

Political Roles of Religious Communities in South Asia

Ingolf Kiesow
Editor

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Executive Summary

As an introduction to the conference held in Singapore on February 25–26, 2010, the participants from Sweden described why they considered South Asia to be relevant for **Europe**, when the political roles of religious communities are discussed. In thus doing, it was underlined how religion is becoming “globalized” by present-day large-scale migration. One participant described how romanticism during the nineteenth century created the image of the people as an organic entity, which resulted in excessive nationalism. Today, both European Islamic groups as well as anti-Islamic movements can be found. The plebiscite in Switzerland concerning the building of minarets illustrated how Islam is becoming a target for dangerous populist campaigns.

Discussions about **Afghanistan** illustrated how the Shia minority was quite powerful in parts of Afghanistan before 1990; the Taliban subsequently reduced their influence. After external intervention, the situation of the Shites has improved with greater access to legal procedures. The introduction of a penal code and civil law in 1973 marked the introduction of secular law in Afghanistan. Yet the present constitution expects Afghans to be Muslims. Given the structure of Afghan society, the participants argued for a balance between tribal, religious, and governmental power.

In **Pakistan** the relations between the state and religious communities are basically regulated according to secularized principles. One speaker painted a picture of the vision of the father of the Pakistani nation, Ali Jinnah. His aim was to create a secular system with freedom for all to practice their religion side by side in harmony. Since his death, discussions concerning the constitution have been prolonged and resulted in a series of compromises and a lack of clarity. A period of religious orientation under Muhammad Zia-ul-Haq led to the introduction of problematic shariah laws. *Hudood*¹ and blasphemy are two concepts that continually create problems. Some of the

¹ An entire body of law has been enacted – largely during the regime of General Muhammad Zia-ul-Haq – that seeks to establish what is perceived by the supporters of these laws as an “Islamic” system of justice in the country. These laws have come under increasing scrutiny and debate both within Pakistan and internationally, especially with regard to their impact on civil liberties, human rights, and equal treatment of citizens.

contradictions are reflected in article 2 of the constitution, which states that Islam shall be the “state religion.” There is an Islamic Council to Parliament, which creates additional problems by building religion into constitutional proceedings.

Another speaker characterized 2008 and 2009 as a dark period in Pakistan. There was a surge of terror, and the Taliban movement started to push for the creation of an Islamic Emirate. The roots to this serious situation are found in the Soviet invasion of Afghanistan and the U.S. retreat, the series of events in Pakistan and its neighborhood that climaxed with the assassination of Benazir Bhutto and the ensuing terror rampage, the operations in the Swat Valley, and the wave of anti-Americanism created by the U.S. presence in Afghanistan. The reasons for the present disorder were explained by the spread of anti-U.S. sentiments in general, a great deal of naïve beliefs about the seriousness of the intentions of the Taliban, influence from Afghanistan, and an influx of foreign fighters and above all a weak civil society. What is needed now are rapid rehabilitation, reconciliation, and reconstruction. But is there a sufficient political will to create the necessary poverty alleviation and to stop mixing religion with politics?

In **India** Hinduism is the dominating religion and India has its share of intercommunity violence. Starting with events during the British rule and before the partition of British India, one speaker analyzed eight serious incidents in India, Pakistan, and Bangladesh, which took place during the second half of the twentieth century. A further ninth incident shows that the situation still remains very unsatisfactory in to the present-day period. Violence and destruction, caused by intercommunal strife, can easily break out. The killing of Hindus on a train at a railway station in Gujarat, India, triggered a diabolical retaliation. Although the violence was two-sided, the number of Muslims killed exceeded the number of Hindus killed at a ratio of approximately seven to one. The government’s collusion with Hindu rioters was so glaring that the Chief Minister of Gujarat was severely condemned both domestically and internationally.

The problem of Kashmir is usually looked at as either a bilateral issue between India and Pakistan or as a problem of separatism, where many Muslim Kashmiri want their state to be separated from both India and Pakistan (or at least from India). The discussions during the conference hinted at a much more complicated nature of the problem on the local level as

opposed to the international issue. Radicalization is a growing threat and especially so in Jammu, which is a multireligious, multicultural, and linguistically composite region. Issues of land ownership have aggravated relations not only between Hindus (who are in the majority in Jammu) and other religious groups. Religious communities seek to include socio-economic conditions and identity issues as a part of religious politics and thereby in their election agendas. The example of a land transfer in 2008 to a Hindu temple was used to illustrate how all the mainstream political parties and separatist groups can (and often do) jump into the fray to further politicize a sensitive issue. As one of the participants argued, exploring the possibilities of subregional autonomy and decentralization of power within the different regions of Jammu, and within the context of relations on the international level, is a must if any resolution of the conflict is to be accepted – a telling example of “boxes inside boxes” in intercommunal relations.

The Indian constitution is secular. It has created a secular system, but court cases about family law are judged according to the confession of the parties. Communalism and excessive cast consciousness are problematic. The issue of *who* can interpret the family law becomes a problem. There are several articles in the constitution concerning scheduled casts and tribes, and, with that, positive discrimination has become a problem. Religious leaders are misusing this situation to their own advantage, and confrontations between religious communities are common. The speakers came back again and again to the importance of the **rule of law** as the only efficient limit to excessive power being wielded by religious leaders – and by extension thwarting the potential for communal disorder.

The nature of the problem was highlighted in a debate initiated by a comparison made by one of the speakers between **the legal systems of Singapore and India**. Both India and Singapore make provisions for the administration of sharia for Muslims in personal and religious matters. In Singapore, the government’s approach towards the regulation of Islam and management of religions have resulted in the establishment of a state sanctioned Islamic authority, namely Majlis Ugama Islam Singapura (MUIS), also known the Islamic Religious Council of Singapore. One of the key roles that MUIS is tasked with carrying out is the centralization of the administra-

tion of mosques, *waqf*,² *zakat*,³ and other forms of charitable donations. MUIS also plays an important role in defining Islamic doctrine and practice. It has a legal committee that periodically issues *fatwas* (religious edicts). MUIS also has a *Mufti* (an Islamic scholar who interprets sharia) who is seen to be, and officially promoted as, the highest authority on Islam in Singapore.

In contrast to Singapore, there is no centralized or state-sanctioned Islamic authority in India. In recent years, India has witnessed the burgeoning of Muslim law boards each attempting to define sharia for the state courts and advising the state on Muslim or Islamic issues. These law boards, it must be noted, have no legal sanction and operate as pressure groups.

Singapore's approach towards the management of Islam has largely centered upon the construction of a centralized state-sanctioned Islamic authority, which serves to advise the government on issues relating to Muslims and Islam, on the one hand, and guides the religious development of the Muslim population, on the other. In contrast to this, the Indian state negotiates its position on Muslim and Islamic issues with various actors claiming to represent the community and religion. With the rapid growth of law boards, the Indian state finds itself having to negotiate its regulation of Islam and Islamic institutions amongst a growing number of players.

² An inalienable religious endowment in Islamic law.

³ Zakat is the only tax sanctioned to the state according to Islamic law or sharia. It is a proportionately fixed contribution collected from the surplus wealth and earnings of Muslims.

Foreword

Ingolf Kiesow

During 2007 the Institute for Security and Development Policy (ISDP) started a project of a series of “local” seminars and a workshop on *Religion and Security Politics in South Asia*. The intention was to bring together scholars and people with various religious affiliations to discuss a number of key questions and to bring together scholars and people with various religious affiliations to discuss a number of key questions.

The seminar participants consisted of nationals from Afghanistan, Pakistan, India and Sweden. The aim was to have as diverse a list of participants as possible including representatives from government, minority organizations, academia, and non-governmental organizations (NGOs). The focus of the local seminars was multidisciplinary, including perspectives from sociology, economy, political science, law, and the history of religions. Invited specialists were invited to have this in mind and to be prepared to adapt to this form of discussion. Each local seminar took the specific situation in the country where the seminar was held as point of departure.

Three seminars were held, one in Islamabad, one in Kolkata and one in Kabul. A number of the local seminar participants had been asked to contribute a discussion paper on their topic of choice. These have been edited in two volumes, namely:

Pervaiz Iqbal Cheema, Maqsoodul Hasan Nuri, Muneer Mahmud and Khalid Hussain, eds., *Political Role of Religious Communities in Pakistan* (Islamabad: Islamabad Policy Research Institute and Stockholm: Institute for Security and Development Policy, 2008), available at: <http://www.isdp.eu/files/publications/ap/08/pc08politicalroles>

Jayanta Kumar Ray and Arpita Basu Roy, eds., *The Political Roles of Religious Communities in India*, Maulana Abul Kalam Azad Institute of Asian Studies and Institute for Security and

Development Policy Asia Paper (November 2008), available at:
<http://www.isdp.eu/files/publications/ap/08/jr08politicalroles>

A third seminar was held in Kabul in December, 2009. A report by Mr. Sanaullah Tasal summarizing the discussions in Kabul is included in this report as Appendix 1. One of the working papers for the Kabul seminar, written by Mr. Abdul Rahman Ulfat about the role of religious scholars is also included as Appendix 2.

These two papers had been distributed beforehand together with the two abovementioned reports from Islamabad and Kolkata and constituted recommended reading for the participants at a conference in Singapore in February 2010. This conference was arranged by the S. Rajaratnam School of International Studies, Nanyang Technical University (RSIS), Singapore. This report documents the proceedings of the Singapore conference.

Religion and Globalisation

Karl Harbo

Religion has always been a global phenomenon. Priests and monks followed Columbus to the Americas and missionaries followed in the footsteps of empire builders and armies to Africa. The Moghuls introduced Islam to wide areas of Central Asia and India. Religion and politics were closely interrelated as rulers were often crowned by the church and therefore ruled with the blessings of the Almighty. The French revolution brought an end to this and introduced the concept of secularism with separation of church and state, where the people exercised political power through the ballot box and with the rulers reduced to a ceremonial role or eliminated completely.

In Europe during the twentieth century religion faced strong competition from various political ideologies as the basis for governing states. Houses of worship were often closed or converted to other uses and clergy forces to discontinue preaching. This period ended with the demise of communism as a political power around 1990. A major element in the period after the Second World War was the growth of Arab nationalism/socialism, which saw a number of secular states emerge in the Middle East under the leadership of Gamal Abdel Nasser.

The defeat of the Arab states in the 1973 Arab-Israeli war became the starting point in the revival of Islam in the Middle East. People were increasingly looking to Islam as a solution to solve their political and social problems and movements such as the Arab Brotherhood gained increasingly strength. I was myself in Saudi Arabia these years and the increase in oil prices made it possible to expand the financial support for Islam or more specifically Wahabism in Islamic countries of the region inclusive East Africa. I was able to watch the expansion of Koranic schools, scholarships to seminaries as Omdurman University and construction of new mosques for the newly trained imams. The process started to worry both political and religious circles in many countries.

The spread of Wahabism is just one example of the globalization of religion in recent years and other examples can be found in several places of the

world. It has partly been facilitated by another sign of globalization, namely immigration and movement of huge numbers of people looking for a better life or due to political oppression. Many of these immigrants have found it difficult to integrate in their new places of living and are looking to religion for a new identity. Nowhere has this been more obvious than in Europe, where there are now estimated to be more than 30 million Muslims. Many countries or at least certain regions have been turned multicultural. In the UK immigrants from the Caribbean have settled in certain towns and the same is the case with the Pakistanis. In France, there are large communities with immigrants from North Africa. Even in small, largely homogeneous countries as in Scandinavia large communities of immigrants are found. Politicians in Europe have generally had difficulties in adjusting to the new circumstances as witnessed by the debate about wearing of burka and hijab in many countries as well as construction of new mosques in Switzerland.

It has previously been mentioned that the spread of Wahabism or fundamentalist Islam to a large degree has been fueled by the flow of money from Saudi Arabia from either public or private sources. There are similar flows to other locations. For example, Central Nigeria have become a religious battleground, where around 10–20,000 people have been killed since 1990. The road between Jos and Kano is dotted with competing churches and mosques. Evangelical Christians, backed by American collection plate money are surging northwards, clashing with Islamitic fundamentalists, backed by Saudi petrodollars, surging southwards. Local political/ethnic infighting have added fuel to the fire verifying the suspicion that religious conflicts often are instigated and exploited for political purposes.

A similar shift as in seen in the spread of Wahabism can also be registered within Christian religions both Catholic versus Protestant and among Protestant groups. A few examples would help to illustrate the changes. In Korea the number of Protestants have increased have increased from about two percent in 1950 to currently 20 percent while the number of Catholics have remained around 10 percent. The change has been through a surge in Pentecostals. The largest of these is the Yoido Full Gospel Church in Seoul with more than 800,000 members and 60,000 attending service on a typical Sunday. It is also very export oriented, targeting especially North Korea and China. It dispatches 600 missionaries annually and has thousands of local community workers. Overall in Asia the number of Christians is estimated

to have increased to more than 400 million. The Catholics and Buddhists in Korea have started to fight back. Catholics have also started to fight back in Nigeria as in such an unlikely place as Central America where Pentecostals also have made large gains. In Guatemala for example they have built the largest building in the region, with a capacity of 12,000 seats.

Buddhism has seen its share of followers reduced significantly over the past century but appears to look at it rather passively. According to the prevailing view, people should discover faith themselves rather than being introduced to it. But this might change. In South Korea monks have started to establish meditation areas in big urban centers instead of hiding away in rural shrines. Hinduism has tended to be more turf conscientious. In some Indian states laws have been passed banning Evangelists and Muslims from using allurements for converting Hindu untouchables, who tend to get a raw deal under the caste system.

In Western politics religion has forced itself back into the public square. Now the U.S. President begins each cabinet meeting with a prayer. The easiest way to tell a Republican from a Democrat is to ask how often she or he goes to church. European liberals often sneer about American theocracy but even in secular Europe a number of well-known politicians have strong religious roots such as Tony Blair and Angela Merkel. In many countries there are strong religious parties. Issues like abortion and stem cell research are not necessarily approached from a medical or scientific point of view. In the United States adjudication of religious disputes is often left to the court system.

There is little doubt that the power of religion has kept increasing in recent decades. Perhaps it is a question of reaction and counter-reaction. Fundamentalist Islam has helped spur radical Judaism and Hinduism. Globalization has propelled religion forward with traditionalists of all kinds thereby using religion as a barrier against change.

Politicians have struggled to come to terms with the new situation, especially the ones dealing with foreign policy. Samuel Huntington predicted a secular end to history. *The Economist* was even so confident about the Almighty's demise that it published his obituary in its Millennium issue. The terrorist attacks on September 11, 2001 changed all that. From being ignored as a potential source of conflict, religion was suddenly considered the opposite. The difference between Shias and Sunnis was suddenly understood.

Religious problems were identified all over, Orthodox's in Russia, Hindu nationalists in India, Christians in China. The list is long.

The other group struggling to deal with religion's role in public life and politics are the liberals. They have no problems handling such issues as creationism in schools. However, is it liberalism to stop a worker wearing crucifix at work? Or to prevent a Muslim worker to pray? Some observers see the answer in the difference between European and American liberalism. In European liberalism there is a strict separation of church and state. With mostly only one religion to deal with, this was no problem. The Founding Fathers in America were faced with several competing religions and therefore needed to find a more pragmatic solution. While in Europe we wanted to protect the state from the church, the American aim was to protect religion from the state.

Democracy or Ethnocracy? Roles of Religious Communities and Ethnic Markers – A European Perspective

Jan Hjärpe

Demos and Ethnos

In the Swedish Constitution of 1974, it is stated that all official power, all power executed by the State and its institutions, is a mandate from the people (a mandate expressed in general and free elections). We find similar statements in other constitutions too, and in a way this is seen as an expression of the very idea of democracy. It sounds very clear and distinctly formulated.

But there is a problem here: the very word “people.” As in many other European languages, the word “people” (Swedish “folk”) is used for a whole range of very different concepts. In the political debate the use of the word has a tendency to slide between these various and sometimes contradictory meanings. This is a fact with relevance for an analysis of recent events and developments in Europe, but of interest from a comparative perspective for South East Asia and other regions too.

To distinguish between the two main (or most important) concepts or meanings, we can use two Greek loanwords, likewise in use in many European languages, especially in compound words, namely *demos* and *ethnos*.

When we use the word “people”, the population of a country, in the sense of *demos*, we include all human beings there, all, regardless of origin or descent, ancestry, language, religion, race, color, norms and opinions, social status or belonging. If all, the whole *demos*, of a country, a state, have equal part, in the same degree, as citizens and as equals in political rights and duties and in the political processes of elections and so on, and in that way give legitimacy to political power, we call this democracy.

But “people” in the sense of *ethnos* is something else. It has to do with “ethnicity.” This means that we with “people” signify a group, a community, an entity consisting of individuals regarded as having one or several

markers in common. Those “markers” are then seen as essential for the “identity” of the individual. The choice of markers is rather arbitrary or incidental. The markers, explicitly mentioned and adduced or quite simply implied or taken for granted, differ. One marker often used is the language; those having the same mother tongue constitute a “people” (ethnos). Another marker is the descent: the idea to be of the same tribe or having a common ancestry, the same “blood.” Still another marker may be a common cultural or religious tradition or community belonging, still another might be race, color. Even norms and values, knowledge of the “nations” literary and cultural heritage can be used as a sign of belonging in this respect.

The connection made in European historiography and very much so in the political debate just now in Europe, between ethnicity and nation, has to do with the era of romanticism of the eighteenth and nineteenth centuries, with the idea of “the people” being a common organic entity, having a common “soul” and character which finds its expression in its folk music, folklore, oral literature and customs; the idea of a special spirituality, a distinct folk character. These typical traits in national romanticism got its political expressions in the nationalistic movements of the nineteenth and twentieth centuries, with disastrous consequences, including ethnic cleansing. The idea behind such political actions and movements has been that a people (ethnos) and a specific geographical area were connected to each other and should constitute a political and administrative entity, i.e. an autonomous state, one people, one country, one state. Recently we have seen this concept expressed in the conflicts in the Balkans. The events there, in the 1990s and onwards, constituted an interesting example in this respect as the “ethnic marker,” the definition of ethnicity, was in a remarkable degree connected with formal religious belonging; Croats as Catholics, Serbs as Orthodox, and Bosniaks as Muslims. “Religion” was thus seen as a cultural tradition, not necessarily connected with any actual personal religious belief, but functioning as an ethnic marker.

If in the political debate there is a demand for the possession of specific ethnic markers for political rights, citizenship, the right to vote etc., we cannot call it democracy, but a more adequate term is ethnocracy. This phenomenon is rather common today in Europe, not only in the jargon of the so called populist parties, but also in the discussions within the more conventional political parties and in the general debate. In reality there is hardly

any state (in Europe or elsewhere) being one hundred percent democratic. There is always a mixture, also in recognized democracies there are traits and practices which are ethnocratic, sometimes in a high degree, sometimes less.

We can see some examples: in Estonia and Latvia the constitutional rights are connected to the language. If you are not of Estonian or Latvian descent, having the respective language as your mother tongue, you must pass a language test to obtain the political rights for a full citizen. This means a considerable disadvantage especially for those in these two countries who are of Russian ethnicity. In this respect these two countries are more to be regarded as ethnocracies than democracies.

In Germany citizenship is easier to obtain for an immigrant being of German "blood" (for instance belonging to the so called "Volga Germans"). Religious belonging as a national marker is found in a considerable degree in the idea of Pakistan, and in the Hindutva idea of the Shen Siva and its propaganda in India. And the combination of religious belonging and descent is found for instance in a high degree in the state of Israel, thus being more of an ethnocracy than a democracy. The case of Israel is interesting in the respect that the religious tradition is seen and is functioning as a "national history," an ethnic and national marker (the state defined as Jewish) while religious belief is regarded as a private matter. In defining the affiliation the decent is regarded as relevant: Jew is automatically the one who has a Jewish mother.

In Europe, Denmark has recently become something of a symbol of ethnocracy. Ethnocratic ideas and propaganda from the rather influential populist Dansk Folkeparti (Danish People's Party) have left traces in recent legislation to prevent "un-Danish" behavior, habits and norms. The propaganda has targeted especially Islam and Muslims. Sometimes it passes into the utterly ridiculous, as when the party in the Danish parliament wanted to pass a special law that made it compulsory for official institutions (hospitals, senior citizen's homes, etc.) to serve Danish pork at least at 30 percent of the meals.

This is not without parallels in the debate in other countries, as recently in France (the "Burqa debate"), and similar traits can be found to be promoted by other populist parties in Europe, as in Belgium, the Netherlands, in England and elsewhere. The demand for assimilation can concentrate on

very different things, depending on what marker is regarded as essential. The demands taken up in the debate in each of the countries give a hint as to how the “national myth” is constructed, how the “soul of the nation” – in the romantic sense – is defined. They are in that way very revealing.

Individual or Collective Rights? Strength of the State

The distinction democracy/ethnocracy is not entirely unproblematic, however. Totally equal rights for everyone, individually, would imply that collective rights should not be legitimate. We might concede that such rights can be a necessity just in order to protect and help minorities, minorities in a less favorable situation. But the ongoing “ethnocratic” tendency is to demand privileges to “protect” the majority.

As to the question of religious communities and their legal status there are considerable differences between the states in Europe, from regulations by the state and its legislation – France – to the traditional British attitude with a minimum of interference by the state; the legal conditions in Austria has even some traits reminding of the old Ottoman millet system.¹

Collective minority rights; are collective rights in conflict with the idea of individual rights? It might be so, especially in a system where religious – or tribal – leaders have a certain jurisdiction over the members of a community. But this problematic is related to the strength and actual function of the state. If the leaders of a minority community have jurisdiction, actual power over the individuals, that is a compulsion, an infringement of the rights of the individual who would have preferred to be under the jurisdiction of the state – if it is functioning in a way that he finds relevant and trustworthy. Is the communal belonging a must or the individual’s free choice? Simultaneously, if the state is weak or dysfunctional, the individual might be in need of the support given by the structure and institutions of the special ethnic, tribal and/or religious community to which he belongs. But can then the special constitutional rights given to that community strengthen the power (i.e. the structure of compulsion) of the leaders?

Thus, the role of tribal and religious communities and leaders differ considerably depending on the strength of the state. Is the state is strong

¹ For the differences in this respect, cf. Jørgen Nielsen, *Muslims in Western Europe* (Edinburgh: Edinburgh University Press, Third edition, 2004).

enough and its institutions functioning in a way that the citizens, regardless of ethnicity or religious affiliation, have confidence in and can trust? If the state is weak and dysfunctional, it means that the role and importance of other social structures increases.

An interesting example in the Swedish debate was the reaction to a doctoral dissertation at the Faculty of Law of Uppsala University.² The thesis discussed the possibilities to apply Islamic inheritance rules in Swedish courts in special cases in regard to immigrants and refugees residing in Sweden. Even to discuss such a possibility was regarded by some participants in the debate as outrageous: the legislation of the state and nothing else must be applied equally to all, regardless of religious belonging. The temperature in the debate was rather heated which must seem strange for anyone with knowledge of how personal law is functioning in India or in Singapore and in most countries in Asia and Africa.

The “Minaret Referendum”

Now, we can as an illustration and as part of an analysis of these phenomena in Europe, take a look at the rather curious “minaret referendum” in Switzerland on November 29, 2009. What did it express, and how can it be explained?³

The referendum concerned a change in the Federal Swiss Constitution: a prohibition to build new minarets should be added to the Constitution. It can be mentioned that this was nothing new in the history of Switzerland. The Swiss Constitution of 1874 had several articles against Catholicism, a ban of the Jesuit Order, a prohibition to create (or re-establish) monasteries and a rule that new bishoprics should have a special permission by the government. These articles were removed only as late as in 1973 and 2001 (the article about bishoprics). The “minaret prohibition” article is now included in the very same paragraph of the Federal Swiss Constitution, Catholicism substituted by Islam as a “constitutional threat.”

² Mosa Sayed, *Islam och arvsrätt i det mångkulturella Sverige* [Islam and law of inheritance in Multicultural Swede] (Uppsala: Iustus förlag, 2009).

³ For the statistics and other details of the referendum, and a brief analysis of it, cf. Jean-François Mayer, “Analysis: a majority of Swiss voters decide to ban the building of new minarets,” http://religion.info/english/articles/article_455.shtml (accessed December 4, 2009).

What is to be learned by the Swiss example? We can really find some issues of general interest there:

1. The participation in the referendum was (compared with other occasions) rather high, 53.4 percent. The number of yes votes constituted 57.5 percent.

Remarkable is that there are only four minarets in the whole country. They cannot possibly be of any nuisance, something "constitutionally wrong." They are not used for the *adhân*, the call for prayer. So the real problem must be somewhere else, the "minaret prohibition" having a symbolic function, a symbol for anxieties and feelings in need of a simple and easily recognizable expression. This was very clear from the various traits in the propaganda before (and after) the referendum.

