricts the authority of the government to law so as to close the doors on it to encroach on the legitimate rights of the citizens. Similarly, Article 22 makes the Supreme of Pakistan (the Apex Court) as the custodian of the fundamental rights of the citizens as enumerated in the Constitution. Likewise, Article 15 deals with equality before law. It means that all the citizens will be treated under the same law of the land without any discrimination (The Constitution of Pakistan, 1962).

Articles 5, 6 and 7 deal with right of every citizen to movement across the country, right to freedom of assembly and right to association respectively. Similarly, Article 8 guarantees the right to adopt any profession or occupation. Article 12 guarantees the religious rights in terms of education; and grants freedom to attend any educational institution to receive religious instructions irrespective of caste, creed or race; and to establish and maintain educational institutions by any religious community. Closely related with this provision, Article 10 guarantees to everyone the right to profess, practice and propagate any religion; and to establish, maintain and manage its religious institutions. In addition, Article 17 protects the rights of citizens against discrimination in the service of Pakistan. Besides, Article 18 protects the right to preserve a distinctive language, script or culture (Ibid).

Like 1956 Constitution of Pakistan, the 1962 Constitution also laid down some policy guidelines for the state known as "Principles of Policy" envisaged in Chapter-II of Part-II. Some important provisions in this regard are following. Article 1 of Chapter-II lays down that 'no law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah; and all existing laws shall be brought in conformity with the Holy Quran and Sunnah. Article 2 bounds the State to discourage parochial, racial, tribal, sectarian and provincial prejudices among citizens. Likewise, Article 3 also bounds the State to safeguard the legitimate rights of the minorities including their right to enter Service of Pakistan (Ibid).

It is important to point out that in 1962 Constitution, Article 4 was added to protect and promote the educational and economic interests of the people of backward classes or in backward areas. Article 5 of this Chapter obligates on the State to take appropriate steps to improve the quality of life of the under-privileged castes, race, tribes and groups. Article 6 protects the rights of everyone to participate in the national activities of the country. Article 9 bounds the State to take steps for the well-being of the people irrespective of caste, creed or race. It is also noteworthy that Article 20 permits the consumption of alcoholic liquor to non-Muslims for religious purposes; but not to Muslims except medicinal purposes. Article 12 bounds the State to take steps to ensure standard of living, to facilitate for work, and to provide basic necessities of life like food, clothing, housing, education and medical relief to all citizens without discrimination on the basis of race, castes or creed (Ibid).

Fundamental Rights under 1973 Constitution of Pakistan

The 1973 Constitution was enforced on August 14, 1973. It has been undergone various changes/amendments from time to time to meet the requirements of the people of Pakistan. Like previous constitutions, the Part-II of 1973 Constitution deals with the fundamental rights of the citizens and Principles of Policy. Some important provisions related with fundamental rights of the citizens including minorities are being highlighted. Article 8 lays down that the government shall not pass such laws which are inconsistent with the fundamental rights. It manifests that it restricts the authority of the government to law so as to close the doors on it to encroach on the legitimate rights of the citizens. Article 9 of 1973 Constitution provides personal security to every citizen of the country. Article 10 protects the citizens against arbitrary arrest or detention. Article 15, 16 and 17 provides the right to freedom of movement, freedom of assembly, and freedom of association to every citizen of Pakistan respectively. Article 20 guarantees to everyone the right to profess, practice and propagate any religion; and to establish, maintain and manage its religious institutions. Simply, this Article promotes religious freedom in the country. In addition, Article 27 protects the rights of citizens against discrimination on the basis of sex, religion, caste, race, residence, etc in the service of Pakistan. Besides, Article 28 protects the right to preserve a distinctive language, script or culture (The Constitution of Pakistan, 1973).

In addition to fundamental rights, the 1973 Constitution of Pakistan also gives a detailed account of "Principles of Policy" consisted from Article 29 to 40. Some important provisions in this regard are following. Article 33 makes obligatory on the State to discourage parochial, racial, tribal, sectarian and provincial prejudices among citizens. Article 36 also bounds the State to safeguard the legitimate rights and interests of the minorities including their representation in the Federal and Provincial Services (Ibid). Likewise, Article 37 obligates the States to take measures to promote the educational and economic interests of the people of the Special Areas, the backward classes and the Scheduled Castes. It is also noteworthy, that Article 37 (h) permits the consumption of alcoholic liquor to non-Muslims for religious purposes; but not to Muslims except medicinal purposes. Article 38 guarantees and bounds the State to take steps to ensure standard of living, to facilitate for work, and to provide basic necessities of life like food, clothing, housing, education and medical relief to all citizens without discrimination on the basis of race, castes or creed (Ibid).

V. CONCLUSION

The thorough discussion and comparative analysis of the global legal documents regarding rights of minorities and various provisions of the Constitutions of Pakistan that minorities' rights have been protected. This study is mainly theoretical in nature. It is evident from the Constitutions of Pakistan that the framers of the Constitutions and policy makers always tried to accommodate the international human rights laws, declarations, conventions etc.

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