2. The result of the referendum differed from what was predicted in the opinion surveys which preceded it. It also differed from, and went very much against, the recommendations made by most important political and religious leaders and organisations, a fact which is important to notice. The referendum thus showed the discrepancy between political and religious elites or leaderships and popular opinion, "people in general." This is something that we can see in other European countries too, that is in democracies. There is a vacuum, a space for populist parties and leaders, reflecting a feeling among many of being without political influence and ignored by the political elite.

3. The role of new media was very clear in this case. The anti-Islamic propaganda is a part of the "instant communications" on the Web, spread in people's interaction all over the Globe. Certain themes and arguments, from different sources and circles, are picked up and reused and become part of the local debate very quickly.

This means that the traditional local leadership has less influence than previously. Populist movements scoop arguments and myths from different sources from a global and continuously ongoing "instant communication."

4. The themes in the Swiss debate were thus determined by how this "instant communication" defined the very problematic. Some (but not all) of the themes had their main source in certain circles in the American so called "Bible Belt," where a conflict with Islam and the Muslim world is regarded (and propagated) as part of the fulfilment of certain Biblical prophecies and as a sign of the second coming of Christ and the "final battle"

of Armageddon. Islamophobic themes from these “Armageddonists” and other sect circles in the so called Christian Right in the United States came into the Swiss debate sometimes with, most times without these “theological” connections. Those ideas and themes were promoted by the so called “Mouvement Suisse contre l’Islam.” The “religious” anti-Islamic themes were significant for the party called Eidgenössisch-Demokratische Union/ Union Démocratique Fédérale.

Islamophobic themes (but without these direct religious-apologetic connections mentioned) were forwarded by the large populist party, Schweizerische Volkspartei/Union Démocratique du Centre. Most people probably did not know of their origin.

The Islamophobic Themes and their Function

The main themes were:

1. The fear of Islamic Sharia, the idea that Muslims in Switzerland intended to establish “Sharia laws” as interpreted and implemented by the Taliban in Afghanistan and Waziristan and similar extremist groups.

2. The theme of the suppressed Muslim woman (a trait especially in the propaganda of the EDU/UDF).

3. A third, rather curious item was the “revenge theme”: As Christian groups and minorities are harassed or discriminated against in countries in the Muslim world, one ought to discriminate against Muslims in Switzerland (Denmark, Sweden etc.). – [A strange reasoning: In what way could the conditions for Christians become better by that?]

4. The theme of suppression of women was combined with the theme of Muslims as dangerous, Islam connected with violence. In a poster very much spread during the campaign a number of minarets, more numerous than the four existing in Switzerland and of a very different look: they were depicted in a way giving mental associations to missiles, and beside them a menacing-looking very tall women covered with a black niqâb. A part of that theme is constituted by the idea of a “demographic aggression”: Muslims have many children, so they “will take over” within so and so many decades...” (I have met this theme already in discussions in Serbia 1990, and in the Belgian debate in 2009, and I have heard it elsewhere too). Birth-rate statistics are used as a “proof.” It is then taken for granted that all these children will become believers impossible to integrate and dangerous

extremists. In earlier times, in the first part of the previous century, similar arguments were used in Northern Europe as to Catholicism. This theme of the “dangerous Muslims” is often formulated as “all Muslims are not terrorists, but all terrorists are Muslims.” This is a phrase often repeated, curiously enough, although it is totally false. Here no statistics are used in the Islamophobic propaganda, as statistics show that facts are different. We have now for instance the official statistics of terrorist attempts (bombings and similar acts) in Europe during the year 2008. The number registered was 515. Not one single of them was performed by a Muslim. The largest number of such acts was done by Basque separatists, and by Corsican separatists.⁴

5. These themes were combined with secular ones, the already existing negative attitude towards immigrants in general, coupled to the unemployment in the country: “Immigrants take our jobs.”

6. In the propaganda for a minaret prohibition the nationalistic romanticism theme was very evident. One example is a video, spread by the EDU/UDF on the Web. It showed a peaceful Swiss idyllic valley, green meadows with cows and the tooting of an alpine horn. And suddenly comes a loud voice, disturbing the idyll: the Call to Prayer in Arabic, enforced by loudspeakers, drenching the sound of the horn. The message was so obvious: “This is not our people (= ethnos).” The alpine horn expresses the “soul” of Swiss ethnicity – and nationality, but the adhân is foreign to it.

It is not without interest to compare the themes in the European Islamophobia with the themes in the propaganda of the Shen Siva and its Maharashtra nationalist leader Bal Thackeray, not without influence on the BJP and its Hindutva policy.

There are also many similarities in the Islamophobic themes mentioned and the themes in the European Anti-Semitic, anti-Jewish tradition which had its most disastrous consequences during the Nazi era and its ultimate form in the Holocaust. There we have, in a similar way, the idea of “our people” (=ethnos) and “the other” as a threat, something not belonging to the ethnic community, foreign and harmful for the purity of the Ethnos (“Volksfremde”), combined with the idea of a huge conspiracy intended to take power.

⁴ See: <http://www.loonwatch.com/tag/eu-terrorism-situation-and-trend-report> (accessed March 26, 2010).

A common trait is also the use of texts, quotations from “their scriptures” used as “proof” of foreign and dangerous ideas and intentions. Those quotations (real or fabricated) are spread regardless of how they are seen or interpreted by the believers themselves, or regarded as normative or not. The belonging to a special group of human beings is seen as a determinant factor, and attributed to this group are special characteristics or beliefs as markers of belonging (“identity”).

What function has the Islamophobic ideas (as had the Anti-Semitic ones) in the minds of people?

When a person or a group is taking a position, a political standpoint, a choice of behavior, we can distinguish in that process three categories of reasons:

1. We can look for the driving forces behind it, mostly to be found in social and economic circumstances and changes. These causes behind the individual’s choice of behavior are he/she seldom fully aware of, and has difficulties to see them clearly and to formulate and express them.

2. Instead his/her situation is interpreted, understood, within the frames of his/her “cognitive universe,” in the categories and with help of the ideas existing in the mental environment, its historiography, ideological themes, symbols and prejudices. By help of these the individual reacts and finds a standpoint and a behavior which looks relevant, plausible, reasonable and even self evident. These are the legitimising reasons, the way in which the individual can regard his/her actions as right.

3. But these are not necessarily the same reasons given in the debate with others. In that situation the choice of behavior is defended with apologetic reasons, arguments which one thinks can be accepted by the opponent.

The Task of the Scholar

The action to make by the scholar, in order to contribute to diminish a conflict and to counteract communalistic prejudices, is to try to analyze and explain the driving forces behind them, and to make the participants to see them and to detect the false interpretations which legitimizes communal tensions and violence: to reveal the misinterpretations of the reality. This means to detect what markers that are regarded as important and why so, and to confront this with the fact that each individual has many “belongings,” many “identities,” and in the peace-building process to stress those

belongings/identities which are not used as markers describing the communities in conflict, that is to not accept the description of the conflict given by the parties involved in it. It is important instead to stress other markers (eventually professional belonging, citizenship, the belonging to a common humanity, etc.) Citizenship can be stressed in that way, but here comes the necessary condition that citizenship really functions as a benefit for all, for the whole demos, regardless of other community belongings.

Where communal conflicts are prevalent, we can see that the state and its institutions are dysfunctional. The task must then be to strengthen the state and work for creating conditions where the individual has confidence and can trust the state and its institutions, and see their ability to work for the benefit and security of all, the whole demos.

Conclusion

As a scholarly duty we can see the analyses of driving forces behind conflicts, their social and economic causes, the analyses of misinterpretations of the reality and their causes, introducing the explanation of these causes into the general debate, and participating in the establishment of institutions relevant and beneficial for all, and thus worthy of confidence.

The Political Role of Religious Minorities in Afghanistan

Sanauallah Tasal

Background

Afghanistan is the homeland of various ethnic and religious communities which have equally participated in the country's political history and economic development. Most numerous among the ethnic groups in Afghanistan are the Pashtuns, Tajiks, Hazara, and the Uzbeks, respectively. The smaller groups and tribes include Turkmen, Aimaq, Baluch, Brahui, Nuristani, Pashai, Pamiri, Kirghiz, Qizilbash, Mongols, Arabs, Gujars, Kohistanis, Wakhis, and Jats. In addition, a large population of nomads and small numbers of Hindus, Sikhs, and Jews also live in Afghanistan.¹ However, population and demographic data are uncertain. The last census was conducted in 1978, and there have been extensive movements within the country and out of the country. Several million refugees from Afghanistan can still be found in Pakistan and Iran.

Table 1. Ethnic groups in Afghanistan (Total population around 25 million)

Ethnic group	
Pashtun	54–63%
Tajik	12–16%
Hazara	8–12%
Uzbek	6–9%
Turkmen	2–3%

The largest ethnic groups are the Pashtun with 38 percent followed by the Tajik with 20 percent and Hazara with 19 percent respectively. Whilst the vast majority of the population is Muslim (99 percent), about one percent

¹ Ali Wardak, "The ethnic and tribal composition of Afghan society," in Edward Girardet and Jonathan Walter, eds., *Afghanistan* (Geneva: Crosslines Publications, 2004), p. 71.

belongs to small religious minority groups such as the Ismaili Shiite; there are Hindus and Sikhs as well. Most of the Muslims, around 92 percent, adhere to the Sunni Hanafi School of interpreting the Quran and Hadith, and use the Hanafi Fiqh as the source of Islamic jurisprudence. The Shiite population, about eight percent, follows the Jafaria School, and Ja'afari fiqh for legal guidance. The two major Shi'a communities in Afghanistan are the Ithna Ashariya, Twelvers or Imami, and the Ismaili, sometimes called the Seveners. The Imami Hazara, living in Hazarajat in central Afghanistan, is the largest Imami Shi'a group in the country. They are also found in urban centers such as Kabul, Kandahar, Ghazni, and Mazar-e Sharif, where a number of Qizilbash and Hazara reside. Mixtures occur in certain areas such as Bamiyan Province where Sunni, Imami, and Ismaili may all be found.

Islam has played a key role in Afghan history. Since Afghan society is religiously conservative, rulers have traditionally maintained close relations with the clergy. Rulers who instituted reforms that were seen as un-Islamic by the clerics and society often lost their popular support and were exiled from the country.

Historically, the central government in Kabul has kept both the tribal leaders and religious figures at an arm's length and thus tried to limit or undermine their influence. The role and influence of religious scholars, however, increased exponentially with the *jihad* against the Soviet Union and the subsequent civil war among the *Mujahideen* factions and the Taliban regime. During these periods, religious preachers provided legitimacy to actions that often sanctioned violence in the name of Islam.

All the tribes and religious followers have made great sacrifices for the freedom of Afghanistan. The Shi'as have on many occasions played an important political role in the country's quest for freedom and independence. In the early eighteenth century they fought together with Shah Mahmood Hotaky against the Asfahans. They took part in the Sher Sorkh Jirga arranged by Ahmad Khan (later the first king of Afghanistan) in 1747, where a leader was selected and Afghanistan established. The Shi'as role in the formation of Afghanistan gave them the right to celebrate specific Shi'a Muslim festivities such as the Ashora in religious places. Stressing the importance placed on Shi'a support, both the king and ministers participated in the Ashora celebration. The political influence of Shi'a decreased over time, however, with a discernable change occurring in the 1890s when

King Abdul Rahmann Khan secured administrative control over the Hazarajat region.

Unlike other countries there has never been any religious sectarian violence between Shi'a and Sunni Muslims in Afghanistan, and the wars that have taken place in Afghan history have never been of a religious or ethnic origin.

The Political Role of the Shi'a Minority in Afghanistan

From the 1890s to 2003, in family disputes, courts relied on a civil code based on the Sunni Hanafi school, regardless of whether the parties involved were Shi'a or Sunni; the civil code also applied to non-Muslims. The Shari'a Faculty of Kabul University followed the Hanafi School of jurisprudence. This is apparent in the constitutions from 1923 and 1964.

According to the Constitution of 1923, Article 21:

In the courts of justice all disputes and cases will be decided in accordance with the principles of sharia and of general civil and criminal laws.

In Article 2 of the aforementioned constitution:

Religion of Afghanistan is the sacred religion of Islam. Followers of other religions such as Hindus and Jews residing in Afghanistan are entitled to the full protection of the state provided they do not disturb the public Peace.²

The Constitution of 1964, Article 2:

Islam is the sacred of Afghanistan. Religious rites performed by the state shall be according to the provisions of the Hanafi doctrine. Non-Muslim citizens shall be free to perform their rituals within the limits determined by laws for public decency and public peace.

And in Article 8:

The king of Afghanistan shall be an Afghan national, a Muslim and a follower of the Hanafi doctrine.

² <http://www.afghan-web.com/history/const/const1923.html>

The 1977 Constitution declared Islam the religion of Afghanistan but made no mention that the state ritual should be Hanafi. The Penal Code (1976) and Civil Law (1977), covering the entire field of social justice, represent major attempts to cope with elements of secular law.

Historically, the Shi'a populations have felt that Shiism has not been officially recognized as equal to Sunnism, and several past leaders have explicitly stated in public documents that Shi'as were not considered state-recognized Muslims. Therefore, the use of the term "Hanafi" in the constitution and as a source for law seems to have taken on political significance as an issue of identity: it represents official discrimination for many Shi'as.

The political involvement of Shi'a communities grew dramatically during the era following the Soviet invasion. Politically aware Shi'a students formed the hardcore of the Afghan Maoist movement of the 1960s and early 1970s. After 1978, Shi'a mujahideen groups in the Hazarajat, although frequently at odds with one another, were active in the jihad and subsequently fought for the control of Kabul. During the political maneuvering leading up to the establishment of The Islamic State of Afghanistan in 1992, Shi'a groups unsuccessfully negotiated for more equitable, important political and social roles.

Shi'as in the Taliban Era

Before the Taliban gained control over Kabul, the Shi'a were involved in Afghan politics and had been so since they had fought alongside the Sunnis against the Soviet invasion in 1979. However, three major defeats during the Taliban era signified the end of this political influence. The first defeat was marked by the downfall of Kabul and the death of the Sunni leader Mazari at the hands of the Taliban. Second, in August 1998 the northern city of Mazar-e Sharif was conquered. Mazar-e Sharif was the second most important city for the Northern Alliance and held a major concentration of Wahdat's troops and civilian Hazaraz. As Hizb-e Wahdat had played the key role in repelling a Taliban offensive on the city in 1997, they were to bear the brunt of Taliban anger this time. Third, only a few weeks after taking Mazar-e Sharif, the Taliban captured Bamyan – the new Shi'a headquarters. The fall of Mazar-e Sharif and Bamyan proved to be more than just military defeats. Nearly all territories earlier controlled by Hizb-e Wahdat were

captured by the Taliban, and their political and military cadres were forced to flee to neighboring countries. This marked an end of Hizb-e Wahdat's existence as a cohesive political organization.

Shi'as in the Post-Taliban Era

After the international community defeated the Taliban regime in 2001, Shi'a participation in Afghan politics increased due to their strong participation in the past civil war. This is evident when looking at the Interim Administration (2001–2) where prominent Shi'as earned high-profile positions: Karim Khalili was one of the second Vice Presidents and Muhammad Mohaqiq was Deputy Chairman and Minister of Planning. The representation of Shi'as in the Interim Administration as well as the Transitional Administration in 2002–3 was mostly dominated by members of Hakarat and Akbari tribes.

In the Loya Jirga for the Afghan Constitution in 2004 many Shi'as argued that Ja'afari fiqh should be recognized at every mention of Hanafi fiqh. Although many Shi'as realized that such alteration had little legal significance in practice, they emphasized the recognition as vital if the state was going to acknowledge the significant Shi'a minority and its political presence in Afghanistan. Meanwhile, some Sunni interlocutors claimed that only Hanafi law should be recognized in the constitution, since more than 90 percent of the country adhere to it. They also claimed that if the system were to represent the democratic desires of the people then Hanafi law would be the demand of the majority. Others emphasized the impracticality of having judges knowing more than one school of law depending on where the Shi'as happened to live. Several proponents of this view argued that there was no other politically viable alternative and that it would be impossible to put forward any legal text that did not solely recognize Hanafi jurisprudence as the source of Islamic law and religious rites.

In the midst of these differences a third perspective evolved suggesting that the preferable solution to this dilemma would be to remove any reference to a specific school of thought in the constitution and thus only call upon "Islamic principles" as a source of jurisprudence. Some suggested that in such a system Shi'as could be allowed to utilize their own personal law in the courts (like the system in Pakistan) and that this solution would signal that in the new constitution Afghan minority rights would be protected.

Other interlocutors suggested that the only practical way to address this issue would be by strengthening the provisions in the new constitution referring to minority rights, covering both religious and ethnic minorities.³

In the end, the new constitution decided to follow the third view. No preferential status was granted to the Hanafi school, nor was any special reference made to Sharia law.⁴ The constitution acknowledges in Articles 130 and 131 that Shi'a law will be applied in cases dealing with personal matters involving Shi'as.

Article One Hundred Thirty

In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about the case, the court halls shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this constitution, rule in a way that attains justice in the best manner.

Article One Hundred Thirty One

*The Courts shall apply the Shia jurisprudence in cases involving personal matters of followers of the Shia sect in accordance with the provisions of the law. In other cases, of no clarification in this Constitution and no other law exists, the courts shall rule according to the laws of this sect.*⁵

There is no special/separate law applying to non-Muslims. The new constitution requires that the President and the Vice President of Afghanistan are Muslims, but makes no distinction between Sunni or Shi'a adherence. Religious affiliation is not explicitly suggested in the case of government ministers, but the oath required suggests an adherence to Muslim faith. The new constitution does not contain any religious requirement for Members of Parliament.

³ http://www.preventconflict.org/portal/centralasia/AfghanLegalReform_PB.pdf

⁴ *The Constitution of the Islamic Republic of Afghanistan* (Ratified) January 26, 2004. *Article One*: Afghanistan shall be an Islamic Republic, independent, unitary and indivisible state. *Article Two*: The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals. *Article Three*: No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.

⁵ *The Constitution of the Islamic Republic of Afghanistan* (Ratified) January 26, 2004.

Challenges for Other Minorities in Afghanistan

While a number of regimes have come and gone during the past decades, minority religions have always been hardest hit by these changes. Information indicates that religious minorities are denied access, by law or practice, to a number of key positions in the state apparatus such as president, army generals, cabinet minister, ambassador, provincial governor, mayor, etc.

According to law, no one has the right to convert from Islam to Christianity or Judaism, and if so, the person will most probably be executed as in the example of Abdul Rahman. Moreover, it is impossible for non-Muslim men and women to wed a Muslim without first converting to Islam. A non-Muslim Afghan also risks being left out from welfare benefits, since the assistance provided by other Islamic states and fundamentalist groups excludes non-Muslims.

In recent years properties belonging to Sikhs and Hindus have been seized or confiscated by local warlords and militia leaders. "Before the war in 1979 there were 16,673 Sikh and Hindu families in Kabul, Nangarhar, Ghazni, Khost, Kandahar and Helmand provinces. In the past 30 years they have suffered tremendously and many of them left the country." Since there are no special schools for children of ethnic minorities, the only chance to teach them their native religion, language, and cultural values are through homeschooling and home study. However, the most common result is that most minority children cannot attend school and hence suffer from illiteracy.⁶

As an example of discrimination against Hindus, the Taliban regime suggested an edict requiring Hindus to wear identifying badges on their clothing in May 2001. Although Taliban radio announced on May 23 that the edict was supported by religious officials, it was reportedly never signed by Mulla Omar and thus never implemented. The underlying arguments for the proposed edict were that it would "protect Hindu citizens from harassment by the religious police." International observers, however, regarded the proposal as part of the Taliban effort to segregate and isolate the non-Muslim minorities and to encourage Hindu emigration. The reaction among the Hindus ranged from indifference to direct outrage.

⁶ [http://www.rawa.org/temp/runews/2009/03/18/sikh-hindu-minorities-of-afghani-stan-and-8220-disappoint ed-isolated-and-oppressedand-8221.html](http://www.rawa.org/temp/runews/2009/03/18/sikh-hindu-minorities-of-afghani-stan-and-8220-disappoint-ed-isolated-and-oppressedand-8221.html)

In September 1999, furthermore, the Taliban had initiated a decree that severely limited living-space for non-Muslims. For example it was forbidden for non-Muslims to criticize Muslims, it was not allowed for them to reside in the same residences as Muslims, and non-Muslim women were encouraged to wear a yellow dress so that Muslim men would keep their distance from them. Furthermore, all non-Muslims were to identify their houses by placing a yellow flag on their roof tops. They were also prohibited from building their own places of worship, but were allowed to worship at existing holy sites.

However, the situation for ethnic minorities to practice their religions has been greatly enhanced by the current government's decision to provide security for all places of worship as well as supplying funds for their maintenance. Punishments for conversion from Islam to Sikhism no longer exist.

Compared to the past, when minorities in Afghanistan were excluded from taking part in elections, and when there were no seats for minorities in the government, the situation has improved under the present government. Minorities are now provided basic rights and have their representatives in both the Walsy Jirga (Parliament) and Mashrano Jirga (Senate).

Conclusion

Historically, the Hanafi interpretation of Sharia law has played an important role in Afghan political and social affairs. Because of a traditionally weak central government, the ruler has throughout history been forced to compromise with tribal and religious leaders in order to stay in power. This is evident in a number of examples from Afghan history.

For example, if we look briefly at the rule of King Amanullah Khan (1919–29), he wanted to modernize Afghanistan and implement reforms, but due to strong resistance from both religious leaders and tribes he had to abdicate and leave the country. When King Nadir Khan (1929–33) took over power he accorded special privileges to the tribes and exempted them from conscription as well as giving honorary ranks to the tribal chiefs. In order to appease the religious leaders, he established several official Madrasas, such as Najmul Madares in Jalabad, Madrasa-e Asadeya in Mazar, and Abu Hanifa in Kabul. The importance of these Madrasas is apparent in the number of graduates that have become known bureaucrats and politicians in Afghanistan.

King Zahir Shah (1933–73) managed to maintain peace in Afghanistan by carefully balancing the tribal chiefs, religious leaders, and the rule of the government. Likewise, the communist regime's (1978–92) choice to target religious and tribal leaders led to the initiation of a strong national resistance movement (jihad) and ultimately the failure of the Communists to implement their agenda. The same pattern occurred once again when the Mujahideen and Taliban regime (1992–2001) excluded tribal leaders from power thus leading the country into civil war.

So to conclude, the main point of this paper is that in order to preserve peace and security in Afghanistan, it is necessary to maintain a steady balance between tribal, religious, and government structures. Additionally, it is of vital importance for the new government to respect religious minority groups and to involve them in the political process.

The Surge of Terrorism in Pakistan and Relations between Religious Moderates and Radicals¹

Maqsudul Hasan Nuri

Introduction

2009 turned out to be a dark year in Pakistan when terrorism reached its peak, with suicide attacks in urban areas, militant attacks on military and police installations, government buildings, target assassinations, kidnappings for ransom, the burning of schools in Swat regions, and the killing of some senior military officers. The latter was unprecedented in Pakistan's history as armed forces had always been considered a symbol of respect and authority. The terrorists did not even spare civilians, including innocent women and children in public places, schools,² and sportsmen. Threats and intimidation were widely used to terrorize people in the name of Islam and anti-Americanism in a bid to unseat the Pakistan People's Party (PPP) government and pursue the militants' dream of establishing an Islamic emirate in Pakistan.

The tide started to turn after successful military operations were launched in Swat, South Waziristan, and Bajaur in April 2009. In the last year or so the army has established control over some of the Federally Administered Tribal Areas FATA and started reconstruction and rehabilitation work. Although the military operations against terrorism are far from complete, the back of terrorism has been broken insofar as the infrastructure of arms, cache of supplies, and militant training centers are concerned.

¹ The paper was presented at a workshop, "Political Role of Religious Communities in South Asia," held by the Institute for Security and Development Policy (ISDP) in collaboration with the S. Rajaratnam School of International Studies, Nanyang Technical University, Singapore, on February 25–26, 2010, in Singapore.

² For example, in Pakistan's Swat district of Malakand Division in the North Western Frontier Province (NWFP) of Pakistan nearly 356 schools were destroyed. See "Education under attack in 32 countries: UN," *Dawn*, Karachi, February 14, 2010, p. 11. The other countries where these attacks intensified were Afghanistan, Pakistan, India, and Thailand.

Roots of Religious Militancy and Violence

What were the major causes of this upsurge in violence? It would be redundant to go back into past history such as the Soviet invasion of Afghanistan (1979) and the hasty withdrawal (1989). The successful Islamic revolution in Iran gave an impetus to Islamists the world over but especially in and around the region. In fact, the post-9/11 attack led by the United States on Afghanistan served as a backdrop to a rise in militancy as foreign forces were perceived by the Afghans as an “occupation force.” Furthermore, myopic Islamization policies under General Muhammad Zia-ul-Haq in Pakistan gave strength to the obscurantist religious forces. All civil and military governments from 1988–99 were either sympathetic or connived with religious parties’ agendas, notwithstanding their general unpopularity amongst the masses.

While General Pervez Musharraf started on a right note and started his policy of “enlightened moderation,” he later succumbed to the religious right. In July 2007, his government had to perforce launch a last minute military operation against the foreign and local militants ensconced in Lal Masjid in the heart of Islamabad. As a reaction terrorist activities gained momentum in Bajaur, Swat, and later in North and South Waziristan tribal agencies.³ The first manifestation was the assassination of Benazir Bhutto in December 2007, when she returned to contest elections and share power with other parties in Pakistan under an arrangement with the then Musharraf government and the United States. The PPP has always been an anathema to religious parties, among others, for its quasi-secular outlook. It was also seen as an extension of Musharraf’s rule when he quit in August 2008 following general elections in the country in February 2008. Thereafter, in Swat, an Islamic movement under the religious cleric Sufi Muhammad was launched to avenge the killings in Lal Masjid. The militants went on a spree of burning girls’ schools and colleges, attacking video and barber shops, and killing government functionaries, tribal elders, and all those who were sympathetic to the government. They let loose a reign of terror through barbaric

³ For a detailed background of FATA agencies, see Pervaiz Iqbal Cheema and Maqsoodul Hasan Nuri, eds., *Tribal Areas of Pakistan: Challenges and Responses* (Islamabad: Islamabad Policy Research Institute and Hanns Seidel Foundation, 2005); see also *Federally Administered Tribal Areas (FATA): Pakistan’s Post-9/11 Politico-Strategic Response*, in P. I. Cheema, ed., *Federally Administered Tribal Areas of Pakistan*, IPRI Paper, 10 (Islamabad: Islamabad Policy Research Institute, 2005), pp. 48–70.

public floggings and executions under the guise of bringing an Islamic dispensation and threatened to extend the same to Pakistan. Ironically, due to rampant anti-Americanism and the collision with the Supreme Court, the unpopularity of Musharraf's rule in his last days garnered sympathies for the terrorists among public and religious circles. Incidentally, this sentiment has always been quite high in Pakistan, despite the latter being a major non-NATO ally and a "frontline state" working in a "special relationship" with the United States while being engaged in a Global War on Terrorism (GWOT).

Why the Surge in Terrorism?

When President Asif Ali Zardari's government decided to launch military operations in April 2009 in Swat, it resulted in a swift retaliation from diverse terrorist groups. In particular, the major terrorist organization Tehrik-e-Taliban Pakistan (TTP, Movement of Taliban in Pakistan) launched terrorist and suicide attacks on both hard and soft targets in major cities of Pakistan. The aim was to inflict maximum punishment and terror on the public so that the military operations would cease. Also, it was meant to convey the message that the government was ineffective in protecting the lives and property of ordinary people. The major cities, especially Peshawar, were hit hard by a number of suicide attacks from October till December 2009. The strategy was designed so as to motivate suicide attacks by young men to wage Jihad against the "infidel" Pakistan army; this was done under the promise of "martyrdom" which meant "direct entry into paradise."

Before 2007, the total number of recorded suicide bombings was no more than 25. However, in 2007, the number had risen to 56, including the high profile assassination of Benazir Bhutto.⁴ Subsequently, 61 incidents took place in 2008 and 87 in 2009.⁵

Lack of Public Awareness about Islamists' Real Intentions

In the early stages, the public lacked awareness of the real motivations of Islamic militants. This considerably blurred the picture. The aim of the

⁴ Bilal Abbas, "Light at the end of the tunnel," *Daily Times*, Lahore, February 14, 2010, p. A7.

⁵ Ibid.

repeated suicide attacks was twofold: to create terror and despondency amongst the public, and to build pressure on the government to stop the military operations. Secondly, it was to scare foreign missions and scupper investment plans, and thereby paralyze the government. The militant organizations justified violent actions against the Pakistani government for acting as a “proxy” of the U.S. forces in Afghanistan, and termed the U.S., NATO, and Pakistani forces as “occupation forces” (U.S. and NATO in Afghanistan and the Pakistan army in the FATA). Initially, they started by hitting hard targets: these included military installations as well as police and intelligence headquarters in different cities, in order to demonstrate their reach and power.

It seems that the above could not have been possible without secret informers and sympathizers to their cause. Then the terrorists started to indiscriminately attack soft targets: schools, public places, religious rallies, political leaders, and even sportsmen, to create a sense of mayhem in society. The culminating point of the campaign came when they attempted a suicide attack at the entrance of the Army General Headquarters (GHQ), in which a senior officer and many soldiers were killed. In thus doing, they wanted to convey the message that nobody was safe in Pakistan and that the government must accede to their demands by stopping military actions, withdrawing from tribal areas, and by releasing captured militants.

Infighting between Political Parties

The spate of attacks was encouraged by infighting between the two major political parties in Pakistan — the PPP and the Pakistan Muslim League Nawaz PML(N). The latter had attained an electoral majority in the largest province of Punjab. This bickering led to a loss of focus and political will in dealing with the scourge of terrorism. Moreover, all religious parties were either sympathetic to or connived in these terrorist attacks – citing the United States as the main cause and source of trouble in the region. In their simplistic and reductionist thinking, it was not “Pakistan’s war” but America’s and that once the NATO forces left Afghanistan peace would descend on the region.

Questionable Role of the Media

The media in Pakistan, unfortunately, was allowed unbridled freedom in the later days of the Musharraf era.⁶ As a result, acts of terrorism received undue publicity from the mostly right-wing print and electronic media. This muddied the debate in Pakistan confusing the general public. Incidentally, the Pakistani public, albeit moderate, tends to be swayed easily by religious rhetoric and symbols. At the same time, the United States refrain to “do more” on Pakistan’s part in the war on terrorism, accompanied by drone attacks in FATA, resulted in increasing civilian casualties. Cumulatively, this fuelled anti-Western sentiment, and by default, garnered sympathy and support for the Islamists’ cause.

Fighting Guerrilla Mountain Warfare and Police Inability in Countering Urban Terrorism

The Pakistani army, the seventh largest army in the world, perceives its main threat to emanate from its eastern borders with India, and accordingly, it is trained in fighting conventional battles on the plains. It has little experience in facing tribal guerrilla/terrorist insurgency of the kind it is presently faced with. Terrorism is an elusive threat with no visible enemy. The Pakistani intelligence system was rendered weak as the terrorists and their sympathizers seemed to have infiltrated different sections of society. Moreover, the armed forces and the paramilitary forces such as the Frontier Corps (FC) lacked adequate weaponry, logistics, and training to engage in mountain warfare. Underpaid and ill-trained, they also found it difficult to kill their kinsmen. This partially explained the initial reluctance to engage with the terrorists, as the army wanted the government to take the lead and build a national consensus. The army rule under Musharraf had suffered a heavy toll of casualties with negative repercussions; thus the army wanted to stay clear of taking any unilateral action.

However, the tide of public opinion started to shift fast when Taliban/Al-Qaeda inflicted atrocities and wanton attacks in Pakistan proper on the mainland between January-March 2009. Now they came to be seen as an

⁶ This practice still continues as eight full-time religious channels and 30 different channels at different levels partially fuel fundamentalism in early morning and late evening broadcasts. See Nizamuddin Nizamani, “Encountering fundamentalism,” *Daily Times*, March 17, 2010, p. A7.

existential threat to Pakistan's survival. In 2009, some 207 brigade-size operations were carried out; this was twice the number of the previous two years combined, which saw the deaths of 800 Pakistani officers and soldiers.⁷ The army and air force were able to bomb and destroy the entrenched positions of the Taliban, including training centers and caches of weapons and munitions in their mountain strongholds.

In about two months, the Swat district was cleared. Nearly 2-3 million Internally Displaced Persons (IDPs) had left the region. Their repatriation and rehabilitation took time and strained the resources of the country, but the task was nevertheless completed. Having secured Swat, a district of Malakand Division, bordering FATA, the army took the next step of clearing South Waziristan of militants – the haven of the Taliban under the leadership of TTP leader Baitullah Masood. Many areas were cleared and the insurgents were mostly pushed into the mountains across the Pakistan-Afghan border, or slipped into the major urban centers of Pakistan in a bid to regroup.

Incidentally, the rugged terrain of FATA and the fighting skills of its tribesmen have always been proverbial and were recorded from ancient times when Alexander the Great invaded India. They stoutly resisted the efforts of the British forces in the nineteenth and early twentieth centuries to capture the tribal areas. Hence the British wisely decided to avoid confrontations with them, and deployed their troops on the fringes by building military cantonments in the present settled areas of Pakistan. After Independence, the same policy was followed by Pakistan until the army under Musharraf made its first inroads into FATA in 2004. They had always been considered previously as “no go areas,” with the Pakistani government only having very loose control over them. The lack of national writ led to these borderlands becoming an ideal haven for Al-Qaeda and the Taliban, including foreign militants, after 9/11 to where they escaped after the U.S. invasion of Afghanistan.

Afghanistan's Open and Porous Borders

The insurgency in Afghanistan has been sustained due to the lack of military success of U.S.-led NATO forces in south and southeastern Afghanistan.

⁷ Michael E. O'Hanlon, “Pakistan's war of choice,” *Daily Times*, March 25, 2010, p. A8.

Initially, these regions were left alone by the invading U.S./NATO forces. To this could be added the poor performance and lack of control of the Karzai government, as well as the insufficient and poorly-equipped armed forces and police. The long, undemarcated, and porous border between Pakistan and Afghanistan easily facilitates the cross-border movement of militants, drug money, and weaponry supplies. Pakistan's troops in NWFP (now renamed Khyber-Pukhtunkhawa) and in FATA number 150,000 – this is up from 50,000 in 2001. In addition, there are the 90,000 paramilitary soldiers of the FC.⁸ The long border has 821 posts on the Pak-Afghan side as opposed to 112 manned by NATO and Afghan forces on the other side.⁹

Presence of Foreign Fighters

Credible sources maintain that foreign elements had also infiltrated the FATA region. In the wake of the November 2008 Mumbai attacks, India was also blamed for instigating violence on the western borders in a bid to squeeze Pakistan. The active role of foreign militants cannot be denied as they were fighting shoulder to shoulder with Al-Qaeda-Taliban elements. Though the latter were united by a common enemy, they had different agendas: Al-Qaeda leaders are living in tribal areas and protected by the Taliban. Some observers think that the division of the Taliban into “good” and “bad” elements is not apt; hence, the offer of power may not be enough for them to lay down arms. They will only disengage from Al-Qaeda once foreign troops leave Afghanistan.¹⁰

The foreign militants, amounting to nearly 5,000, consisted mostly of Arabs, Uzbeks, Tajiks, and Chechens that had escaped from Afghanistan after the U.S. attack. They eventually escaped into the Pakistani tribal borderlands where they found refuge. Many intermarried with locals and could not go back to their home countries for fear of being captured and tried. Besides the Taliban, the presence of a Punjabi Taliban is also reported.¹¹ While some have been killed in the military action, many have escaped into other agencies and borderlands.

⁸ As quoted by Major General Athar Abbas, Director General Inter-Services Public Relations (ISPR), Rawalpindi, in *ibid.*

⁹ *Ibid.*

¹⁰ On the difference between Al-Qaeda and the Taliban, see Reuters, “Taliban, Qaeda have common foe in West: ex-ISI chief,” as reported in *Daily Times*, Feb 18, 2010, p. A12.

¹¹ For example, one writer estimates their number to be 10,000. See Meher Bokhari,

Civil Society To Be More Assertive

When society becomes polarized and the discourse gets emotionalized and muddled, it is important that civil society groups should actively step in to correct the distortions and set the basis for rational debate. Media, universities, civic groups, and NGOs, however, have generally remained either apathetic or shy to speak out. Albeit better than before, the cleavage between moderates and radicals has to be bridged by building and arriving at a healthy consensus.

The present situation is that the army has been able to effectively clear some areas, but remnants of militant forces still remain in some tribal regions. The army wants to consolidate and maintain its presence by building permanent garrisons there so that developmental work can begin. However, it needs time to consolidate and move into other areas. American troops have to equally share the burden on their side in sealing the Afghan border. Some think that the surge of 30,000 troops may cause many militants to flee into Pakistan, which will destabilize the western provinces of Pakistan unless the Pakistan-Afghan border is effectively sealed.

There are moves under the Obama administration to plan a withdrawal of its forces by July 2010, after giving some stake to the Afghan Taliban who prefer to be co-opted into the political process. Incidentally, Pukhtoons comprise nearly 43 percent of the population in Afghanistan, and while most of the Taliban are Pukhtoons, all Pukhtoons are not Taliban. Pakistan, on its part, feels that its own Taliban, who are part of the Al-Qaeda nexus and are active in FATA, will have to be dealt with firmly, and there is no plan to share power with them as the experience of repeated talks and ceasefires has not borne fruit. The Afghan government, meanwhile, wants the Afghan Taliban to sever its connections with Al-Qaeda before they are allowed to share some power. This is based on the assumption that both sides find themselves in a war of attrition: the Taliban has not been wholly successful in controlling Afghanistan, and the U.S.-led NATO forces have been unable to quash the insurgency. How this finally pans out, only time will tell.

"Fighting in the dark," *Daily Times*, March 17, 2010, p. A7.

Radicals and Moderates

Pakistani society is generally moderate but due to heavy doses of Islamization under General Zia-ul-Haq's regime (which served to legitimize his own narrow power base and neutralize secular parties like the PPP), the building up of Mujahideen forces, rising anti-U.S. sentiment due to the Afghan and Iraqi military invasions, and the foreign occupations of Muslim lands – all this has cumulatively contributed to Islamic radicalization. Presently there is a general polarization at all societal levels in Pakistan: religious diehards versus secularists, sectarian rifts of Sunnis versus Shias, Ahmadis, Ismailis, and non-Muslims, i.e., Hindus and Christians, and an interethnic divide between Punjabis and Pukhtoons, Balochis, Sindhis, and Mohajirs. Religious freedom is endangered¹² and blasphemy charges are misused against minorities purportedly for economic and job reasons or to settle scores of all kinds. For instance, between 1927 and 1986 there were less than ten reported blasphemy cases. After 1986 the number increased to about 4,000.¹³ Between 1988 and 2008, 1988 Pakistani authorities charged 647 people under blasphemy laws of which 50 percent were non-Muslims with 20 percent murdered.¹⁴ Moreover, 25 percent of the cases were against Ahmadis while 20 percent were against Christians, which is not in line with the ratio of these communities in the population (Ahmadis account for 0.22 percent of the population and Christians 1.58 percent).¹⁵ Nearly two-thirds of these cases took place in Punjab.

In addition, the gap between the (minority) rich and (majority) poor is also rising. Pakistani civil society, comprising of journalists, civic groups, the press, and intellectuals, is generally ambivalent and shirks its responsibilities: the latter avoid taking a strong vocal position against religious acts of bigotry against minorities and Taliban/Al-Qaeda forces. People are caught up in existential problems of eking out a livelihood, burdened as they are by food, energy, and water shortages, and a general lack of jobs.

¹² The U.S. Commission on International Religious Freedom in its annual report (2010) has named Pakistan, Saudi Arabia, and China, among 13 countries, as violators of religious freedom. See "Pakistan, 12 others named violators of religious freedom," *Daily Times*, April 30, 2010, p. 1.

¹³ Mansoor Raza, "Blasphemy laws: a fact sheet," *Dawn*, April 16, 2010, p. 7.

¹⁴ Ibid.

¹⁵ Ibid.

Moderates do not speak up and, barring a few activists, most of them prefer to remain silent and play safe. The lack of direction and political education from political parties and media has added to the overall confusion. Debates and discussions invariably turn acrimonious and the threshold of tolerance is low. This is often witnessed in vitriolic writings and exchanges in the press, acerbic debates on TV, and charged outbursts in parliamentary and national fora.

This state of affairs can only be mitigated by determined military action followed by massive economic reconstruction, rehabilitation programs, and a toning down of radical ideology through educational and Madrassah reforms. As radicalism has taken nearly three decades to take root in the Afghanistan-Pakistan region, it might take at least a decade or so to reverse the process. Insurgencies do not end soon as the examples of other countries have shown. They are in fact the symptoms of a deeper socio-economic malaise in society.

The Way Forward: What Should Be Done?

How long will the war against terrorism go on and how soon will the genie of Islamic fundamentalism be exorcised from Pakistani society? History shows us that terrorism is not easily erased from a society which is infected with it – of whatever stripe and strain, be it religious, ethnic, or of any other kind. Sri Lanka is a prime example in South Asia where it took nearly three decades to finally end the conflict. Nepal suffered from a Maoist insurgency for years, and in India too radical elements such as the Maoists/Naxalites are gaining strength day by day.¹⁶ Since terrorism and fundamentalism breed from the fertile soil of poverty, illiteracy, and poor governance, these prime causes have to be addressed immediately. Of course, in the Middle Ages poverty and illiteracy were rampant too, but without the kind of terrorism that is witnessed today. Rising expectations, globalization (with easy transfer of ideas, money, and weaponry), and a general restraint on the use of force by democratic governments have encouraged radicalization and

¹⁶ Presently the Naxalites are present in 16 out of 28 states in India. Prime Minister Manmohan Singh has called it the “biggest internal challenge that faces India.” See Sumon K. Chakrabarti, “Massacre prompts debates over India’s Maoists’ war,” *Daily Times*, April 22, 2010, p. A8.

terrorism. Besides, the attacks of 9/11 set a precedent and motivated many Islamic terrorist groups to emulate such acts.

Long Term Goals

Poverty Eradication

Poverty eradication means long-term measures and no government – least of all one hobbled with serious resource constraints and financial woes – can accomplish such measures alone and in a short space of time. It requires regional and international cooperation. As previously mentioned, it has taken three decades for fundamentalism to grow in Pakistan and Afghanistan. The causes behind this growth are various and are also due to a set of cumulative events. Therefore, it is to be expected that it will take time before the influence of fundamentalism is diminished.

Educational Reforms

The state has to revamp the paradigm of educational philosophy. The issue of distorted history books, as well as a needless emphasis on religiosity without inculcating Islamic values of tolerance, education, and justice, has to be revisited. A greater emphasis on scientific, technical education has to be given, and larger funds allocated for the purpose of improving general illiteracy levels are necessary. Madrassah reforms need also to be undertaken in earnest in keeping with the demands of the time.

Winning Hearts and Minds

Winning the “hearts and minds” of people prone to radical worldviews is crucial. This can only come about once good governance is assured to those sections of society that are deprived and without hope. The Pakistani governance record has been poor, and more so in the FATA. There is a need to initiate fast-track development, improve education and reconstruction, as well as instigate economic programs that will address the basic needs of people and ensure jobs and skills for the youth. This would wean the unemployed away from being recruited to the Jihadi cause – and so diminish the undertaking of terrorist missions and suicide attacks.

Short Term Goals

Stop Promoting Proxy Forces and Mixing Religion with Politics

The founder of Pakistan Quaid-e-Azam Mohammad Ali Jinnah's vision of an Islamic welfare state where everybody, regardless of creed, sect, and ethnicity, is regarded equal before the state has to be strictly adhered to. The state should not have anything to do with religion, nor should it encourage religious parties and build proxies to enhance domestic and foreign policy goals. This has already done the Pakistani nation great damage. The question of whether a state is supreme or its ideology is supreme needs to be revisited and decided upon. It falls upon the state to repeal discriminatory laws against minorities, proscribe different terrorist groups and punish their leaders, block their sources of funding, and show a firm hand by coming down hard on those preaching sectarianism, raising the level of consciousness of treating minorities as equal citizens and highlighting their role in nation building.¹⁷

Madrassah Reforms

Madrassahs are an age-old institution in South Asia where many notable people have been educated. Previously, the Islamic world was never in such a state of turmoil as is presently the case. Two Islamic countries (Iraq and Afghanistan) are physically occupied by foreign forces. The presence of migrant workers from Pakistan and other Islamic nations in the Gulf is a three-decades old phenomenon. Mostly unskilled and ill-educated, these workers are susceptible to indoctrination of a particular brand of Islam where they live and earn money. Unknowingly and in good faith, they contribute donations and charity to various Islamic organizations at home

¹⁷ See editorial, "Religious Freedom," *Dawn*, May 2, 2010, p. 7. The role of minorities in nation building in Pakistan is not properly highlighted. This has been often lamented by some writers, including a leading Parsi journalist cum lawyer, Ardeshir Cowasjee, in his pieces. See his latest, "Not the voice of the creator [Jinnah]." In fact, the Christian community's notable contribution to Pakistan's education, health, charity, and judiciary is hardly mentioned. The same could be said of the Ismaili community's efforts in the fields of education, business, and the running of the best NGO, the Aga Khan Foundation, in helping the situation in the Northern Areas of Pakistan. Likewise, the Ahmadiyyas' contribution in producing internationally recognized talent in the formative years of Pakistan in the areas of foreign policy, science, bureaucracy, and the armed forces remains woefully unacknowledged at the state and societal level.

which get diverted to militant organizations. The controls and checks by government on these transfers have blocked many of these flows but not all.

It is not the case that all Madrassahs in Pakistan preach the Jihadi school of thought; some do so with due emphasis on purely theological education. Besides, they provide board, lodging, and free education for the poorest of those families who cannot afford any of these. Most of the students after completion of their stay come out with a blinkered view of life and are later vulnerable to Jihadi organizations, becoming easy recruits to their cause. The appointment of Imams and the modernization of curricula need to be seriously addressed at the national level. Funding by Saudi Arabia and Gulf states who promote Deobandi and Salafist brands of Islam has to be curbed too. They can only be brought into the mainstream by upgrading educational levels and by teaching subjects (geography, science, economics, psychology, biology, vocational skills) besides Islamic theology.

Fast Track Development

The development of the FATA region was never seriously planned and no government took steps to integrate it into the national mainstream. The region was neglected and became a lawless zone, a den of smugglers, criminals, and outlaws. This void was filled when Al-Qaeda and its affiliates sought sanctuary here and tried to set up a quasi-Islamic statelet. The net result was that it started challenging the Pakistani state. Arms, drugs, and Gulf money in the guise of Islamic charity and donations started pouring in, which was used to support Jihadi groups. Had the government acted in time to check these things, the situation as it is today may not have arisen.

Role of Media and Political Parties

The Pakistani media has to play a mature and responsible role in nation-building and highlighting issues like terrorism. At present, it is still characterized by an anti-Western, and, in particular, anti-U.S., stance. There have been many incidents where militants' activities or successes against the government have either been justified or condoned. Even some of the rebel groups have received unnecessary coverage and glorified as "Islamic warriors" undertaking "Jihad" for the "greater glory of Islam and the Muslim Ummah."

The Pakistani media in the last days of Musharraf's rule found itself operating with fewer restrictions, but it is now either misusing or abusing the newfound freedom in the name of democracy. The media and political parties both play on government weaknesses to undermine the current moderate and left-of-center PPP government.

Role of Ulema

The Ulema have to educate people to respect the religious freedom of minorities and other groups. There is consequently a need to redefine Jihad to the general public in a more modern context, and the Ulema bear a responsibility to play a constructive role. This redefinition of Jihad is still not agreed upon by Islamic scholars in Pakistan who have in some individual capacity passed *fatwas* (decrees) that terrorism called "Jihad" is *haram* (illegal) in Islam. Likewise, the Council of Supreme School in Saudi Arabia while denouncing terrorism also considers financiers of terrorists as equal "partners in the crime."¹⁸ However, while condemning acts of terrorism and its ill effects on the economy and the state, the Deobandi Ulema remain generally reticent about openly condemning suicide attacks.¹⁹

Cooperation Amongst Countries in the Region

All countries in the region should pool their resources to help Pakistan and Afghanistan in combating terrorism and alleviating poverty. The diverse national agendas of neighboring states have created problems and made Afghanistan a theater for a "New Great Game." India, as a regional power, has to play a positive role. Also, the Russian Federation, China, and Iran have to contribute meaningfully. The Shanghai Cooperation Organization (SCO) as a regional organization envisages such a collective role against terrorism.

¹⁸ "Saudi religious body denounces terrorism," *Ashaq al-Awsat*, London, as cited in *Daily Times*, April 14, 2010, p. A12.

¹⁹ For instance, nearly 150 Ulema of different Deobandi factions, groups, and political parties in a moot in Lahore on April 15–17, 2010 expressed reticence in condemning suicide bombings. See "Deobandi leadership shies away from suicide bombings," *Dawn*, May 2, 2010, p. 1.

Military Operations to be Taken to Logical Conclusion

While some of these measures are long term and may require time, the immediate need is for military action against the insurgency to be brought to a logical conclusion. Any deals and compromise should not be repeated as the experience of such deals with militants has shown to be counter-productive. The area has to be cleansed of foreign fighters and Al-Qaeda elements for good. At the same time, the state has to ensure surveillance and intelligence on urban areas so that terrorists cannot strike with impunity. It is also the responsibility of U.S. and NATO forces to seal borders and assume responsibility for a greater combat role.

Conclusion

Religious fundamentalism and its lethal forms – terrorism and suicide attacks – have come about due to the sins of omission and commission both by the Western countries and the policies of the Pakistani state. On the international level, morbid anti-Islamic sentiments, drone attacks on Pakistani territory,²⁰ the needless curbs on Muslim culture and way of life in Western countries, and the general stereotyping of Muslims and Islam, do not help matters nor does the overreaction from religious radicals in the Muslim world. It is an action-reaction syndrome which is turning into a vicious cycle and creating further mutual distrust and widening fault-lines. In tackling the virus of terrorism, Pakistan could draw some useful lessons from certain Latin American nations as well as Islamic countries such as Malaysia and Turkey.

Presently, relations between moderates and radicals within the country have led to polarization. This cuts across religious, sectarian, provincial, and other lines. This can be assuaged by granting greater autonomy to provinces and initiating a fast-track developmental program for the impoverished regions and integrating them into the national mainstream. In 2010,

²⁰ By April 2010, nearly 125 drone attacks had been conducted by U.S. forces in the tribal regions of Pakistan. Although they have been able to target and kill some notable Al-Qaeda and Taliban leaders, the collateral damage in terms of the deaths of civilians has also been considerable. Yet they are done with the implicit concurrence of the Pakistani government, in spite of the fact that the political leadership publicly criticizes these attacks. They also demand provision of drone technology to Pakistan. See, for example, David Ignatius, "Ending of war through sit-downs," *Daily Times*, April 4, 2010, p. A8.

the ruling political government has taken some worthwhile steps such as the institution of *Agha-e-Haqooq-e-Balochistan* (Beginning of the Rights of Balochistan), the National Finance Commission Award, and lately the 16th Amendment in the Constitution which gives more rights and autonomy to provinces. But, as always, the efficacy of reform measures lies in early and sincere implementation which would redress the grievances of people. It depends how effectively and how soon the government is able to tackle these problems. Admittedly, this is a challenging task but many countries faced with similar problems like Pakistan have been able to make headway armed with political will, imagination, and focus.

The Pakistani army remains a strong nationalist binding force to keep the country together, though it is well advised to refrain from assuming a direct role in politics. Creditably, it has successfully demolished the infrastructure of most of the Taliban and Al-Qaeda terrorist networks operating in Swat, Bajaur, and South Waziristan – the latter being the nerve center of terrorism. Presently, the army has taken a tactical pause, but it plans to move into adjoining tribal areas to eliminate the remaining militant hideouts. Having physically occupied the areas and established military garrisons for the first time in Pakistan's history, it has launched fast-track developmental programs of rehabilitation and reconstruction with the civil governments. The latter correspond to the demands of the majority of the tribal peoples, in order to ensure speedy and effective incorporation into the Pakistani state.

Yet the task is daunting enough and far from completed. While some militants have escaped into the adjoining agencies, others have crossed over the borders into Afghanistan's eastern borderlands. It is also high time that the international community takes a serious view of the situation and collectively tries to combat the menace. India and Pakistan must join forces to combat terrorism instead of exploiting their mutual difficulties and vulnerabilities; this only serves to embolden radical groups. The 15th summit of the South Asian Association of Regional Cooperation (SAARC) heads of states in Thimpu, Bhutan (April 27–28, 2010), has somewhat eased Pakistan-India tensions and with it the possibility of reopening the long-stalled Pakistan-India talks. In the Final Declaration of the summit, eight South Asian countries (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka) pledged to work jointly to eradicate the core issues of

poverty, water shortage, energy depletion, and terrorism that are afflicting South Asia.²¹

In short, the hydra-headed monster of terrorism can only be dealt with through a comprehensive and multidimensional strategy. Afghanistan has to be stable and secure so that Pakistan can also attain normalcy. President Barack Obama's new strategy focusing on the Afghanistan-Pakistan region has certain positive elements, but it should also emphasize the co-opting of other regional powers viz., Iran, Russia, and China.

The plan to start withdrawing U.S. forces from Afghanistan by July 2011 is a welcome step,²² but it depends how circumstances unfold in Afghanistan and the wider region. These could facilitate or impede the U.S. plans in the year ahead. In fact, none of the neighboring countries want Afghanistan to relapse into violence which would destabilize their polities. Afghanistan's neighbors have to take a long-term view and not be tempted by expedient gains in propping up their favorite elements in Afghanistan (Russia, India, and Iran supporting Northern Alliance and Pakistan, Saudi Arabia and some Gulf countries backing the Pukhtoon elements). An end to fighting and the return of normalcy in Afghanistan and Pakistan's tribal regions could bode well for general stability in the region.

²¹ "Pakistan, India agree to revive dialogue," *Daily Times*, April 30, 2010, p. 1.

²² Robert Pape in his book *Dying to Win* says that terrorism may have different motivations such as religion, race, social preservation, or revenge, but ending the threat of foreign occupation is the main motivation.

Constitution, Laws, and Religious Communities in Pakistan

Syed Noor-ul-Haq

The Evolution of the Constitution of Pakistan

Pakistan was created as a place where an economically marginalized “minority can operate a democracy” independently.¹ It was to save the people from religious discrimination and domination by an overwhelming religious majority. It emerged as a territorial state in the Muslim majority areas of the South Asian subcontinent on August 14, 1947. Quaid-i-Azam Muhammad Ali Jinnah, the father of the nation, after his election as the first president of the Constituent Assembly of Pakistan on August 11, 1947, outlined his concept and policies for Pakistan, which in essence were secular, pluralistic, and democratic. For instance, he emphasized that in Pakistan every person

no matter what is his colour, caste or creed, is first, second and last a citizen of this State [Pakistan] with equal rights, privileges and obligations. [...] You are free to go to your temples, you are free to go to your mosques or to any other place 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. [...] we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.²

¹ Comments by Stephen P. Cohen, Sr. Fellow, Brookings, Washington, D.C.

² *Quaid-i-Azam Mohammad Ali Jinnah - Speeches as Governor-General of Pakistan 1947–48* (Karachi: Pakistan Publications, n.d.), pp. 8-9. Jinnah’s address has been interpreted differently. Ch. Muhammad Ali in his *Emergence of Pakistan* (New York: Columbia University Press, 1967) has viewed it as an assurance for security to minorities, whereas Muhammad Munir states that Jinnah believed in secularism. See Muhammad Munir, *From Jinnah to Zia* (Lahore: Vanguard Books, 1980), p. 29.

Again, as the first governor-general of the country, he affirmed that he would always be guided by the “principles of justice and fair play” without any “prejudice or ill-will” or “partiality or favouritism.”³ He died a year after the birth of the country. Consequently, Pakistan took nine years to evolve its first constitution in 1956; the second came in 1962, and finally the third constitution in 1973. Paul R. Newberg observes that

Pakistan has encountered frequent, unresolved political crises. They are woven into its concepts of political community, and have understood uneasy relationships between state institutions and civil society. Pakistan’s politics has also been characterized by incomplete constitution-making, a process that has placed the burden of constitutional interpretation and political change on state instruments varying from the bureaucracy to the military to the judiciary.⁴

Soon after Jinnah’s demise, the Muslim leadership of Pakistan came to be divided into two opposing groups. One group wanted to have Pakistan as a liberal, secular state, while the other was for the introduction of Nizam-i-Mustafa according to the Qur’an and Sunnah (i.e., a form of government similar to the one practiced by the Holy Prophet Muhammad (PBUH) in Madina in 620–32 A.D.) The true Islamic state was founded in Madina in 620 A.D. and ended with the assassination of Caliph Ali in 661 A.D. According to Shi’a belief the Islamic state ended with the demise of the Holy Prophet in 632 A.D.

Due to a lack of competent and visionary political leadership, and the fact that Muslims constituted 97 percent of the population, the conservative religious leaders, partly due to their conviction and partly owing to their parochial interests, advocated and preached the establishment of a religio-political system.⁵ They were skeptical of the politico-social development of

³ *Jinnah Speeches*, pp. 6–10. Jinnah’s address has been interpreted differently. Chaudhri Muhammad Ali in *The Emergence of Pakistan* has viewed it as an assurance for security to minorities, whereas Muhammad Munir states that Jinnah believed in secularism. See Muhammad Munir, *From Jinnah to Zia*, p. 29.

⁴ Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (New Delhi: Cambridge University Press, 1995), p. i.

⁵ “The field of medieval political theory has already been subjected to intensive investigation by Von Kremer, Arnold, Sherwani, Rosenthal, Hamidullah, Tyan and others, and movements of modernism in contemporary Muslim world have also been extensively

modern times and Western political institutions and government based on communist ideology. Their dogmatic theology clashed with the democratic culture envisioned by the founding fathers. Some of the vernacular print media⁶ and the clergy⁷ were mostly propagating against liberalism and working against the efforts of liberal leaders.

It was after the separation of East Pakistan and a lapse of more than a quarter of a century (1947–1973) that the elected representatives of the people under the leadership of Prime Minister Zulfikar Ali Bhutto (1971–77) framed a consensus Constitution of the Islamic Republic of Pakistan in 1973, envisaging a federal, parliamentary, and democratic structure with Islamic characteristics. This constitution has survived in spite of the breakdown of democracy twice in 1977 and 1999, and hopefully is set to stay.

Religious Orientation of the Constitution

To accommodate the demands of the religious parties, the following clauses are included in the constitution:

- The process of Islamization in Pakistan commenced with the Objectives Resolution passed by the Constituent Assembly in 1949. Initially, it was added to the first constitution of 1956 as a pious wish, but it was made an integral part of the constitution by President General Muhammad Zia-ul-Haq (1977–88) in 1985, which was a major step towards Islamization. This was, however, a compromise solution attempting to balance the values and the spirit of Islam with the requirements of secularism and of human rights for all including minorities. It is incorporated as an annex under Article 2A of the constitution:

The Objective Resolution

Whereas sovereignty over the entire Universe belongs to Allah Almighty alone and the authority which He has delegated to the State

surveyed by scholars such as Smith, Gibb, Adams and Aziz Ahmad." Manzooruddin Ahmed, *Islamic Political System in the Modern Age: Theory and Practice* (Karachi: Royal Book Coy, 1983), Justice Hamoodur Rehman, *Islamic Concept of State* (Karachi: Begum Aisha Bawany Waqf, 1978).

⁶ For instance, the popular Urdu daily *Nawa-i-Waqt* of Lahore.

⁷ For instance, Maulana Shabbir Ahmad Usmani (1886–1949) and Maulana Zafar Ali Khan (1873–1956) promoted religious orthodoxy.

of Pakistan, through its people for being exercised within the limit prescribed by Him is a sacred trust;...

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom equality, tolerance and social justice as enunciated by Islam shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and the Sunnah;

Wherein adequate provision shall be made for the minorities to profess and practise their religions and develop their cultures;...

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

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

Whereas the independence of judiciary shall be fully ensured; ...

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity.

- Article 2 of the constitution says that “Islam shall be the state religion.”
- Under Article 228–230, an Islamic Council is established “to make recommendations to Parliament and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Qur'an and Sunnah.”
- Under Article 203A-J, a Federal Shariat Court is established to “examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam.” The Constitution has made the Shariat Benches Order part of it, but the Shariat Benches jurisdiction is very much limited, all important laws having been excluded from their jurisdiction.⁸ There was also the enactment of the Enforcement of Shari'ah Act, 1991, which says in

⁸ Muhammad Munir (Chief Justice of Pakistan in 1950s), *From Jinnah to Zia*, p. xix.

paragraph 3(1) that “Injunctions of Islam as la[id] down in the Holy Qur’an and Sunnah, shall be the supreme Law of Pakistan,” but the next paragraph 3(2) says that “nothing contained herein shall affect the rights of the non-Muslims guaranteed by or under the Constitution,” and paragraph 1 says: “Nothing contained in this Act shall affect the personal laws, religious freedom, traditions, customs and way of life of the non-Muslims.” Article 203F allows an aggrieved party to appeal to the Supreme Court against the orders of the Shariat Bench.

- *Appointments.* Article 41 lays down that the President of Pakistan shall be a Muslim and by virtue of oath the prime minister should also be a Muslim. Except for them, all other appointments including federal ministers, speaker and members of the National Assembly, and the chairman and members of the Senate and all other appointment such as the Chief Justice of Pakistan, chief election commissioner, auditor-general, etc. are open without discrimination. For instance, there was Honourable Alvin Robert Cornelious, a Christian (1960–1968), and Honourable Rana Bhagwandas, a Hindu appointed as Chief Justice of Pakistan (2009), and later Chief Election Commissioner of Pakistan (2010), besides other high court judges. There is no disqualification for members of national or provincial legislative assemblies on the basis of color, caste, creed, or religion.

Religious Sectarianism

Since Pakistan was conceived as a modern democratic state and not a theocracy, the clergy felt isolated. They attempted to establish their leadership by championing the cause of religion. They were partly inspired by their faith and partly by economic and/or political motives. To establish their leadership visibility, they promoted sectarianism, extremism, and violence. The first example of their efforts can be seen in the anti-Ahmadiya movement (1953), which led to the imposition of martial law in Lahore. The Ahmadiya community follows Mirza Ghulam Ahmad (1835–1908), who claimed revealed knowledge. They consider themselves as Muslims. The mainstream Muslim Ulema demanded that the Ahmadiya community be declared a non-Muslim minority. Liberal opinion criticized the Ulema, however, for “launching a politically inspired agitation.”⁹ However, in 1974, Prime Minister Zulfikar

⁹ Craig Baxter et al., *Government and Politics in South Asia* (Oxford: Westview Press, Third Edition, 1993), p. 179.

Ali Bhutto conceded to the demand of the Ulema, and the constitution was amended to categorize the community as a non-Muslim minority.

Following the success of the Ulema in getting their demand accepted, President Zia-ul-Haq, in order to win their support, encouraged the growth of madaris,¹⁰ and recognized their *sanads* (educational certificates) equivalent to degrees of general education.¹¹ Madaris in Pakistan are “excellent welfare set-ups where the poor get free board and lodge ... without State funding.”¹² Owing to official patronage the role and influence of religious parties increased. This enabled the “militant religious organizations” to exploit a ready-made platform for achieving their objectives. The “institutional roots” found space in a few mosques and madaris. This also led to the rise of religious groups on sectarian lines.¹³ The extremist Sunni and Shi’a groups strengthened the sectarian divide in the country.¹⁴ Interested foreign countries came to their help. For instance, after the 1979 revolution in Iran, the Iranian government supported the Shi’a community in Pakistan, while Saudi Arabia supported Sunni groups. The United States supported the Zia regime in encouraging and arming religious militants to fight against the Soviets in Afghanistan. Thus, madrasah culture was promoted and developed especially in the camps of Afghan refugees, who had migrated to Pakistan from Afghanistan.¹⁵ After Zia’s death in 1988, during the next decade of democratic civilian rule “Pakistan went through periods of the worst sectarian killings” and there were instances of attacks on mosques, Imam bargahs, and churches.¹⁶

¹⁰ The plural of madrasah (i.e., religious school) is madaris.

¹¹ For the increase in Madaris, see Noor ul Haq, “Education in Pakistan: Historical Perspective,” in Pervaiz Iqbal Cheema et al., eds., *Pakistan and Changing Scenario: Regional and Global* (Islamabad: Islamabad Policy Research Institute, 2008), p. 16.

¹² President Musharraf’s address to the nation, January 12, 2002, *Dawn* (Islamabad), January 13, 2002.

¹³ Sipah-i-Sahaba; Lashkar-i-Jhangvi; Jaish-i-Muhammad.

¹⁴ Sadia Nasir, *Religious Extremism in South Asia*, IPRI Paper 7, Islamabad Policy Research Institute, 2004, p. 33; cited in A. Z. Hilali, “The Costs and Benefits of the Afghan War for Pakistan,” *Contemporary South Asia* (Oxford), Vol. 11, No. 3 (November 2002), p. 301.

¹⁵ Hussain Haqqani, “Islam’s medieval Outposts,” *Foreign Policy*, November/December (2002), p. 63; cited by Sadia Nasir, *IPRI Paper* 35.

¹⁶ Zafar Abbas, “The Backlash,” *BBC News*, October 17, 2002, http://news.bbc.co.uk/1/hi/world/south_asia/2337675.stm

Civil and Criminal Laws

Pakistan inherited the civil and criminal laws enacted during the British period, which are followed to the present day. These are inherently secular laws. Except for some variations, especially for the Muslim community, all punishments under the normal civil and criminal law and the Evidence Act remain intact and all religious communities enjoy the personal laws applicable to their respective faith.

However, under his Islamization policy, President Zia promulgated certain laws – Hudood Ordinance and Blasphemy Law – which have enhanced the maximum punishment for adultery, theft, drinking alcohol, blasphemy, and also made the evidence for *zina* (adultery) more stringent. Accordingly, the Hudood Ordinance, enacted in 1979, lays down harsh punishments mentioned in the holy Qur'an and Sunnah:

(i) Zina (adultery): Maximum punishment is death by stoning, but there is reduced maximum punishment for unmarried couples and non-Muslims, 100 lashes. But for *qazaf* (false accusation of zina) 80 lashes. However, Qur'an prescribes lashes only and not stoning to death.¹⁷ President Musharraf revised it in 2006 by Women's Protection Bill, allowing rape to be prosecutable under civil law.

(ii) Theft: Maximum punishment is cutting off right hand. But the amputation of right hand, according to an opinion expressed by a former Chief Justice is "contrary to Quran as verse 38 of Surat-ulMaidah is qualified by the next succeeding verse 39 which says "but whoso repenteth after his wrong doing and amendeth, Lo Allah will relent towards him. Lo Allah is Forgiving, Merciful."¹⁸

(iii) Drinking alcohol: Maximum punishment is 80 lashes. But the "prohibition ordinance" which punishes possession, consumption etc. of all spirituous liquors. [This] is against the Hanafi school of thought, based on Quranic injunctions [which

¹⁷ Qur'an, 24:2.

¹⁸ Qur'an, 5: 38–39; Munir, *From Jinnah to Zia*, p. xix.

allows consumption] provided they are drunk in a moderate quantity or as medicine.¹⁹

Blasphemy Law: The criminal law prohibits and punishes blasphemy and the maximum punishment is death or imprisonment with or without a fine, but no judicial execution of a person guilty of the offence has taken place. Several sections of Pakistan's criminal code forbid damaging or defiling a place of worship or a sacred object; outraging religious feelings; defiling the Qur'an; or defaming the Holy Prophet Muhammad, but it is a requirement that the offence should be a consequence of the intent of the accused. Defiling the Qur'an merits imprisonment for life, and defaming the Holy Prophet merits death with or without a fine. The trial for the defaming of the Holy Prophet is required to be heard by not less than a Muslim district and sessions judge.

Some jurists are of the opinion that in awarding punishment of execution or cutting off the hand and foot on the opposite side of those who fight against Allah and his Messenger, verse 34 of Surat-ul-Maidah of the Qur'an is being ignored, which says "save those who repent before ye overpower them. For know that Allah is Forgiving, Merciful." This verse exempts those "who repent before they are [over] powered, that is, who cease fighting against Allah and his Messenger and repent."²⁰

Some Muslim scholars, such as Jawaid Ghamdi of Pakistan, argue that capital punishment in Islam could be given only to a person who is guilty of homicide, i.e., killing somebody deliberately, or to a person who is guilty of *fitna* (spreading disorder and conflict in society). President Zia promulgated these ordinances considering them "Islamic," but "some of them are contrary to the plain terms of Quran."²¹

There seems to be a consensus that most of the cases registered for blasphemy have not been inspired out of religious considerations but rather for personal reasons so as to harass opposing parties irrespective of their religion. This law is opposed by liberal forces in the country, who desire that it should either be abrogated or modified to address the concerns of all people including minorities. They argue that it would be appropriate and timely

¹⁹ Munir, *From Jinnah to Zia*, p. xix.

²⁰ Qur'an, 5: 33–34; Munir, *From Jinnah to Zia*, pp. xix–xx.

²¹ Munir, *From Jinnah to Zia*, p. xix.

if "Muslim jurists realized that Arab pre-Islamic *adat* [practices/practice] is far from divine and should not form the basic structure of any Sharia law today."²²

Religious Configuration

The countrywide census is likely to be conducted in 2010. Figures on the religious configuration of Pakistan available, as per the first census of Pakistan conducted in 1951 and the most recent census about half a century later in 1998, are provided in Table 1.

Muslims comprise 96.16 percent of the population. The major sects amongst Muslims are Shi'as and Sunnis, the former being roughly about 20 percent of the population. The religious minorities constitute 3.84 percent of the population. If the present total population is around 170 million, the minority population would amount to approximately 6.5 million. The Hindus and Christians are the two main minority communities. About ninety percent of Hindus live in Sindh and eighty percent of Christians live in the Punjab. In addition, there are Ahmadis, Sikhs, Buddhists, Parsis, and other minor groups such as Bhais, Kalasha, and Jains.

²² Asghar Ali Engineer, "Muslim Women and Modernity," *Dawn* (Islamabad), April 9, 2010.

Table 1. Religious Configuration in Pakistan

Community	Total 1951 (millions)	Percentage	Total 1998 (millions)	Percentage 1998
Total Population	33.730	-	145.5	-
Muslims	32.732	97.12	139.91	96.16
Qadianis	-	-	0.509	0.35
Hindus	0.531	1.58	1.40	0.962
Scheduled Caste	-	-	0.48	0.33
Christians	0.433	1.28	2.458	1.9
Others	0.046	0.02	0.746	0.512

Source: Census of Pakistan 1951; Population Association of Pakistan Statistics, Table 1.4: Percentage Population by Religion, Source: 1998 Census: Hand Book of Population and Housing Census Pakistan (Islamabad: Government of Pakistan, Population Census Organization Statistics Division, 2002), p. 50; <http://www.pap.org.pk/statistics/population.htm>

Table 2. Percentage of Religious Population by Provinces

	Punjab	Sind	NWFP	FATA	Baloch	Islamabad
Muslims	97.2	91.3	99.4	99.6	98.8	95.5
Qadiani	2.3	1	0.2	0.2	0.4	4.1
Hindus	0.1	6.5	-	-	0.5	-
Sh. Caste	-	0.1	-	-	0.1	-
Christians	2.3	1	0.2	0.1	0.4	4.1
Others	0.1	0.1	0.1	0.1	0.1	0.1

Source: 1998 Census: Hand Book of Population and Housing Census Pakistan (Islamabad: Government of Pakistan, Population Census Organization Statistics Division, 2002), p. 50.

Alleviation of the Concerns of Minorities

Minorities have had concerns about the system of electorates, ownership of private schools, fundamental rights, and some other controversial laws. These have been addressed as follows:

Separate Electorates

During the period of British supremacy, Muslims being in a minority had demanded and got separate electorates to ensure their separate representation. The minorities in Pakistan opposed separate electorates re-introduced by President Zia in 1985 (which had been abolished in 1956). An All Pakistan Minorities Conference was held in Lahore in 2000. They demanded that joint electorates be re-introduced. President Pervez Musharraf's government acceded to their demand. Now, the minorities enjoy double votes: one they have for their reserved seats and one for the general seat because of the joint electorates.

Private Schools

The minorities had complaints that their schools were nationalized under the nationalization policy of Prime Minister Zulfikar Ali Bhutto's administration. Musharraf's government restored private ownership and allowed them to get back their institutions; they could also open additional private schools.

Fundamental Rights

The Constitution of Pakistan provides safeguards to the minorities. Part II of the constitution lays down "fundamental rights and principles of policy." There are clauses which permit freedom of movement, assembly, association, trade, business or profession, and speech. Articles 20–27 provide "freedom to profess religion and to manage religious institutions"; "safeguards against taxation for purposes of any particular religion or educational institutions in respect of religion"; furthermore that "no person attending an educational institution shall be required to receive religious education, or take part in any religious ceremony, or attend religious worship, if such institution, ceremony or worship relates to religion other than his own"; and

ensures the equality of citizens and non-discrimination, etc.²³ The Supreme Court of Pakistan and the Human Rights Commission of Pakistan ensure that these rights are guaranteed to the people of Pakistan irrespective of their caste or creed.

Controversial Laws

Despite guaranteeing the fundamental human rights, the Hudood Ordinance and Blasphemy Law remains controversial. The minorities as well as a large number of those who belong to the majority community desire that these laws be abrogated or modified suitably to accommodate their concerns. Sustained efforts are, therefore, necessary for the protection of the rights of all citizens irrespective of their caste or creed as per the concept of the founders of Pakistan. It is the job of every government to ensure implementation of rules and regulations, especially those concerning the internationally accepted fundamental human rights to their true letter and spirit. Referring to the Islamization policy of President Zia, Justice Muhammad Munir, the former Chief Justice of Pakistan, in his work *Jinnah to Zia*, has remarked:

So the net result is that the parties who opposed the creation of Pakistan were, by a strange quirk of history, placed in a position where they could destroy the Quaid-i-Azam's conception of Pakistan and could give to the country a set of laws which are directly opposed to the Quran. According to Quran, Allah is Forgiving and Merciful but in the Order and Ordinance [i.e., Hudood Ordinance and Blasphemy Law] promulgated, there is not a trace of His Forgiveness and Mercifulness.²⁴

Conclusion

Generally, the people of Pakistan are moderate. They are against the clergy playing a political role. This is evident from the fact that the religious political parties enjoy only a minimum representation²⁵ in the Parliament. In spite

²³ Preamble and Article 2A of the Constitution.

²⁴ Munir, *Jinnah to Zia*, p. xx.

²⁵ In the general elections held in 2008, Jamiat-ul-Ulema-e-Islam (Fazalur Rehaman), a religious party which participated in the elections, secured only six out of 342 seats in

of a few symbolic discriminatory constitutional provisions and a couple of pieces of controversial legislation, there seems a consensus that the constitution and laws in the country possess a compromising balance between secular ideals and Islamic principles. And, above all, under Article 184 (3) of the Constitution of Pakistan, the Supreme Court of Pakistan, besides appellate and advisory jurisdiction and interpretation of the constitution and laws, has original jurisdiction over “the enforcement of any of the Fundamental Rights.”²⁶

the National Assembly of Pakistan.

²⁶ Article 184 (3) of the Constitution of the Islamic Republic of Pakistan reads: “Without prejudice to the provisions of Article 199 [i.e., Jurisdiction of the High Court], the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights, conferred by Chapter-1 of Part II [enumerating fundamental rights] is involved, have powers to make an order of the nature mentioned in the said Article.”

The Constitution and Religious Freedom in India

Sona Khan

Recent Developments

While I was preparing to come to Singapore to attend the February 25–26 conference, the Bhartya Janta Party (BJP), India's right wing Hindu party, was concluding its annual national meet. The party was basking under the words of wisdom of its new head, Mr. Nitin Gadgari. After eating a meal with a Dalit family (low caste), he advised Muslims to give up their claim on the land where the Barbari mosque had stood until December 6, 1992, in order to make way for the building of Ram temple. He promised to explore the possibilities of finding another piece of land nearby for a mosque. This is surely an act of political arithmetic, as determination to build the Ram temple has been one of the party's election planks since the 1980s. Another allied party, Shiv Sena (right wing regional political party), is upset with the BJP head for appealing to Muslims. According to Shiv Sena, there is no need to appeal and be soft. While both parties are making their own statements, the matter concerning the piece of land in question is the subject of civil law suits before the courts.

In another development, India was gripped with the fear of possible obstacles to the release of a motion picture called "My name is Khan" in Mumbai and elsewhere, because its lead actor Shah Rukh Khan had questioned the wisdom of not bidding for Pakistani players at an international cricket auction of players in a private commercial venture. Shiv Sena, known for championing narrow regional causes in the name of religious nationalism, wanted the actor to apologize but he replied that he had nothing to apologize for. Tensions started to build in the film industry in view of the threats to the peaceful release of the film. Fears that cinema halls showing the film would be a potential target for vandals caused sleepless nights for the authorities – duty-bound as they were to preserve law and order in Mumbai in the wake of any confrontation. The actor in question is a Muslim. However, in the midst of huge security arrangements, the film was released. Barring a few isolated incidents, all went well.

The issue was more a question of politics between the party in power and those in opposition in Maharashtra than religious prejudices as such. Shiv Sena was very keen to register its potential for derailing the due process of law so as to demonstrate its extra-constitutional powers. Such games have been played successfully before on several occasions. A significant outcome of this latest episode, however, is that people in Mumbai indicated that they do not care anymore about such extra-constitutional forces, as they went in large crowds to see the film in spite of security restrictions. It should be noted that militancy in Punjab in the 1980s was, to begin with, also an outcome of conflict between such regional forces; it later escalated with much larger, even international, stakes, with demands for the establishment of a separate Sikh land.

In February 2010, a blast rocked Pune, Maharashtra, India, killing 12 people and injuring more than 60 at the cosmopolitan German Bakery, close to an international spiritual resort, often frequented by foreigners in search of familiar bread and a strong cup of coffee. The blast has been confirmed as an act of terrorism. A few terrorist groups in neighboring Pakistan have admitted responsibility, while India was seriously preparing to enter discussions with Pakistan over outstanding issues, including terrorism.

More than 5,000 educational institutions run by the Catholic and mainstream Protestant Christian organizations in India are coming together to form a representative body in New Delhi, which will take up issues to protect their educational institutions from political onslaught from non-secular political parties. Attacks on Christians and their institutions in Orissa and Mangalore last year have underscored the need for an institution which can take up the cudgels for Christian educational institutions, based in different parts of India, with regard to the central government. Christian educators have complained that the vested interest target political parties. The prominent Christian colleges and schools in urban areas have some access to government and political parties at the state level, but they lack access to government and political parties at the federal level. Additionally, a large number of rural and small town educational institutions run by Christian managements feel the need of having some access to the process of formulating policy matters in the capital to protect their minority rights.

Honor Killings

Another issue presently rattling the authorities is the spate of honor killings in northern states. The central government is preparing a legislative route to amend the Indian Penal Code (IPC) to provide for a deterrent punishment against *khap panchayats* (community and caste based village level bodies) that bestow the death penalty upon young couples who marry in defiance of caste barriers. A serious consideration in amending the IPC is to make honor killing a separate and distinct offence, and the provision for a deterrent punishment is on the cards. The preparation to draft a bill to amend the IPC to make honor killings distinct from ordinary murders by widening its definition under Section 302 of the IPC, began seriously on the back of an endorsement by the attorney general that legislative intervention was necessary to make honor killings a specific offence. Honor killings, mostly reported in Haryana, Western Uttar Pradesh, Punjab, rural Delhi, and in some areas in southern India, have a potential for evoking sharp reactions and having political ramifications not only in India, but also in neighboring countries like Pakistan.

It has been felt that honor killings are deplorable, and the right of caste *panchayats* to pronounce whether a man or a woman should live together, or if a woman has committed an act which, allegedly, brings dishonor to the family or community, cannot be protected by any customary law. No caste panchayat has the right to pronounce and judge upon the conduct of individuals. The push for a proposed amendment of the IPC to make honor killings a separate offence, and to make it distinct from ordinary murder, came from the Punjab and Haryana High Court, which in the recent past has been flooded with applications from young couples seeking protection from caste panchayats and caste-blinded relatives. The High Court has said that it was time that society protected such harassed couples. According to the principles followed by *khap panchayats*, there can be no marriage alliance between a man and a woman if they are of the same *gotra* or belong to different castes. Even if they belonged to the same caste and different *gotras*, they still cannot marry if they reside in the same or adjoining villages. The arrogance of groups who presume that they enjoy extra-constitutional powers is manifested in almost all religious communities as well.

Let us examine a few other aspects of religious freedom. Since the early 1980s, there has been a heightened Hindu consciousness and resultant

increase in concepts of nationalism. The concept of Hindu nationalism has its roots in the late nineteenth century and is represented by an increasingly formidable range of organizations and parties, like the powerful paramilitary Rashtriya Swayamsevak Sangh (RSS), its revivalist affiliates Vishwa Hindu Parishad (VHP), and the Bharatiya Janata Party, the leading opposition political party with ambitions of taking control of the central government. With visions of a revitalized religious politics, they portray India's secularism as no more than a pretext for the pampering of religious minorities. Secularism in India does not divide religion and the state. It recognizes and fosters all religious communities equally. As a minority, Muslims are more visible than other minorities. Subjects associated with minorities have been a fertile bed of breeding discontent. The constitution guarantees freedom of religion, worship, and the right of each religious group to establish and administer its own schools and to maintain its distinct traditions. Like in the United States, in India also the form and degree of state accommodation of religious practices has been a matter of controversy. Political managers constantly work hard to strike an appropriate democratic balance between the majority preference and protection of minority rights.

Shah Bano Case

In the wake of the partition of the country in 1947, the Indian Muslim population was assured of the right to retain their faith, culture, personal law (governing family law, marriage, divorce, inheritance, etc.), along with other minorities. Many Hindu nationalists opposed this and labeled such attempts as pseudo-secularism. They also thought at one stage that it was not necessary for Muslims to have their separate identity, as they had the option to go to Pakistan; the opinion was that those staying in India should opt for living under a common system of governance. This notion was very aggressively contested in 1985 in the Shah Bano case, where the Supreme Court granted a Muslim woman the right to seek maintenance from her divorced husband. Her husband had divorced her after 43 years of marriage in a traditional manner without going to court. Under the customary law, he was not responsible to pay her maintenance after three months of dissolving the marriage. The Supreme Court ruled otherwise, interpreting the Quranic verse 241 of chapter II Sura Bakr.

Many Muslims thought that it was a good judgment as the court found that the Quran was compatible with the Indian constitution. Many non-Muslims, on their part, also thought the judgment was not bad, believing that there could not be different laws for minorities. Some also thought that an Indian Muslim should be a Hindu Muslim and an Indian Christian should be a Hindu Christian; therefore, the judgment granted the Muslim woman the same right as a Hindu woman. On the other hand, amongst cries of "Islam is in danger with the application of the Shah Bano judgment," the then government (Congress Party) brought in a hurried piece of legislation to negate the import of the said Supreme Court judgment, called the Muslim Women (Protection of Rights on Divorce) Act, 1986. I challenged the said new Act in the Supreme Court *inter alia* on the grounds:

1. That it was unconstitutional to deny the right of equality and equal protection of laws to Muslim women, since the same was available to Indian women of other faiths.
2. That it was dangerous to divide the country in respect of maintenance, a secular duty of the head of the family, a responsibility delegated by the state. It is associated with the right to life, to survive for a Muslim woman to survive in the absence any individual source of livelihood.
3. That it was un-Islamic as the Quranic verse 241 specifically states that a wife has the right to seek maintenance from her divorced husband until her remarriage.

For political opponents nor for Hindu nationalists was the Shah Bano case judgment a human rights issue. To them, the government's response to the Shah Bano case was simply an appeasement of minorities, a trend that they had been denouncing for a long time. The Congress Party justified the new legislation on the grounds of preserving the right of freedom of religion for Muslims and the duty of the state to protect religious diversity. I am not sure that the state has any such duty towards a religious group when the basic human right to life (to live with dignity) and also the equal protection of law of a Muslim woman were in question!

Pure political arithmetic was the inspiration because when the judgment came in 1985, bi-elections in Andhra, Kerala, and West Bengal were

just around the corner with considerable number of Muslims due to vote. It was simple political prudence which pushed the enactment to negate the Supreme Court judgment. However, later in 2001, my challenge was accepted and the Shah Bano judgment was declared to be a good law; Muslim women, however, did not obtain relief under secular law but under personal law – therefore, the fight for equality in this matter is yet to be achieved.

It is true that article 44 (Directive Principles of State Policy) of the constitution does provide for a uniform civil code to be enacted. There is no consensus or acceptable, genuinely effective draft in spite of several public discourses. The nature of a uniform civil code needs to emerge from non-political pursuits. However, Indian citizens desirous of the secular application of family law have a choice to opt for such legal recourse, already in place from the British times, like the Indian Succession Act, Special Marriages Act (amended in 1954), Guardianship and Wards Act, etc. This tends to take away their religious character in the area of family law. The BJP and its allies have been promoting the idea of formulating a uniform civil code, with the aim of abolishing the religious identity of minorities. In many other earlier judgments, the Supreme Court has suggested to the government the formulation of a compulsory uniform family code. These judgments did not cause any political upheaval as the Shah Bano case judgment did. The complexity of minority rights and the acute battle for preserving the identity of minorities has always deterred the government from undertaking such an exercise. Moreover, if the question of uniform civil code is analyzed in detail, considering the diversity within one religion itself, the imposition of uniformity would be as oppressive to the individual member of the majority community as to the reluctant minority.

The Issue of Ram Temple

On discovering the results of religious arithmetic, gauging the pulse of people while opposing the legislation to negate the Shah Bano case judgment, the Hindu nationalists found that crying foul over the protection of minority rights could be a potent vehicle by which they could gather political power and renew their call for Ram-Rajya, the ideal rule of the mythic age of Lord Ram. The conceptual catalyst in this exercise is *Hindutva* (Hinduness), synonymous to their concept of Indian-ness, a term that embodies the

notion that all Indians, including Muslims, are part of a Hindu nation and that Lord Rama and the gods and heroes of Hindu mythology are part of their patrimony. Those unwilling to accept Hindutva are thus not just apostates but traitors. In the late 1980s, Lord Ram became the potent symbol of Hindu nationalists. Hindus, disparate in their profusion of sects and traditions, turned into a self-conscious community. The city of Ayodhya in Uttar Pradesh is presumed to be the birthplace of Lord Ram. In pursuit of their religious politics, devotees assert that, in the sixteenth century, the Mogul emperor Babar destroyed the temple so as to construct a mosque, called the Babri Masjid.

In 1989, efforts by the Vishwa Hindu Parishad and other Hindu revivalist political groups to demolish the Babri Masjid in the name of “recapturing injured Hindu pride” through the construction of a new Ram temple precipitated what was up until that time probably the most serious Hindu-Muslim conflict. In 1990, to galvanize Hindu sentiment behind the BJP, Party President L. K. Advani launched his *rath yatra* (chariot pilgrimage), a 10,000-kilometer journey in a van fashioned to look like a mythological chariot across the heart of North India from Ayodhya, to launch the initiative for the construction of the new temple. Then Prime Minister V. P. Singh, invoking the principles of secularism, warned that the mosque would be protected “at all costs.” As Mr. L. K. Advani and other BJP leaders approached Ayodhya, they were arrested. The BJP, in turn, withdrew its parliamentary support from the then minority government of Prime Minister V. P. Singh, after an unprecedented 346-to-142 vote for a no-confidence motion; the prime minister submitted his resignation to the president on November 5, 1991.

In the fall of 1992, the VHP and BJP vowed that on December 6 they would begin building a new temple at the site of Babri Mosque. More than 200,000 Hindus from all shades of political parties associated with Hindutva ideology converged in Ayodhya, storming through the police barricades. The crowds managed to demolish the Muslim shrine. The police and paramilitary guarding the mosque offered little resistance. In the face of such aggression and subsequent rioting, the then Congress government of P. V. Narasimha Rao seemed helpless. The central government dismissed the state government (led by the BJP) of Uttar Pradesh for failure of constitutional machinery, under the provisions of article 356 of the constitution, and imposed president’s rule. Uttar Pradesh is India’s most populous state. A

week later, the governments of the remaining three BJP-ruled states were dismissed, again invoking the provisions of article 356 for maintenance of constitutional machinery. Mr. L. K. Advani and his other associates from Hindu-nationalist parties were arrested and charged with inciting religious feelings of hatred, that is, of hurting the religious feelings of other communities, resulting in political aggression, and thereby leading to the tangible act of demolition of the mosque. The central government also announced a two-year ban on three Hindu communal organizations, namely, the RSS, VHP, and the Bajrang Dal, as well as two Muslim groups. The president of the VHP vowed that any government efforts to impede the construction of the new Ram temple would result in “a confrontation of unimaginable magnitude.” Thus it was a real challenge to the secular state of India and of its capacity to secure democracy, justice, and equality in a multicultural society.

Democracy, Secularism, and the Indian Constitution

Indian democracy is often challenged by communalism, excessive caste consciousness, and separatism, in the name of cultural and religious freedom. In order to meet these challenges and related security measures, India is confronted by a dilemma of changing values in respect of individual liberty and freedom, which the state is forced to adopt. These values are the core of any democratic commitment. In its attempts to quell endemic unrest and meet the challenges of terrorism, India is forced to enact laws that have become instruments in the constant decrease in the quality of human liberty. Yet, Indian democracy has shown remarkable strength and resilience because of the value it attaches to secularism.

Let us examine if the scope for practicing religious politics of this nature is included in the idea of India, which our constitutional framers had for the future generation. The preamble of the constitution summed up the idea of India in the following words:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political

LIBERTY of thought, expression, belief, faith and worship

EQUALITY of status and opportunity, and to promote among all

FRATERNITY assuring the dignity of the individual and the unity of the Nation

The Indian constitution was adopted on November 26, 1949, and came in to force on January 26, 1952. India deliberately opted for a parliamentary, federal constitution, and quoting Professor Granville Austin: "The Constituent Assembly's decision to give India a parliamentary, federal Constitution was not made in a day. The process took two and a half years from the first meeting of the Congress Experts' Committee on the Constituent Assembly, held in July 1946, to the debate on the Draft Constitution in November 1948."

Thus India became a federal, democratic republic with a written constitution. It is also the largest democracy in the world. Its territory is divided into 28 states and seven union territories. Every state has its own three wings of government, namely, legislature, judiciary, and the executive. The central government is for the whole of India.

The caste and religious communities constituting scheduled castes (16.48%) and scheduled tribes (8.08%) account for 24.56 percent of the total population. These classes of communities based on their social level and vocation, preserved for centuries, are mentioned in the constitution as such. Officially, Hindus constitute 82 percent of the population, Christians 2.34 percent (there is a decreasing trend: 1971 – 2.6%, 1981 – 2.4%), Muslims 12.12 percent (unofficial figures put them at more than 15 percent of the population), Sikhs 1.94 percent, Buddhists 0.76 percent, Jains 0.41 percent, and others 0.43 percent.

The profound cultural, linguistic, religious, traditional, customary, and environmental diversity of India is at the same time its significant wealth. Furthermore, the functional democratic institutions built in the middle of the twentieth century have managed our unprecedented diversity well and kept the country united while preserving its rich heritage of thousands of years. The Indian population of one billion constitutes almost one fifth of the total world population. India has around 21 major languages and over 1600 dialects. It is a highly pluralist country and has a large number of different religious practices and cultural traditions. Moreover, Indians live in

harmony in spite of practicing different religions, speaking different languages, and eating different kinds of food. The polity is aptly described as "Unity in Diversity."

The leaders who fought for independence under the guidance of Mahatma Gandhi were opposed to communal and group politics. They stood for a secular India. During the debates in the Constituent Assembly, Prime Minister Jawaharlal Nehru declared that secularism was an ideal to be achieved and that establishment of a secular state was an act of faith. He explained his vision thus:

By secular State, as I understand, the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronize or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion [...] At the same time we must be very careful to see that in this land of ours we do not deny to anybody the right not only to profess or practice but also propagate any particular religion.

Once he told the French journalist André Malraux that while a secular constitution was in place, the country was gripped by deep religiosity.

Secularism as a state ideology has been contentious ever since Hindutva emerged as a major political tool. The political leaders focus on the way the concept is applied in practice, with one section even accusing the state of being biased toward the minorities, particularly Muslims, while the other considers it necessary to keep them away from the undue domination of the majority. Many even go to the extent of saying that the idea of secularism is Western and not Indian in origin. The Supreme Court of India has played its own role in interpreting the concept of secularism, citing its own different verdicts wherever necessary.

Our constitution makers took the step of ensuring affirmative action for *dalits* and *adivasis* (tribals), reserving jobs and seats in educational institutions for them for a stipulated period of time. Since the implementation of

these policies was in the hands of the upper caste, their proper implementation could not take place and the problem has lingered on, resulting in every succeeding government extending the period of reservations; this was also partly motivated by electoral calculations. To add to the complexity, the reservations were used successively by a few groups and not the whole community, leading to the formation of “creamy” sections in the Dalit sections of society, fattening themselves and leaving a larger section of the oppressed deprived of development and without basic dignity as citizens.

The Andhra Pradesh Reservation

In February 2010, in a significant judgment with national ramifications, the Andhra Pradesh High Court struck down the four percent reservation provided by the state government to selected sections of Muslims in education and public employment. The beneficiary of these reservations were categorized as additional “E” group and included among the existing Backward Classes enjoying reservation, first through an ordinance and then legislation. A five judge bench allowed the writ petitions challenging this Act 26 of 2007, while two judges differed with the majority view. The report of the Andhra Pradesh Commission for Backward Classes, which was relied upon by the government for extending the said reservation, came in for severe criticism from the judges.

Declaring the Andhra Pradesh reservation in favor of the Socially Educationally Backward Classes of Muslims Act 2007 “unsustainable,” the five judges said the Act “is religion-specific and potentially encourages religious conversions.” The majority judgment pronounced by Chief Justice A. R. Dave said the government’s action was based solely upon the findings and recommendations of the report of the Commission, and that the procedural error committed by the Commission was fatal to its report and consequential recommendations. The chief minister (Congress Party) reiterated the government’s commitment to provide a four percent reservation to backward class Muslims. Barring the Bartya Janta Party, all other political parties expressed concern at the judgment and wanted the government to take steps to restore the quota.

This is the third time that the government is facing an embarrassment at the hands of the judiciary over a quota for Muslims in Andhra Pradesh. To keep its election promise, the government issued an administrative order

in 2004 providing a five per cent reservation for all Muslims, which relied on a report by the Andhra Pradesh Minorities Finance Corporation. This was struck down by the High Court. The government then constituted a Backward Classes commission and, based on its report, brought about the enactment in 2005, which was again rejected by the court. Activists led by politicians of various parties are protesting against this recent High Court judgment.

The Andhra Pradesh Congress Committee president reiterated the party's commitment to the implementation of reservations and said that the government would appeal against the judgment after rectifying the shortcomings, if any, spelled out in the judgment. The claim that the quota was introduced with an eye on elections by the party in power was dismissed. The Bharatiya Janata Party endorsed the judgment of the Andhra Pradesh High Court, quashing state legislation on reservation for religious minorities, as any attempt to give reservation to religious minorities is unconstitutional.

West Bengal and Job Reservations

On the other hand, around the same time, the West Bengal government announced a ten percent quota in jobs for the weaker sections among Muslims under the OBC (other backward category) on the recommendations of the Ranganath Mishra Commission. It seems that due to political motivations, the government of West Bengal (led by the Left Front) has stolen a march over the central government (United Progressive Alliance led by the Congress Party) on the implementation of the Ranganath Mishra Commission's recommendations by deciding to reserve ten percent of government jobs for the economically, educationally, and socially backward sections among Muslims. The seven per cent job reservation already exists for the OBC category and this will bring the total percentage of job reservation in West Bengal for OBC Muslims to 17 percent.

The West Bengal government claimed that they have decided to ensure reservation of jobs for minorities not on the basis of religion but taking into account the economically, educationally, and socially backward sections among Muslims, and a committee will be set up to identify them and, to start with, reservation in jobs has been accepted and reservation in educational institutions shall be considered thereafter. The committee would suggest putting in place a mechanism for the implementation of the decision

and would conduct a survey in all districts to identify the backward sections among Muslims. The government further specified that “the creamy layer” among the community, those whose annual income was Rs. 4.5 lakh or more per annum, would be excluded from the benefit.

Article 341

Article 341 (amended) reads as follows:

SCHEDULED CASTES 341(1) The President may with respect to any state or union territory and where it is a state after consultation with the Governor thereof, by public notification, specify the castes races or tribes or parts of or groups within castes areas or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that state or Union territory as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste race or tribe but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

This article speaks about scheduled caste only and makes no reference to religion. There is no mention of religion in this article and it is purely secular. However in 1950, a Presidential Order was promulgated under this article and religion was made the basis of identifying and declaring scheduled castes and this article lays down the procedure for specification of scheduled castes in relation to different states and union territories. Under article 341(1), the first list of scheduled castes in respect of different state and union territories is specified by the notification, through an executive order of the President of India. Any subsequent modification, namely, addition or subtraction in these notifications can be effected only by an Act of Parliament under article 341(2). The Presidential Orders specifying scheduled castes are operating because a community may be a schedule caste in one state but may not qualify to be so in the other state. The Presidential Orders stipulate that no person who professes a religion different from that

Hindu, Sikh, or Buddhist shall be deemed to be member of a Schedules Caste. The converts from Dalits to Muslim and Christian communities were not included. Both these communities have challenged these provisions. They have some valid bases, for example, the Muslim Khatiks from Jalgaon District (Maharashtra) are converts from Dalit sections of society and were so recognized in view of the 1951 census. The Jalgaon District Gazette notification issued in or about 1952 shows that Muslim Khatiks are local converts.

The first list of scheduled castes under article 341(1) was notified through the Constitution (Scheduled Castes) Order, 1950. The test applied for the inclusion in the list was extreme social educational and economic backwardness arising out of the practice of social evils, like untouchability. Initially, the Presidential Order (scheduled castes) of 1950 had the word "Hindu only." "No person who professes a religion different from Hindus shall be deemed to be a member of a scheduled caste." However, it originally contained the following provision: "Provided that every member of Ramdasi, Kabirpanthi, Mazhabi of Sikligar caste resident in Punjab or Patiala or East Punjab States Union shall, be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religion." Today after amendments, it stands in the form as quoted hereinabove.

There was a great debate in the Constituent Assembly over the inclusion of Sikhs in the constitutional arrangement of reservations for minorities. It was discussed that there is no caste system or untouchability in the Sikh religion, and many leaders like Sardar Vithalbai J. Patel urged upon those Sikhs demanding reservation for Sikh scheduled castes "not to lower their religion to such a pitch as to really fall to a level where for a mess of pottage you really give up the substance of religion."

Constitutional Safeguards for Minorities

The fathers of our constitution initially thought of providing for political representation to all minorities. After the riots between two major Indian communities, the Hindus and Muslims, the plan for political reservations for minorities was shunned and wherever reservations were being practiced due to previous British legislative or administrative interventions, they were abolished. The Indian constitution or any other document does not define the word "minority." The constitution only refers to minorities and speaks of those "based on religion or language." The Constitution of India

has provided two types of safeguards, general and specific, to safeguard the various interests of the minorities. In the first category are those provisions that are equally enjoyed by both groups. The provisions ensure justice and social, economic, and political equality for all. The second category consists of provisions meant specifically for the protection of particular interests of minorities. The constitutional safeguards for minorities and groups are as follows:

1. People's right to "equality before the law" and "equal protection of the laws";
2. Prohibition of discrimination against citizens on grounds of religion, race, caste, sex, or place of birth;
3. Authority of the State to make "any special provision for the advancement of any socially and educationally backward classes of citizens" (besides the scheduled castes and scheduled tribes);
4. Citizens' right to "equality of opportunity" in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex, or place of birth;
5. Authority of the state to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State";
6. People's freedom of conscience and right to freely profess, practice, and propagate religion – subject to public order, morality, and other Fundamental Rights;
7. Authority of the state to make law for "regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice," and for "providing for social welfare and reform";
8. Authority of the state to make laws for the "throwing open" of Hindu, Sikh, Jain, or Buddhist "religious institutions of a public character to all classes and sections of the respective communities";

9. Sikh community's right of "wearing and carrying of kirpans";
10. Right of every religious denomination or any section thereof – subject to public order, morality and health – "to establish and maintain institutions for religious and charitable purposes," "manage its own affairs of religion," and "own and acquire movable immovable property and administer it "in accordance with law";
11. People's "freedom as to payment of taxes for promotion of any particular religion";
12. People's "freedom as to attendance at religious instruction or religious worship in educational institutions" wholly maintained, recognized, or aided by the state;
13. Right of "any section of the citizens" to conserve its "distinct language, script or culture";
14. Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the state, "on grounds only of religion, race, caste, language or any of them";
15. Right of all religious and linguistic minorities to establish and administer educational institutions of their choice; and
16. Freedom of minority-managed educational institutions from discrimination in the matter of receiving aid from the state.

Part IV of the Constitution of India, containing non-justifiable Directive Principles of State Policy, includes the following provisions having significant implications for the minorities:

- i. Obligation of the state "to endeavor to eliminate inequalities in status, facilities and opportunities" amongst individuals and groups of people residing in different areas or engaged in different vocations;
- ii. Obligation of the state to "endeavor to secure for the citizens a uniform civil code throughout the territory of India";

- iii. Obligation of the state "to promote with special care" the educational and economic interests of "the weaker sections of the people" (besides scheduled castes and scheduled tribes); and
- iv. Obligation of the state to "take steps" for "prohibiting the slaughter of cows and calves and other milch and draught cattle."

Part IV-A of the Constitution, relating to Fundamental Duties, applies in full to all citizens, including those belonging to minorities and of special relevance for the minorities are the following provisions in this part:

- a. Citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India "transcending religious, linguistic and regional or sectional diversities"; and
- b. Citizens' duty to "value and preserve the rich heritage of our composite culture."

Some other provisions of the constitution having special relevance and implications for the minorities are:

- I. Official obligation to pay out of the consolidated funds of the states of Kerala and Tamilnadu 46.5 and 13.5 lakh rupees respectively to the local "Dewasom Funds" for the maintenance of Hindu temples and shrines in the territories of the erstwhile state of Travancore-Cochin;
- II. Special provision relating to the language spoken by a section of the population of any state;
- III. Provision for facilities for instruction in mother-tongue at primary stage;
- IV. Provision for a Special Officer for Linguistic Minorities and his duties;
- V. Special provision with respect to Naga religious or social practices, customary law and procedure, and "administration of civil and criminal justice involving decisions according to Naga customary law."

- VI. Identical special provision for the Mizos; and
- VII. Provision relating to continuation in force of pre-constitution laws "until altered or repealed or amended by a competent legislature or other competent authority."

Part III of the constitution gives certain fundamental rights. Some of these rights are common to all the citizens of India including minorities. These rights are enshrined in:

- A. Article 14: This ensures equality before law and equal protection of law.
- B. Article 15: This prohibits discrimination on any ground, i.e., religion, race, caste, sex, place of birth.
- C. Article 21: No person shall be deprived of his life or personal liberty except the procedure established by law.
- D. Article 25: This ensures freedom of conscience and the right freely to profess, practice, and propagate religion.
- E. Article 26: This ensures a right to manage religious institutions, religious affairs, subject to public order, morality, and health.
- F. Article 29: Gives minorities a right to conserve their language, script, or culture. It provides for the protection of the interests of minorities by giving them a right to establish and administer educational institutions of their choice. The state is directed not to discriminate against minorities' institutions in granting aid.
- G. Article 350A: Directs the state to provide facilities for instruction in the mother tongue at the primary stage of education.
- H. Article 164(1): According to this article in the states of Bihar, MP, and Orissa there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the scheduled castes and backward classes.
- I. Article 244(1): Regarding administration of scheduled areas and tribal areas:

1. The provisions of the fifth schedule shall apply to the administration and control of the Scheduled areas and Scheduled tribes in any state other than the state of Assam, Meghalaya, Tripura, and Mizoram. (2) The provisions of the sixth schedule shall apply to the administration of the tribal areas in the state of Assam, Meghalaya, Tripura, and Mizoram.
2. Article 244(A): Formation of an autonomous state comprising certain tribal areas in Assam and creation of local legislature or Council of Ministers or both thereof. Parliament may by law form within the state of Assam an autonomous state comprising (whether wholly or part) all or any of the tribal areas.
3. Article 275: Provided that there shall be paid out of consolidated fund of India as grants-in-aid of the revenues of a state such capital and recurring sums as may be necessary to enable the state to meet the costs of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the scheduled tribes in that state or raising the level of administration of the scheduled areas therein to that of the administration of the rest of the areas in that state. Provided further that there shall be paid out of the consolidated fund of India as grant-in-aid of the revenues of the state of Assam sum capital and recurring.
4. Article 330: Reservation of seats for the scheduled castes and scheduled tribes in the House of People.
 - Seats shall be reserved for scheduled castes
 - The scheduled tribes except the scheduled tribes the autonomous districts of Assam
 - The scheduled tribes in the autonomous districts in Assam.
5. Article 332: Reservation of seats for scheduled castes and scheduled tribes in the Legislative Assemblies of the states.
 - Seats shall be reserved for the scheduled castes and the scheduled tribes (except the STs of autonomous districts of Assam) in the Legislative Assembly of every state.
 - Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the state of Assam.

6. Article 334: Reservation of seats and special representation in Legislative Assemblies and House of People to cease after fifty years.
7. Article 335: Claims of scheduled castes and scheduled tribes to service and posts – the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to service and posts in connection with the affairs of the Union or of a state.
8. Article 338: National Commission for scheduled castes and scheduled tribes.
9. Article 339: Control of the Union over the administration of scheduled castes and scheduled tribes.
10. Article 340: Appointment of a commission by the president to investigate the conditions of backward classes.
11. Article 341: Power of the president to specify the castes, races, or tribes or posts of or groups within castes, races, or tribes as scheduled castes.
12. Article 342: Power of the president to specify the tribes or tribal communities or parts of or groups within tribes or tribal communities as scheduled tribe.
13. Article 350(A): Facilities for instruction in the mother tongue of a minority group.
14. Article 350(B): Special officer for linguistic minorities.

During the Constituent Assembly debates of 1947–49, the leaders representing the Christian Community, Dr. H. C. Mookerjee and Rajkurnari Amrit Kaur (both were converted Christians from a high caste Hindu background), strongly advocated the abolishment of political reservations. However, the Hindu leaders who belonged to scheduled caste (members of lower castes, now better known as Dalits, which literally means an oppressed person) pleaded for the continuation of reservation for their communities. The Anglo-Indian community, though very small in number, also requested for some kind of reservation for themselves. The Sikhs too demanded reservation as they thought that their number was declining. On fearing that their

demand for political reservation might not be accepted, they demanded reservation for converts to Sikhism from the scheduled caste communities and also for them to be recognized as scheduled castes and not just members of Sikh community. The Constitutional Advisory Committee on Minorities accepted the said demand of the Sikh community. The Constituent Assembly debates relating to the Report on Minority Rights held during 1947–49 on this aspect and related aspects are very interesting and reveal a great deal of the thinking of our leaders of those days. Most of the doubts and suspicions relating to the viability of the provisions of the constitution governing the matter of reservation for minorities can be traced in these debates, and how and why which point of view prevailed. Until the Government of India Act of 1935 came into operation, all persons of the various Dalit communities belonging to every religion somehow obtained reservation under their religious minority status.

The question of reservations for the scheduled tribes has been de-linked from religion; that is, it has been made religion-free and scheduled tribes are stated in article 342 of the constitution. The language is the same as that of article 341. On the same parity and analogy, the case of the scheduled castes could have been free from religion, irrespective of any religion they may originate from. It would have been a case of class and community rather than that of religion. For example, the Muslim *Mehtars* (scavengers) do the same job as Hindu Mehters. Hindu Mehters have been put in the scheduled caste category but not the Muslim Mehtars. Muslim Mehtars face similar situations and social disability. There were various initiatives in states to consider putting Muslim Mehtars in the category of socially and educationally backward classes (SEBC), but not in the category of schedule castes. The thought of their inclusion even in the category of socially and educationally backward classes came by way of a resolution dated September 10, 1993, issued by the Ministry of Social Welfare, Government of India. The same is the case for Muslim *Mukri*, Muslim *Mochi* (shoemaker), Muslim *Garudi*, Muslim *Dhobi* (washerman), Muslim *Jatgar* (Matang), and Muslim *Banzara* (all of them are different castes of Dalits), etc.

Although there was no express declaration in the original constitution that the Indian state was secular, the provisions incorporated in Part III (containing fundamental rights) such as articles 14, 15(1)(2), 16(1)(2), 25, 26, 27, 28 revealed its secular character. In *M.R. Balaji v. State of Mysore*, the

Supreme Court spoke of “the noble ideal of a secular welfare State set up by the Constitution.” In *Kesavananda Bharati*, the Court declared that the secular character of the constitution was part of the basic structure. By the 42nd Amendment to the Constitution, the words “socialist” and “secular” were inserted in the preamble qualifying the words “democratic republic.”

In *S. R. Bommai v. Union of India*, a bench of nine judges expounded the basic feature of secularism at great length. It was pointed out that the concept of secularism was very much embedded in our constitutional philosophy. By the 42nd Amendment what was implicit was made explicit. The judgments delivered by A. M. Ahmadi, P. B. Sawant, K. Ramaswami, and B. P. Jeevan Reddy dealt with the concept of secularism in the context of validity of the proclamations issued under article 356 (imposition of President’s rule in a particular state of the Indian Union) soon after the demolition of the Babri Masjid imposing President’s Rule in the four BJP-ruled States, viz. Himachal Pradesh, Uttar Pradesh, Rajasthan, and Madhya Pradesh. The said proclamations of the President’s rule of the central government were upheld on the ground that any state government, which pursues non-secular policies or non-secular course of action, acts contrary to the constitutional mandate and renders itself amenable to action under article 356. Some of the judges referred not only to the provisions of the constitution, which reflected its secular character, but also to the provisions of law including those of the Representation of the People Act of 1951, and in particular Section 123(3) and (3-A) which make appeals in the name of religion, race, or caste to vote or to refrain from voting a corrupt practice. However, a bench of three judges in *Manohar Joshi v. Nitin Bhaurao* took the view that the statement of a candidate in the course of his election speech that “the first Hindu State will be established in Maharashtra” did not amount to a corrupt practice. The Court held:

In our opinion, a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope. However despicable be such a statement, it cannot be said to amount to an appeal for votes on the ground of his religion. Assuming that the making of such a statement in the speech of the appellant at that meeting is proved, we cannot hold that it constitutes the corrupt practice either under

sub-section (3) or sub-section (3-A) of Section 123, even though we would express our disdain on entertaining such a thought or such a stance in a political leader of any shade in the country.

Although the petitioner had heavily relied on the nine-judge bench decision in *S.R. Bommai*, Justice J. S. Verma, who wrote the judgment in *Manohar Joshi*, did not refer to it. Obviously, the perceptions of secularism vary from bench to bench. *Manohar Joshi* deserves to be overruled. Secularism is too fundamental to be compromised.

The National Commission for Religious and Linguistic Minorities (NCRLM) recommended that scheduled caste (SC) status should be made community-neutral by dropping the concerned clause of the 1950 Presidential order on SCs. With Christians and Muslims forming part of OBC lists, their shift is already being resented by Dalits who feel Christians, with better levels of education, will eat into their share of reservations. Therefore, the amendment to provide schedule caste status for Dalit converts to Christianity and Islam is not easy to carry for state governments.

Political parties do understand that reservation is a double-edged sword. Recently, the Congress Party's apex decision-making body has asked the government to "approach the issue of reservations with caution." The matter has re-emerged in the context of the Gujjar agitations in Rajasthan, requesting reservations and their schedule caste status, and the clashes between that community and the Meenas. In both Kashmir and Rajasthan, Gujjars are cattle-rearers, but have also become sedentary over time. Should they be incorporated into the OBC or the scheduled tribe category? Under the eighteenth century revenue administration of eastern Rajasthan, the Gujjars were considered a peasant group with a shudra status similar to the Meenas, Meos, Jats, and Ahirs. The Gujjars were treated as a shudra group in the Mughal period and subject to a differential system of revenue assessment by the much-expanded Jaipur kingdom. In eastern Rajasthan, Brahmins paid 12 percent, Rajputs 33 percent, and raiyati groups such as Meenas, Gujjars, Jats, and others up to 76 percent of the produce. The Gujjar mobilization then is multifaceted. It is about legitimate democratic aspirations and citizenship. Like African-American leaders of the Harlem Renaissance in the United States who were disheartened when their participation in the First World War only brought them more lynchings, Gujjars contend that they have contributed significantly to the anticolonial struggle and to

the Indian state. In the districts of Meerut, Bijnor, Alwar, and Bharatpur they mobilized against the *firangi* (foreigner) in 1857, a contribution that they claim has not even been recognized.

The recommendations of bodies such as the NCRLM, which has asked for granting SC status to Christians and Muslims amongst Dalits, will not be conducive as per the calculations of political arithmetic. The government's OBC quota policy is slow to respond to proposals because economic status as a "rational criteria" for granting reservations would be more in tune with the present times. Incidentally, the latest member of the Congress to have brought up the issue of reservation is the prime minister himself. He had hinted support to BSP chief Mayawati's idea of providing reservations to the poor among the upper castes at a conference on the empowerment of Dalits and minorities. Speaking after BJP leader L. K. Advani, who also endorsed Mayawati's suggestions, the prime minister said that poor children from economically backward sections among the forward communities should also be supported.

The Minorities Council's representation on this issue to the National Commission To Review the Working of the Constitution (NCRWC) stated that "the Commission, upon due consideration of the representations, felt that no special provision was necessary in as much as, under the existing provisions of articles 14, 15 and 16, it is open to the State to make reservation (in favour of minorities) if it is of the opinion that such reservation is necessary and justified."

The opposition to such supposedly "religion-based" reservation by the Sangh Parivar is understandable, but the secular (including Marxist) classes need to reorient their thinking on the issue under the human rights perspective, which considers special measures for religious (and other) minorities not violating the citizen's right to equality. It has been observed in the earlier Andhra Pradesh High Court judgment on reservation for Muslims that such reservation instead of being anti-secular is a denial of the benefit of reservation to a group just because it is Muslim. Secularism, which is one of the basic features of the constitution, requires equality of treatment for all citizens and groups, and effective substantive equality requires special measures for vulnerable minorities. It is this established principle of jurisprudence of equality expounded by the Permanent Court of International Justice in the Albania School case of 1935, which forms part of India's

jurisprudence, on which basis preferential admission of minorities became validated under article 30.

The religion-based reservation is opposed for fear of inducing the conversion of Hindus to Islam, and could be taken care of by making a provision that now (post legislation) converts to Islam will be treated according to their social/caste status before conversion and post legislation converts to Islam alone will not be entitled to benefits meant for the existing community members. Muslims in general have been recognized by the Sachar Committee as more backward than OBC Hindus; that there is a need to evolve a formula of fair distribution of benefits of reservation for Muslims as a minority, among its more and most backward classes, has also been recognized by the Committee in terms of *Ajlaf* and *Arzal*. Instead of using these demeaning terms, secular law should classify Muslims in terms of backward, more backward, and most backward. Criteria for identification of these three socio-economic-educational and occupational Muslim groups and classes could be evolved as per the mandate of the constitution.

Special safeguards were guaranteed for minorities and were made part of the fundamental rights with a view to instill a sense of confidence and security in them. Those provisions were a kind of a charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first class citizens and others of second class citizens. The result was that the minorities gave up their claims for reservation of seats. Sardar Patel, who was the chairman of the Advisory Committee dealing with the question of minorities, said in the course of his speech delivered on February 27, 1947:

This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by it is the work of this Committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf of the British Government that they have a special responsibility – a special obligation – for protection of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to satisfy every interest and

safeguard the interests of all minorities to their satisfaction. It is in this context of that background that we should view the provisions of the Constitution contained in Articles 25 to 30. The object of Articles 25 to 30 was to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal, and withdraw from the vicissitudes of political controversy.

A three judge bench of the Indian Supreme Court, headed by the then chief justice on August 9, 2005, dealt with an appeal filed by the Minority Commission, a constitutional body, concerning the recognition of some communities/sections of the society as minorities. In its decision, observations made therein empower the constitution and strengthen the social fabric of the society and the nation. In the said appeal, the Supreme Court observed that

the goal of the Constitution was to create social conditions where there was no need to shield or protect rights of minority or majority communities. The Commission, instead of encouraging claims from the communities for being added to a list of notified minorities, should suggest ways to help create social conditions where the list is gradually reduced and done away with altogether. If each minority group felt afraid of the other group, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of the nation leading to sowing of seeds of multi-nationalism. Encouragement to such fissiparous tendencies would be a serious jolt to the secular structure of the constitutional democracy.

However, the Supreme Court warned that:

We should guard against making our country akin to a theocratic state based on multi-nationalism in a caste-ridden Indian society; no group of people can claim to be in majority. There are minorities amongst Hindus. Many sections claim minority status because of their number and expect protection from the State on the ground that they are backward.

This judgment laments and hopes that the list of minorities would eventually be a part of history.

Of late, many weaker sections of the minorities have attempted the judicial route for gaining minority status. Articles 25 to 30 of the Constitution of India have an inbuilt mechanism of positive discrimination in favor of minorities and the provisions of these articles deal with positive discrimination in the area of religion, culture, and education. This is a unique legal arrangement of social engineering and is not found in any other legal system. The question often asked is if these articles are in conformity with the provisions of equality, which is the ultimate promise to all citizens of India. Do these provisions make minorities more than equal? Can majority institutions be equally privileged as those of the minorities?

Many hold that India never had any concept of majority or minority. Christianity, the Parsis, the Jews, and Muslims, all came and were assimilated. No community ever felt a minority. They hold that historically minoritism is a legacy of the British rule. It was conducive for their interest as an alien power to divide Indians in the name of religion, caste, creed, and race. First, in 1906, the then governor general floated a suggestion to Mr. Aga Khan for creating privileges for the Muslims as a minority. Accordingly, in 1909, Muslims were given the provision as a separate electorate in the Central Council. The political baggage attached to majority-minority relations in post-partition India still remains a victim of the pre-partition tensions. The far-sightedness of the constitutional fathers prompted the constitutional arrangements as are found in articles 25 to 30 for the safeguarding of minorities.

In fact, constitutional recognition of any separate identity and enforcing that identity weakens, and is destructive of, the secular foundations of the state. Non-interference in religious matters, which is integral to the secular character of the state, implies protection of the idea of identity. But explicitly promoting by granting special rights or special identity of any section of the society, be it the majority or the minority, is theoretically injurious and destructive of the idea of a faith-neutral and sectional-identity-neutral state. A secular democratic state knows only one identity for its people and that is as citizens with equal rights.

The Supreme Court traced the conceptual origin of the minority rights in the constitution in *St. Xavier's case* [AIR 1974 SC 1389 at 1413]. Speaking through Justice H. R. Khanna, the Court said: "Before we deal with the contentions advanced before us and the scope and ambit of Article 30 of the

Constitution, it may be pertinent to refer to the historical background." The closing years of British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for the independence of India always laid great stress on communal amity and accord. They wanted the establishment of a secular state wherein people belonging to different religions should have a feeling of equality and non-discrimination. Demand had also been made by a section of people belonging to various minority groups for the reservation of seats and separate electorates. In order to bring about integration and fusion among different sections of population, the framers of the constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for the support of all sections of society.

In the matter of the *State of Kerala vs. Very Rev. Mother Provincial* [AIR 1970 SC 2079] the Supreme Court had to deal with the issue of the equality between the majority and minority educational institutions. Justice Hidayatullah who delivered the judgment on behalf of the Court stated:

The claim of the majority community institutions to equality with minority communities in the matter of establishment and administration of their institutions leads to the consideration whether the equality clause can at all give protection, *when the Constitution itself classifies the Minority communities into a separate entity for special protection which is denied to the majority community*. This is not a case of giving some benefits to minority communities which in reason must also go to the majority community institutions but a special kind of protection for which the Constitution singles out the minority communities. This question, however, does not fall within our purview as *the State, at the hearing announced that it was not intended to enforce the provisions of the law relating to the administrations against majority institutions only, if they could not be enforced against the Minority institutions*.

Finally, the Court stated:

The High Court has held that the provisions (except Sec 63) are also violative of Art. 19(1) (f) insofar as the petitioners are citizens of Indian both in respect of the majority as well as minority institutions. This was at first debated at least insofar as majority institutions were concerned. The majority institutions had invoked Art. 14 and complained of discrimination. *However, at a later stage of proceedings Mr Mohan Kumaramangalam stated that he had instructions to say that any provision held inapplicable to minority institutions would not be enforced against majority institutions also.*

This view was unfortunately rejected by the Supreme Court in St. Xavier's case [AIR 1974 SC 1389] despite the fact that in this case itself, two of the judges, Chief Justice A. N. Ray and Justice Palekar, opined:

If the rights under Art. 29 and 30 are the same then the consequence will be that any section of the citizens, not necessarily linguistic or religious minorities, will have the right to establish and administer educational institutions of their choice. The scope of Art 30 rests on linguistic or religious minorities and no other section of the citizens of India has such a right.

This is a clear judicial intimation to lawmakers that the special rights of the minorities are special only to the minority and the majority does not have that right. H. M. Seervai, a great constitutional jurist, in his monumental work *Constitutional Law of India* dismissed Dr. Gajendragadkar's view saying that

it is unnecessary to consider Dr. Gajendragadkar's views in detail, beyond saying that, first, that they do not proceed on an analysis of the terms of Articles 29 and 30 but on what he believed to be the intention of the framers of the Constitution which he then read into Art 29 and 30, a procedure which is contrary to the settled principles of construction.¹

After independence, every Indian citizen, irrespective of caste, color, religion, and gender has the same fundamental rights. The Indian constitution

¹ *Constitutional Law of India* by H.M. Seervai, 3 ed., Vol. I, p. 963.

is inspired to a large extent by the Convention on the Universal Declaration of Human Rights (UDHR) from 1948. For example, the provisions of article 18 of UDHR are reflected in the provisions of article 25 of the Indian constitution, which guarantees freedom of religion, keeping in mind Indian pluralism, which is ensured by making the right of freedom of religion subject to public order, morality, and health, and that all persons are equally entitled to the similar freedom of conscience and the right to profess, practice, and propagate religion.

It is significant to note that article 18 of UDHR states:

- a. The right to change one's religion – individual, or in community.
- b. No factor that restricts/controls this freedom and process.

Whereas the Indian constitution under article 25 offers:

- a. The right to freely profess, practice, and propagate religion.

The “propagation” does not unequivocally grant the right of choice. It has been interpreted in various ways by people holding different views. In some cases the Supreme Court of India did not agree that propagation includes that decision of an individual to convert to another religion.

- b. This freedom is subject to: public order, morality, and health. Union government and state governments have the right to make legislation to restrict/control religious expressions in the name of public order.

Let us understand the import of article 25 of the Indian constitution more clearly with regard to the reality. Indian Christians are quite educated and continue to make a significant contribution to their community and society at large. They have become the main target of the Sangh Parivar (RSS, VHP, Bajrang Dal, Shiv Sena, etc.) in recent years. There have been attacks on Christians including physical violence against the leadership of the church, killing of priests, raping of nuns, destruction of Christian institutions, schools, colleges, churches, cemeteries, etc.

The Hindu community is divided into four major castes. Brahmins, the priestly caste, are at the top of the hierarchy; the Kshatriya, the warrior caste, comes next, then the Vysya, the business people, and the Sudra at the bottom. Below this caste system are the "outcastes." The outcastes were considered "untouchables." They were expected to do service to the upper castes. They were not allowed to study, gain knowledge, or read religious scriptures. A large portion of the Indian population, now called "Dalits," have remained deprived of the opportunities for social advancement as well as socio-political and economic mobility from times immemorial. This most de-humanizing system came to an end after the enforcement of the constitution, though implementation has not been easy. In the case of *Mathura Singh vs. Krishna Ahir*, the Supreme Court upheld the right of a low caste person to become the priest of a temple; traditionally, only a high caste could become a priest. However, he had to go up to the Supreme Court to protect his constitutional right.

Many movements to break the intricate social fabric of the caste system, and thus seeking possibilities of living together outside the caste structure, were initiated, like the Charvaka movement and the Bhakti movement. However, the arrival of Islam and Christianity through traders, rulers, business people, and missionaries limited the roles of these movements. These religions were attractive to the most oppressed communities. The oppressed castes therefore embraced Christianity and Islam with the hope of securing a more dignified life.

The basic feature of secularism in the Indian constitution cannot be altered. The Supreme Court declared in *Kesavananda Bharati v. State of Kerala* that article 368 did not enable Parliament to alter the basic structure or framework of the constitution. This is a landmark decision in the evolution of constitutional law and a turning point in Indian constitutional history. No other court in the world has taken such a position. It may be of interest that, subsequently, the Supreme Court of Bangladesh adopted the doctrine of basic structure relying on the said Indian *Kesavananda Bharati* judgment. In Pakistan the Lahore High Court and the Baluchistan High Court took the same view, but the same was not endorsed by the Supreme Court of Pakistan. The old Constitution of Nepal (1990) contained some provisions which could not be amended at all. The power of amendment is subject to the restriction that its exercise shall not cause prejudice to the spirit reflected

in the preamble of the constitution. In the context of Nepal, the preamble referred to the basic human rights of every citizen of Nepal, adult franchise, the parliamentary system of government, constitutional monarchy, multi-party democracy, etc. It also speaks of an independent and competent system of justice and the rule of law. Well, we all know how things have changed in Nepal and pray that all goes well and the rails of democracy remain intact.

Conclusion

The basic right of equality and the secular character of the Indian state cannot be changed. The lack of equal and uniform opportunities for the people, and access to national natural resources like land *inter alia* based on the social framework of the caste system practiced for centuries, made one citizen different from the other on the basis of one's birth. The right of equality has the potential to disturb the exiting concentration of wealth besides changing the very nature of the socio-cultural fiber of society, leading to sharing the national resources and wealth in a just and fair manner amongst members of all cultures and religions.

There are many unhealed wounds of past communal massacres which a caring government must address, like the killing of Sikhs in 1984, the Gujarat carnage of 2002, the Kandamal massacre, the troubles in Jammu and Kashmir, and also those in the northeast of India, etc. All conceivable support in the constitutional framework must be provided by the state to the survivors in a consistent manner, even if the suffering does not end for a long time. The funds for those widowed and orphaned by the conflict need to be provided by the state. Most importantly, the government must acknowledge and redress the grave mistakes of governments past.

The democratic process will constantly haunt and remind political leaders that there can be no closure to the spilling of innocent blood; and no sense of equal citizenship without justice done, and seen by all to be done. And there can be no healing without caring. A secular polity is the most precious legacy of our struggle for freedom. It stands today contested and battered, but endures ultimately because our people live by secular convictions. The government must demonstrate the same conviction, and the compassion and courage required to restore secularism and equal citizenship, as the foundations of public life in India.

Emerging Conflicts: Jammu and the Intra-regional Divide

Shafat N. Ahmad

The Kashmir dispute is a political problem and therefore its solutions can only be found politically, but the religious dimension of this conflict cannot be ignored. The state of Jammu and Kashmir (generally referred as Kashmir) contains many religious communities: Muslims, Hindus, Buddhists, and Sikhs. The Muslims and Hindus of Jammu and Kashmir are politically two important religious communities, keeping in view the overall political atmosphere of India. The mainstream political parties at the “national” level have used religion as a tool to mobilize vote banks and generate sympathies for their political ambitions. Both religious and secular political parties use socio-economic conditions and identity issues of religious communities in their election agendas to mobilize the vote bank. The Amaranth land transfer fiasco of June 2008 – as explained below – was a clear example of this.

The conflict in Kashmir has been viewed either as a bilateral issue between the two states of India and Pakistan or as a movement of self-determination led by various groups in the Kashmir valley. This is the larger discourse with international dimensions to it. However, there are other important issues that have been part of this conflict, these being the regional and sub-regional issues within the three regions of Ladakh, Jammu, and Kashmir. The fallout resulting from failing to resolve the Kashmir dispute is day by day leading to the greater radicalization of various communities living in Jammu and Kashmir.

The religious polarization occurring in Jammu and Kashmir has brought with it the question of regional autonomy. The debates over article 370¹, its implementation, and criticism to it, have become part of the larger discourse of the Kashmir conflict in the situation of a radicalization of relations

¹ The Indian Constitution vide Article 370 had granted a special status to the J & K state guaranteeing state's autonomy in the areas of defence, foreign affairs and communications. For details on Art. 370, see A.G.Noorani's JAMMU AND KASHMIR Article 370: Law and politics. <http://www.hinduonnet.com/fline/fl1719/17190890.htm>

between Jammu, Kashmir, and Ladakh, as well as within the regions themselves. This radicalization is now a growing threat to all the communities, especially in the Jammu region which is more pluralistic and diverse than Ladakh and Kashmir. The communal violence that recently engulfed Kishtwar, Rajouri, and Poonch during the Amarnath land row issue, despite these regions maintaining harmony among religious communities, is an obvious example.

It may be interesting from the conflict resolution point of view, and in terms of broader perspectives on the roles and responsibilities of communities which have a tendency to represent religion, to study Jammu which constitutes one of the most important regions of the state in terms of geography, demography, and history. In terms of the ethnic and linguistic composition of the population, Jammu represents the picture of a pluralistic society.

History of Jammu region

Historically all three regions have maintained regionally distinct identities. The present geopolitical territory of Jammu and Kashmir emerged as a state only in the middle of the nineteenth century, when in 1846 Kashmir was ceded to Dogra King under the Treaty of Amritsar with the British. Thus, Jammu, Ladakh, and Kashmir came under the single administrative control of the autocratic regime of Maharaja Gulab Singh.

The modern Jammu region was divided into several small principalities. Subsequently the handing over of the Jammu hill states to Maharaja Gulab Singh and his brothers by Maharaja Ranjit Singh led to the end of the political autonomy of the Jammu hill states, and the modern Jammu region came into being. Maharaja Ranjit Singh abolished the concept of the existence of small principalities on a hereditary basis in the Jammu hills, and Gulab Singh and his family were given sole control of the hill states.

The Fall of Dogra Rule and Jammu

“Dogra rulers remained indifferent towards the pitiable conditions of the Muslim masses and took no interest in the pain and alleviating the overall condition. In fact they were heavily taxed and Walter Lawrence, the land settlement officer who himself was responsible for introducing many revenue related reforms, noted that almost everything save air and water was taxed

in Kashmir.”² The discrimination meted out to the Muslims by Dogra Hindu rulers was evident in every aspect of their administration. There were no jobs for Muslims in the bureaucracy, state services, or in the army; further evidence of the pro-Hindu attitude of the administration could be seen in the deprivations faced by Muslims, compared with the Hindu population in the Kashmir valley and Jammu. Hindus enjoyed a monopoly in the administration and courts; they owned large estates; and occupied all key positions in every sphere of the kingdom. This practice of discrimination by the ruling class and its supporters was responsible for driving a wedge between Hindus and Muslims in the valley. However things changed drastically after 1947, when partition of the subcontinent took place and Jammu and Kashmir was divided into two territories administered by India and Pakistan respectively.³ The rise of the national conference led by Sheikh Abdullah was seen as Kashmiri Muslims’ domination over Jammu and Kashmir, and subsequent land reforms saw a sea change in the socio-economic structure of the state. The land reforms led to the abolition of *Jagirdari Nizam* (feudal system) and the ownership of land was now vested with the tillers, which did not go down well with the Dogra landlords and the political elite from the time of the Maharaja; it was very difficult for them to witness the rise of new Muslim peasants as land owners, who previously had been their bondsmen. Accordingly, the old Jammu elite were not reconciled to their loss of power feeling as they did that the new political elite of the valley was dominating the politics of the state. They held reservations about the autonomy granted to the state under article 370 of the Indian constitution.

Therefore the impact of Hindu right wing politics can be seen as intervening at a very early stage and finding a support base in Jammu. The instrument of accession to India was limited to defense, communication, and for-

² Walter Lawrence, “The valley of Kashmir,” quoted by Rekha Chowdary in a working paper *The Muslim identity and the politics of fundamentalism in Kashmir* (QEH Working Paper series).

³ The decolonization of the Indian subcontinent and the political uprising of the Muslim majority against Dogra Rule, led by Sheikh Abdullah, changed the political landscape and power structure. The partition of the subcontinent on the basis of religion led to the formation of Pakistan and India. The first war over Kashmir between India and Pakistan resulted in the division of Jammu and Kashmir. The dispute is still to be solved and at least three wars have been fought over it. The Maharaja at the time of first Indo-Pak war in 1947 signed the instrument of accession with the Government of India.

eign affairs under article 370 of the Indian constitution. They supported the full integration of Jammu and Kashmir into the Indian domain.

There was opposition to the land reform program of the Abdullah government in Jammu, which became more intense after the ratification of the Delhi Agreement. The main opposition came from the Praja Parishad with its demands for the abrogation of article 370 and the complete merger of Jammu and Kashmir with India. The Praja Parishad's anti-autonomy views were succinctly expressed in a popular slogan: *Ek Desh mein do vidhaan, ek desh mein do nishaan, ek desh mein do pradhaan: nahin chalenge, nahi chalenge* (Two constitutions in one country, two flags, two heads of state, these will not be accepted). In order to reduce the Kashmiri Muslim domination, the Parishad proposed that Hindu and Sikh migrants from Pakistan be settled in the valley.⁴ The Parishad organized violent demonstrations, student protests, and hunger strikes throughout Jammu. It received strong encouragement from Hindu groups outside Jammu and Kashmir, notably the Jana Sangh.⁵ The Jana Sangh, the RSS, and the Hindu Mahasabha also organized demonstrations in India to support the ones taking place within Jammu, arguing that the according of a special status to Kashmir would encourage Muslim separatism. Even the Akali Dal in Punjab, led by Master Tara Singh, joined these agitations. The Jammu and Kashmir government dealt with the demonstrations in a heavy-handed manner and many leaders of the Praja Parishad were arrested. Even Shyama Prasad Mookerjee was arrested when he attempted to enter the state; he subsequently died (of a heart attack) on May 8, 1953, while in detention.⁶

Any attempt at abrogating article 370 is seen as a most serious issue between New Delhi and Kashmir, and it could lead to serious political repercussions in the state. Abrogation of Article 370 which accords a special status will be unacceptable to majority Muslim population of the state. Though in present times the significance of article 370 has been reduced by Indian state substantially, it nevertheless still holds some significance

⁴ Iffat Malik, *Kashmir: Ethnic Conflict, International Dispute* (Oxford: Oxford University Press, 2005).

⁵ Jana Sangh was formed by Shyama Prasad Mookerjee in 1951. Its first manifesto announced a four-point program for strengthening the unity of India and one of the four points was full integration of Jammu and Kashmir into the Indian Union.

⁶ For more details, see Khalid Wasim Hassan, "History Revisited: Narratives on Political and Constitutional Changes in Kashmir (1947–1990)," Working Paper 233 (Bangalore: Institute for Social and Economic Change [ISEC]).

for example it debars outsiders (Indian citizens) from buying property in Jammu and Kashmir.

The abovementioned developments have subsequently led to various political agitations in the state and have had a large impact on the mind-set of the population. The issues of regionalism and the “step motherly” treatment of regions and sub-regions have thus been a dominant feature of regional politics.

The Region of Jammu and its Issues

“Overall, the Hindus form a majority in the province, with Muslims accounting for around a third of the population. Other communities living in the province include Christians and Sikhs. Prior to 1947 Muslims had a very substantial presence in Jammu town. However, in the 1947 Partition riots, the Jammu province witnessed a large-scale slaughter of Muslims, with thousands killed and many more forced to flee to Pakistan. Consequently, Jammu town was almost completely depleted of its Muslim population.”⁷

Jammu cannot be said to be a region as such but rather an administrative province. Jammu, unlike Kashmir, is not geographically, culturally, ethnically, demographically, and economically a monolithic unit; hence it would be a misnomer to label it as Hindu or Muslim Jammu. Out of 10 districts Jammu has six Muslim majority districts with the rest being Hindu majority districts. “The Jammu province accounts for around 45 per cent of the total population of Jammu and Kashmir. Overall, the Hindus form a majority in the province, with Muslims accounting for around a third of the population. Other communities living in the province include Christians and Sikhs. Of the Hindu population, around a third belongs to the Scheduled Castes.”⁸

The Jammu region is the amalgamation of different territories displaying distinct geographical, cultural, and demographical features, unlike Kashmir which is more homogenous. The question of discrimination is not only an issue between Kashmir and Jammu, but also within Jammu region itself. The demand for regional autonomy or the separation of Jammu from Kashmir has been continuously pursued by various politicians and intellectuals

⁷ Yoginder Sikand, “Muslim-Hindu Relations In Jammu Province – Part 1,” available at www.indianmuslims.in (accessed May 14, 2010).

⁸ Yoginder Sikand, <http://indianmuslims.in/muslim-hindu-relations-in-jammu-province-%E2%80%93-part-1> (accessed May 25, 2010).

of Jammu. "In [the] people's convention of 1960, Sheikh Abdullah, who was not in power then, gave the idea of a federal state of Jammu and Kashmir but, though an ideal system there was no political will to carry out this idea. Within Jammu region, the people in Doda, Rajouri and Poonch are asking for separate regions because they feel discriminated within Jammu."⁹

In 1960 the question of regional imbalance was the subject of political debate in Jammu. In 1965, Dr. Karan Singh proposed that the state of Jammu and Kashmir be organized on a linguistic basis with Jammu being merged with the adjoining state of Himachal Pradesh. This suggestion was rejected by the majority of political voices, however. A forum called the "Autonomy Forum" was established through the active support of various Jammu intellectuals, however it collapsed due to lack of popular support.¹⁰ There is a sense of great dissatisfaction over ignoring these areas in the field of development. There is a persistent demand for autonomous hill councils according to the pattern of Ladakh Autonomous Hill Development Council, though in the past some commissions were set up to look into the grievances and to look into the question of regional imbalance and for recommending remedial measures as the state government appointed two commissions of inquiry. One was headed by Justice P. B. Gajendra Gadker, the former Chief Justice of India, to investigate what could be done to improve the conditions of Jammu within the constitutional framework of the state. This commission reported in November 1968 that there were imbalances among these regions and recommended development of these areas by means of special administrative arrangements and devices, a regional development board, etc. The commission did not favor dividing the state into three components. Pursuant to the Jammu agitation of 1979 another commission of inquiry headed by Mr. S. M. Sikiri, also a former Chief Justice of India, was appointed to look into the question of regional imbalances. The responsibility of this commission was to review the policies underlying developmental programs and the allocation of financial resources to different regions of the state (and within district administrative units), and to recommend measures, constitutional or otherwise, to remove imbalances with a view to

⁹ Interview dated October 2008, with Ved Bhasin, Senior Journalist and Chairman Kashmir Times, an English daily.

¹⁰ Qazi Abdul Hamid (Advocate) of Doda, interview with author in Jammu, October 2008.

ensuring just and equitable treatment of all regions of the state including the district administrative units.

However, over the course of time, the increase in subregional issues and discontent within the regions towards identity issues and the ignoring of the rights of ethno-cultural groups has led to the demand for autonomous hill councils within Jammu region. This has had a direct impact on the regional politics of the sub-regions and within the communities especially in Jammu:

In articulating Jammu's regional response against Kashmir's dominant political role, Jammu's dominant political elite, located in the core area of the region, has failed to incorporate the perspective and problems of these peripheral areas. The elite of these regions therefore nurse grievances both against the Kashmir region as well as against the dominant elite of Jammu region. Such a manifestation of discontent reflects the failure of dominant political elite of Jammu region to incorporate the demands, the political perceptions and aspirations of the peripheral areas into the politics of region.¹¹

The ethnic groups have their own aspirations within the sub-regions of Jammu that are quite different from those of the majority group in Jammu. They have their own notions of identity and harbor the feeling of being discriminated in terms of development, education, jobs in the government sector, and, in general, there is a sense of being excluded from regional politics.

It is an established fact that Chenab valley has been discriminated against and has, as a part of Jammu region, been treated in a step motherly fashion in every sector. The people of these areas demand development and greater rights and political representation, but this is being seen as anti-Jammu with the impression being created that the demand for autonomous hill councils underlies a desire to break away from Jammu and similarly from the Kashmir valley. Therefore it is presumed that these communities are not for the resolution of the Kashmir dispute. The political elite and opinion-makers are well

¹¹ A.S. Rishi, "Agitational Politics of Jammu Region: An Analysis," in *Conflict and Politics of Jammu and Kashmir: Internal Dynamics* (Jammu: Saksham Books International), p. 144.

versed with the situation – their educational and economic backwardness, inaccessibility, the absence of people from such areas in the administrative set-up. These communities need to be understood in the context they are living.¹²

The Amaranth Land Row Issue and its impact within Jammu Region

In the year 2000, the Shri Amarnath Shrine Board (SASB) was set up to take care of the passage of pilgrims to the caves of Amaranth; previously this responsibility had been shared by the tourism department of the state government and Dharamarth Trust. The pilgrimage had established a strong bond between the Muslim community and the Hindu pilgrims who come from different areas of India, with local Muslims providing the latter with logistics as well as meeting other needs. This *yatra* (pilgrimage) has been ongoing peacefully since 1858 with mutual cooperation. The numbers of pilgrims have increased from 12,000 in 1989 to a four hundred thousand in 2007; this despite the area being ecologically very fragile.¹³

On May 26, 2008, a controversial government decision granted 800 kanals (100 acres) of forest land to the board. This decision – seen as illegal and politically motivated – sparked severe protests across Kashmir valley demanding the decision be reversed. Given the fact that the entire area in question had been used for decades by pilgrims, the logic of land transfer did not hold any merit. All the mainstream political parties and separatist groups jumped into the fray to further politicize the issue. Various arguments such as demographic changes in Kashmir, the Saffronization (radical Hinduization) of the valley, etc., were used to justify the dissent. The government argued that it was only providing temporary logistic facilities to the pilgrims through land transfer, which was not a convincing reason given the already age-old use of land for the same purpose. However, the spokesman of SASB declared in a press conference that the transfer of land

¹² Gist of comments made by members of civil society from Doda region in the three day workshop “Perspectives in Conflict: Role of Civil Society” held in Srinagar, organized by the Centre for Law and Development on March 27–29, 2009.

¹³ The Amarnath Caves are one of the most famous Hindu shrines located in the Himalayas at an altitude of 12,760 feet. The caves are about 88 miles away from Srinagar, the summer capital of Jammu and Kashmir (Jammu is the winter capital). It is one of the most significant pilgrimage destinations for Hindus and attracts thousands of pilgrims.

was permanent. According to Zafar Choudhary, "The PDP (Peoples Democratic Party) locking horns with the then Governor SK Sinha and accusing the Raj Bhawan of promoting Hindutva in Valley left very little for the common masses of Valley to doubt about the 'dangerous communal plans' carried out under the garb of Shri Amarnath Shrine Board of which the Governor is ex-officio chairman by way of a legislation enacted in 2000."¹⁴

The ongoing protests at that time resulted in the withdrawal of orders for the transfer of land by the government. This in turn resulted in massive protests in the Hindu-dominated areas of Jammu region. Political parties further added fuel to the fire which served to intensify the disorder. The Bharti Janta Party (BJP) by using the situation to cash in on its vote bank in Jammu region further lent the dispute a religious dimension. This resulted in a serious communalization of the state, which has created a dangerous divide between Jammu and Kashmir. Not only this, it has also had a serious impact in Jammu: the land row issue has widened the gulf between Muslims and Hindus in the region. According to the national daily newspaper *Indian Express* report dated August 10, 2008, "72 Kulas (hutments) of Gujjars (belonging to Muslims community) were burnt down, 22 vehicles damaged and several trucks carrying supplies looted." The report further quotes: "These are only reported incidents. Many such incidents have taken place, which have not been reported so far."

Violent protests and demonstrations continued in Jammu and Kashmir during this entire period with the divide between the two regions becoming deeper. Within Jammu region as well, the impact of all these events was manifest in the form of communal violence and resulted in religious radicalization. In the words of Yoginder Sikand,

The violence that is rapidly engulfing large parts of Jammu and Kashmir, set off by a controversial government decision to grant a tract of land to a temple trust in Kashmir, threatens to totally disrupt the already tenuous inter-communal relations in the region. This has frightening portents particularly for those parts of the state where Hindus and Muslims both live in substantial numbers, such as Rajouri, Poonch and Doda, all in the Jammu province. Economic interdependence and shared

¹⁴ Zafar Choudhary, "Why Is Jammu Burning?" August 8, 2008, available at: www.countercurrents.org

cultural bonds and traditions between the communities in these areas had kept communal rivalries in check, and people had, over time, evolved their own mechanisms to relate to each other despite their differences. Now, this delicate social fabric might, if the ongoing agitation continues unabated, tear apart.¹⁵

The radicalization of communities between and within the regions of Kashmir, Jammu, and also Ladakh (which issued demands for union territory), has been taking place slowly but steadily over the years. In addition to the Amarnath land row issue, the nomination of a non-Dogra as vice-chancellor of the central university recently resulted in large-scale protests and renewed resentment in Jammu.

In a workshop organized by the Institute of Peace and Conflict Studies in New Delhi, further dimensions of the ethnic and regional divide in Jammu were stated in the following words:

Besides the religious and regional divide, one can also observe a growing divide between the Gujjars and Pahari communities in Jammu, Rajouri and Poonch belt. Ever since the Gujjars were granted the ST (Scheduled Tribe) status, the Pahari community has felt disadvantaged. The parallel processions and counter arguments and articulation of interests by both these communities against each other are indicators of a growing divide that has potential to affect the peace and harmony between these communities which share common space in these twin districts.¹⁶

Conclusion

Jammu is a multireligious and multicultural region. It might well be that people belonging to diverse backgrounds have a compulsion to live together; they are all vulnerable and interdependent and cannot afford animosity. It is important that this diversity is recognized and protected. Politics in Jammu revolves around issues like separate statehood, Dogra desh

¹⁵ Yonginder Sikand, "Dangerous Portents In Jammu And Kashmir: A View From Doda," August 13, 2008, available at: www.countercurrents.org

¹⁶ Building Peace and Countering Radicalization. Workshop organized by the Institute of Peace and Conflict Studies, New Delhi.

(state), Gujjar identity, Pahari identity, job reservation for scheduled tribes and castes, issues of development in sub-regions, etc. Measures taken on these issues must not be politically motivated but guided with the notion of extending equitable benefits and according equal representation to all communities. Policies which exclude one community over the other are a breeding ground for discontent and future conflicts. There is a need to explore the possibilities for sub-regional autonomy and decentralization of power within the different regions of Jammu in the context of the resolution of the larger Jammu and Kashmir dispute. Such an approach holds some promise of meeting the regional aspirations and interests of different communities within the framework of resolving this lingering conflict.

Sharia and Waqf Regulation in the Secular State: The Cases of Singapore and India

Iqbal Singh Sevea

This chapter seeks to provide insights into the regulation of Islam and Muslims in secular and minority contexts by comparing the approaches adopted by India and Singapore. It will focus primarily upon the regulation of *sharia* (Islamic law) and *waqf*¹ both of which are central to debates over Muslim identity, leadership, and the space of Islam in the modern state. It should be noted from the outset that the symbolic significance of *sharia* and *waqf* is accentuated in the Muslim minority context where the provision and regulation of both these institutions has emerged as a yardstick of the religious autonomy of the minority Muslim community. While a number of Muslim states have successfully ushered in significant changes or reforms to *sharia*, attempts to “reform” *sharia* have proven to be controversial in Muslim minority states. An interesting instance of this is the controversy over the validity of the triple talaq² in India. While in both Muslim majority Bangladesh and Pakistan the state has legislated against the practice of triple talaq, in India important sections of the Muslim community view attempts by the state to legislate against the triple talaq as an instance of state interference in the autonomous sphere of *sharia*.³ Attempts at the reform of the regulation of *sharia* and *waqf* in the Muslim minority state have the potential to be perceived by sections of the Muslim community as state interference in Muslim and Islamic issues. On its part, the state is sensitive to the charge of interfering in Islamic issues. In both the cases of India and Singapore, the state has adopted the discourse of non-interference. It should however be noted that despite this discourse of non-interference, in both cases, the state

¹ An inalienable religious endowment which, among other things, can be denoted by a building or plot of land.

² Triple talaq refers to the controversial mechanism of divorce which allows a husband to divorce his wife by repeating the words “I divorce you” three times. The legal validity of the triple *talaq* is not recognized in a number of Muslim countries.

³ See, for instance, Farzhand Ahmed, “No Triple Talak Can’t Be Abolished,” *India Today*, January 31, 2010 (accessed May 13, 2010).

plays a critical role in shaping the space for and discourse on Islamic law, as well as legitimizing Islamic authority.

A comparison of sharia and waqf regulation in India and Singapore will provide important insights into a number of issues – the negotiation of Muslim leadership; relations between the state and the Muslim leadership; the state’s position vis-à-vis Islamic discourse; and the space for Islam and Islamic institutions in the Muslim minority secular state. Despite obvious differences in terms of population figures, there are significant commonalities between the two states that make for an interesting comparison. Firstly, both India and Singapore have a sizeable Muslim minority, with Muslims constituting the second largest religious community in both cases. Indeed, Muslims constitute similar proportions of the population in both states. In India, Muslims constitute 13.4 percent of the population.⁴ Singapore’s Muslim community forms 14.9 percent of the population.⁵ Secondly, both states make provisions for Muslims to be governed in personal and religious affairs in accordance to “Muslim personal law” or sharia. In fact, legal statutes in Singapore pertaining to the provision of Muslim personal law were directly influenced by legislation and legal developments in India, with India serving as a testing ground for legislation in much of the British Empire. Furthermore, in both India and Singapore the state negotiates its regulation of Islam between two discourses – that of granting autonomy to the Muslims in certain aspects of civil law, on the one hand, and concerns over the Muslim community’s “lack of integration” into the nation on the other. Post-September 11, attention has increasingly been paid to the religiosity of Muslims and its supposed impact on national integration.

However, important differences in the political dynamics and vibrancy of civil society in India and Singapore have significant implications on the management of religions in the two states. India has a more vibrant civil society and democratic process, which enables various actors to publically challenge the state and claim to represent various religious, social, and political

⁴ Report on Social, Economic and Educational Status of the Muslim Community of India, Prime Minister’s High Level Committee, Cabinet Secretariat, Government of India (November 2006), p. 29.

⁵ Singapore Census of Population, 2000, Advance Data Release No. 2, “Religion,” Census of Population Office Singapore, Department of Statistics, November 2000, <http://www.singstat.gov.sg/pubn/papers/people/c2000adr-religion.pdf> (accessed May 12, 2010).

interests. Further to this, Singapore has successfully developed laws that enable it to effectively manage religious communities. The Maintenance of Religious Harmony Act (MRHA) of 1990, for instance, guards against overzealous religious activity and protects against the encroachment of religion into the political sphere.⁶

Regulation of Islam and Islamic Institutions in India and Singapore

Both India and Singapore make provisions for the administration of sharia for Muslims in personal and religious matters. A historical sketch of the developments that led to this is beyond the scope of this chapter. Suffice it to note that the roots of this can be traced back to colonial attempts at introducing a judicial system that differentiated between personal law and criminal law, and colonial perceptions that religious communities were best governed in personal matters by their own religious norms. In India, the Hastings Plan of 1772, which established a hierarchy of civil and criminal courts, called for the application of indigenous legal norms in all suits. It was founded on Hastings declaration that “all suits regarding inheritance, marriage, caste and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shasters [sic] with respect to the Gentus [Hindus]” were to be invariably adhered to.⁷ Such a stance was also reflected in Stamford Raffles’ approach towards the regulation of Muslims in Singapore. Laying out the principles of legal administration in Singapore, he stated that in civil matters “the laws and customs of the Malays will be respected.”⁸ The independent states of India and Singapore were to retain much of the colonial approach, at least with regards to Muslim personal law. In contemporary India and Singapore, the provision of sharia has come to be intrinsically equated with Muslim identity and seen as a yardstick of Muslim autonomy in their religious affairs and their ability to develop according to the stipulations of Islam. In debates over the

⁶ For a discussion of the role of the MHRA in the management of religion in Singapore, see Kamaludeen Mohamed Nasir, Alexius A. Pereira, and Bryan S. Turner, *Muslims in Singapore: Piety, Politics and Policies* (New York: Routledge, 2010), pp. 3, 7-10.

⁷ Quoted in Roland Knyvet Wilson, *An Introduction to the Study of Anglo-Muhammadan Law* (London, 1894), p. 92.

⁸ See Noor Aisah Abdul Rahman, “Muslim Personal Law within the Singapore Legal System: History, Prospects and Challenges,” *Journal of Muslim Minority Affairs*, Vol. 29, No. 1 (March 2009), pp. 109–26.

constitutional framework for independent India in the 1940s, a number of Muslim statesmen and religious leaders asserted that the *mazhabi* and *tehzibi azaadi* (religious and cultural freedom) of Muslims in the future Indian state hinged upon the provision of a separate personal law for Muslims.⁹

While article 44 of the Indian constitution encourages the state to develop a uniform civil code, this is a non-justiciable clause. Various governments in India, including ones headed by Hindu nationalists, have refrained from attempting to develop a uniform civil code due to the recognition of the symbolic importance of the issue. The equation of Muslim identity and freedom to develop according to their religious principles with the autonomy of sharia was perhaps most clearly reflected in the opposition to the Shah Bano ruling. In 1985, the Supreme Court ruled that Shah Bano, a 73 year old divorcee, was entitled to maintenance from her husband.¹⁰ This case is particularly interesting as the Supreme Court's decision was based upon the enforcement of Section 125 of the Code of Criminal Procedure, which was enforceable over all personal laws and applied to all communities. Thus the court did not necessarily view this ruling as an infringement of Muslim Personal Law. However, in issuing the verdict, the judges had pointed to the need for a uniform civil code in India to regulate on such matters. This ruling led to unprecedented opposition from sections of the Muslim community.

While Muslims are governed by a separate personal law, there are no separate sharia courts in India. Muslim Personal Law is interpreted and applied by the regular courts.¹¹ In administering sharia, the courts do not employ Islamic jurists, nor do they arrange for any sort of *ijma* (consensus of Islamic authorities) on any particular case. The courts have, however, been careful to assert, not unproblematically, that their role is not to interpret the Islamic sources but limited solely to the application of sharia rulings. Given that sharia law remains largely uncodified, the courts refer instead to the books of *fiqh* (Islamic jurisprudence),¹² reference books on Islamic law, avail-

⁹ See, for instance, Hussain Ahmad Madani, *Shariat Bill aur League* (Delhi, 1940 (?)).

¹⁰ For an insightful discussion of the Shah Bano case and the opposition from Muslim sections, see Zakia Pathak and Rajeswari Sunder Rajan, "Shahbano," *Signs*, Vol. 14, No. 3 (Spring 1989), pp. 558–82.

¹¹ With the establishment of Family Courts in 1984, they have become the first point of arbitration for civil matters.

¹² Namely the *al-Hidaya*, *Fatwas-i-Alamgiri*, *Minhaj-ut-Talibin*, and *Sharai-ul-Islam*.

able legislative enactments, and relevant case law. Sections of the ulema have raised concerns over the fact that Muslim law in India is administered by a secular court whose jurists are untrained in *fiqh*.

In recent years, a number of ulema organizations have reinvigorated the demand for the establishment of a *dar-ul-qaza* (Islamic courts) system. Current demands for a *dar-ul-qaza* draw heavily upon the writings of Maulana Qari Muhammad Tayyeb (1897–1983), former rector of Dar-ul-Uloom Deoband, arguably the most influential and controversial Islamic seminary in South Asia. Maulana Tayyeb described the *nizam-i-qaza* (system of Islamic justice) as a fundamental part of Islamic sharia and argued that it is not permissible for Muslims to lead a life where there is no *amir* (leader) to guide the affairs of sharia. Relating this legal stipulation to the context of India, he stressed that this requirement applied both to a Muslim majority and Muslim minority state. This *dar-ul-qaza* was essentially structured upon the belief that the regulation of Islam and Muslim affairs had to be guided by the ulema and not the secular state jurists; it was asserted that there were a number of issues on which verdict could only be passed by a *qazi* (judge). The Imarat-i-Sharia that was established in Phulwari Shariff, Bihar, in 1921, plays a particularly interesting role in current debates over the implementation of sharia in India. Not only is it at the center of demands for the development of an alternative Islamic judicial system, it also serves as the model for such a system. The Imarat-i-Sharia itself oversees a *dar-ul-qaza* network with some 34 *qaza* courts in Bihar, Jharkhand, and Orissa,¹³ where *qazis* administer the implementation of sharia in civil matters.

This demand for a *dar-ul-qaza* system has met with opposition from sections within India (Muslims and non-Muslims), which feel that the development of such a system will undermine both the judicial structure of India and its secularism.¹⁴ Interestingly, to counter such fears the ulema argue that these courts would not provide a parallel judicial system but a system of alternative courts at the local level. They essentially position these courts within the framework of Alternative Dispute Resolution mechanisms such as village and *panchayat* (village council) courts which are recognized by the Indian state. Indeed, even the government of India has recognized

¹³ See the official site of the Imarat-i-Sharia, <http://imaratshariah.org/introduction.html#top> (accessed February 19, 2010).

¹⁴ See, for instance, Yoginder Sikand, "Mullahs Propose Sharia Courts in India," *Outlook*, May 26, 2010.

that “sharia courts” have played a constructive role in administering justice efficiently.

In Singapore, the administration of sharia is governed by the Administration of Muslim Law Act (AMLA) of 1966. Unlike in India, AMLA provides for the establishment of separate sharia courts. Section 35(2) and Section 52(1) of AMLA state that the sharia court shall hear and determine all actions and proceedings in which all parties are Muslims or were married under provisions of Muslim law and involve disputes relating to marriage, divorces, betrothal, separation, disposition or division of property or divorce, payment and maintenance, etc.¹⁵ Further to this, and particularly relevant to the discussion in this chapter, is AMLA’s provision for the establishment of the Majlis Ugama Islam Singapura (MUIS) or the Islamic Religious Council of Singapore. Established in 1968 as a statutory board, the stated functions of MUIS include advising the President of Singapore in matters relating to Islam, administrating matters relating to Islam and Muslims in Singapore, administration of all Muslim endowments and funds vested in it, administration of all mosques and Muslim religious schools, and the administration of and collection of *zakat*¹⁶ and other charitable contributions.¹⁷

It is important to note that MUIS is vested with the authority to administer all waqf property in Singapore. As of 1995, it is mandatory for all waqf in Singapore to be registered with MUIS.¹⁸ In India, the government has also sought, admittedly with much less success than Singapore, to develop a centralized system for the administration of waqf. A system of state waqf boards – both Sunni and Shia – have been developed. The state waqf boards are overseen by a Central Waqf Board and a Central Waqf Council. Like MUIS, the Central Waqf Council is a statutory board. While some 300,000 waqf are registered with the waqf boards in India, a number of waqf have still not been brought under state supervision.¹⁹

¹⁵ For more details on AMLA, see the homepage of the Syariah Court of Singapore, http://app.syariahcourt.gov.sg/syariah/front-end/AboutUs_Jurisdiction_E.aspx

¹⁶ One of the five pillars of Islam, *zakat* is the religious obligation on Muslims to donate a percentage of their income to the poor and needy.

¹⁷ For more information on MUIS, see <http://www.muis.gov.sg/cms/aboutus/default.aspx>

¹⁸ Ahmad Nizam Abbas, “UK and Islamic Law,” *Sunday Times*, February 17, 2008.

¹⁹ See, for instance, Saba Naqvi, “Allah’s Left The Building,” *Outlook India*, September 21, 2009.

The State and Islamic Authority

There are however significant differences between India's and Singapore's approach towards the regulation of Islam and the management of religions more generally. This section will discuss their differing approaches towards Islamic authority and the state's role in negotiating with various Muslim groups on Islamic issues as reflected in the management of sharia and waqf. The key point stressed here is that while the Indian state constantly negotiates its position on Islamic issues with a myriad of groups claiming to represent Islam, the government in Singapore has effectively established a centralized Islamic authority that both "advises the government" on Islamic matters and oversees the religious life of the Muslim community.

In Singapore, the government's approach towards the regulation of Islam and management of religions has resulted in the establishment of a state sanctioned Islamic authority, namely MUIS. The discussion below will highlight that this has resulted in the granting of a monopoly over the administration of Muslim/Islamic sites and institutions to MUIS, and also effectively granted MUIS authority to define Islam. As noted above, MUIS is a statutory board established by the government. It is suggested that MUIS's authority in Singapore is based on the fact that it is tasked by the government with managing Islam in Singapore.²⁰ It is worth noting here that all the key office-bearers of MUIS are appointed by the President of Singapore. Moreover, the Chairman of MUIS is none other than the Minister-in-Charge of Muslim Affairs.

One of the key roles that MUIS is tasked to carry out is the centralization of the administration of mosques, waqf, zakat, and other forms of charitable donations. It has already been noted that all waqf have to be registered with and administered by MUIS. Prior to the assumption of mosques and waqf by MUIS, there were diverse groups of trustees in Singapore such as the Muslimin Trust Fund Association and the Indian Muslim Society which administered various mosques, madrasas, and waqf. The creation of MUIS has served to displace these alternative "Islamic" authorities and centralize the administration of Islamic institutions/sites.

²⁰ Kamaludeen Mohamed Nasir, Alexius A. Pereira and Bryan S. Turner, *Muslims in Singapore: Piety, Politics and Policies* (London and New York: Routledge, 2010), p. 41.

MUIS also plays an important role in defining Islamic doctrine and practice. It has a legal committee that periodically issues *fatwas* (religious edicts). MUIS also has a *Mufti* (an Islamic scholar who interprets sharia) who is seen to be, and officially is promoted as, the highest authority on Islam in Singapore. It is important to note here that the Mufti is appointed by the President of Singapore (after consultation with MUIS).²¹ Further to this, MUIS has also been vested with the authority of appointing *imams* (religious leaders) in mosques in Singapore and providing the text for Friday sermons issued in various mosques in Singapore. This has effectively allowed MUIS to define “true” Islam in Singapore and control the use of Islamic institutions and sites for the dissemination of “deviant” interpretations of Islam. MUIS also serves to manage, as well as define, Islam through its role in the sphere of Islamic education. MUIS has not only been tasked to standardize the syllabus in madrasas but has also assumed the authority, through its recently introduced Asatizah Recognition Scheme, to oversee the “professional conduct of all *asatizahs* (religious teachers) in performing their roles as religious teachers, scholars, propagators and advisers on Islam.”²²

Cumulatively, MUIS’s role as the authority on Islam in Singapore does not only allow it to define Islamic doctrine, but also to normalize the government’s position on issues related to Islam and Muslims. This does not however mean that there are no alternative sources of Islamic authority in Singapore. One such institution is the Persatuan Ulema dan Guru Guru Agama Islam (PERGAS). Established in 1957 (before MUIS), PERGAS focuses on the training of religious teachers.²³ State-sanctioned support for MUIS and its promotion of MUIS as the authority of Islam in Singapore coupled with MUIS’s monopoly over the administration of Muslim institutions, however, limits the role that institutions such as PERGAS play in shaping Islamic discourse in Singapore.

The role played by MUIS in normalizing the government’s position on various issues relating to Muslims and Islam is perhaps best reflected in the controversy over the use of the *tudung* (headscarf) in schools in 2002. All schools in Singapore, other than madrasas, abide by a “no-tudung policy,”

²¹ See http://www.muis.gov.sg/cms/uploadedFiles/CorporateGOV/About_MUIS_corporate_brochure.pdf

²² See MUIS website, <http://www.muis.gov.sg/cms/services/Islamic.aspx?id=506> (accessed on May 14, 2010).

²³ See PERGAS website, <http://www.pergas.org.sg/>

i.e., schoolgirls are not allowed to don the headscarf. A number of Muslim organizations and individuals have long lobbied the government in various forums to change its position on the issue.²⁴ The debate over the use of tudung came to a head in 2002 when the parents of four primary school girls insisted on the right of their daughters to wear the tudung in school. This culminated in the suspension of some of the girls from school. This also resulted in a rare case of public criticism of the government over its approach towards Islam by a small group of Muslims who organized themselves under the banner FATEHA.

Amid the growing controversy and vocal criticism of the government's position by FATEHA, MUIS provided Islamic legitimacy to the government's position. The Mufti, Syed Isa Semait, for instance, argued that Islam places a higher priority on the pursuit of education than the wearing of the tudung.²⁵ Interestingly, in this case, MUIS's stance was criticized by PERGAS which issued a statement a day after the Mufti took his position on the tudung issue stressing that "it is the responsibility of every individual Muslim to strive as best as he/she can to remove whatever causes which obstruct the fulfillment of one's religious duties."²⁶ In fact, Ustaz Mohammad Hasbi bin Hassan, President of PERGAS, went further and stated that "MUIS is a statutory board, they must serve the interests of the state. It is our responsibility to serve the interests of the Muslim community."²⁷ Despite such criticism, MUIS's legitimization of the government's position enabled the government to marginalize groups such as FATEHA.

In contrast to Singapore, there is no centralized or state sanctioned Islamic authority in India. On matters pertaining to Muslims and Islam, the Indian state has to negotiate its position with various Muslim movements and leaders. It is important here to look at the role played by Muslim law boards in India. In recent years, India has witnessed the burgeoning of Muslim law boards each attempting to define sharia for the state courts

²⁴ See discussion in Lily Zubaidah Rahim, *Governing Islam and Regulating Muslims in Singapore's Secular Authoritarian State*, Asia Research Centre Working Paper, No. 156, July 2009, pp. 15–16.

²⁵ Anil Netto, "Row over Islamic Headscarf goes beyond Singapore," *Asia Times Online*, February 23, 2002.

²⁶ Quoted in Rahim, *Governing Islam*, p. 17.

²⁷ Suzaina Kadir, "Muslim Politics, the State and Society," in Kenneth Paul Tan, ed., *Renaissance Singapore? Economy, Culture and Politics* (Singapore: National University Press, 2007), p. 150.

and advise the state on Muslim or Islamic issues. These law boards, it must be noted, have no legal sanction and operate as pressure groups. The All India Muslim Personal Law Board (AIMPLB) is the most prominent Muslim law board in India. Its genesis lay in the need felt by sections of the ulema in India to have a common platform to resist state interference in sharia.²⁸ Although it holds no formal authority over the implementation of sharia or state sanction, the AIMPLB has exerted an extremely important influence upon the discourse on sharia through its wide membership and strong network of eminent ulema. Its position, and indeed the position of the ulema within the Muslim community, was also strengthened by the fact that it managed to “force” the Indian government to repeal the Supreme Court’s ruling in the above-mentioned Shah Bano case.

Apart from seeking to reform the administration of sharia through the development of the dar-ul-qaza system, the AIMPLB has also spearheaded attempts to codify sharia. This project of the codification of the sharia was undertaken so as to provide the Indian civil courts with definitive reference points, thus ensuring that no “mistakes” are made in their administration of Muslim Personal Law.²⁹ The initial steps in this direction were taken by the AIMPLB in the wake of the Shah Bano ruling with the founding of the Fiqhi Academy by Mujahid al-Islam Qasimi. The AIMPLB’s attempts at codifying sharia culminated in the publication of the *Majmuah Qawanein Islami* or *Compendium of Islamic Laws*. This is presented by the AIMPLB as the defining and most complete guide on sharia in India.

The AIMPLB’s positioning of itself as the chief authority on sharia and its attempts to present a definitive collection (or version) of sharia, has generated criticisms from a number of Muslim groups. Muslim women’s groups, for instance, have attacked them for providing patriarchal presentations of Islam and questioned their authority to interpret sharia. The AIMPLB has also been criticized for promoting a particular strand of Islam, a Deobandi interpretation of Islam, as “true” Islam. While the AIMPLB consistently sought to emphasize its inclusiveness by stressing that its membership will be constituted by members from all sects and organizations of Muslims in India, the fact that most of its important posts have been held by individuals

²⁸ For a history of the AIMPLB, see Muhammad Abdul Rahim Qureshi, *Aal Indiya Muslim Personal Law Board: Sargarmiyyon Ka Ik Khake* (2002).

²⁹ AIMPLB, *Majmuah Qawanein Islami: Muslim Personal Law se Mutaliq Ahkam Shariat ka Majmuah*, p. 31.

associated with Deoband continues to raise concerns amongst members of various sects.

Since 2005, prominent groups, sects, and individuals have broken from the AIMPLB to form their own Muslim law boards. Not surprisingly, given the antagonism between the Barelwis and the Deobandis, a faction of the Barelwi community was the first to break away from the AIMPLB. Under the leadership of Maulana Tauqeer Reza Khan they established the All India Muslim Personal Law Board (Jadid) [New]. The Barelwi faction was followed shortly by a section of the Shia ulema who broke from the AIMPLB to form the All India Shia Personal Law Board (AISPLB). It is worth noting here that since its foundation, the AISPLB has positioned itself as a defender of Shia interests not only in religious but also in economic and political matters. The All India Muslim Women's Personal Law Board (AIMWPLB), which also emerged in 2005, has been the most vocal in its criticisms of the AIMPLB and the monopoly of the ulema over the interpretation of sharia. The AIMWPLB is striving to position itself as the representative of a new – more “authentic” – interpretation of Islam, one which is free from the gender biases of the ulema. It is worth noting that in the very first *adalat* (court) organized by the AIMWPLB, some 166 women registered cases seeking its advice on marital and divorce matters.³⁰ Significantly, the AIMWPLB also rejects the AIMPLB's assertion that sharia law should be applied in dar-ul-qazas. They argue instead that the state courts are the institutions which should implement Muslim Personal Law.

Conclusion

This chapter has sought to compare the regulation of Islam and its institutions in India and Singapore. Sharia and waqf have been employed here as foils to a broader analysis of the negotiation of Islamic leadership as well as the space of Islam and Islamic institutions in the secular Muslim minority state. It has been highlighted that Singapore's approach towards the management of Islam has largely centered upon the construction of a centralized state sanctioned Islamic authority; an Islamic authority which serves to advise the government on issues relating to Muslims and Islam, on the one

³⁰ Cited in Justin Jones, “Signs of Churning: Muslim Personal Law and Public Contestation in Twenty-First Century India,” *Modern Asian Studies*, Vol. 44 (2010), p. 176.

hand, and guides the religious development of the Muslim population, on the other. In contrast to this, the Indian state negotiates its position on Muslim and Islamic issues with various actors claiming to represent the community and religion. With the burgeoning of law boards, the Indian state finds itself having to negotiate its regulation of Islam and Islamic institutions amongst a growing number of players. Sections of the Muslim community in India are optimistic that this will lead to greater plurality in the definition of Islam/Islams, as the state will have to draw from a vibrant market place of ideas rather than being guided by any single authority on Islam.

Communal Violence in South Asia: Examples and Analyses of Some Events

Jayanta Kumar Ray

Intercommunity as also intracommunity violence is not rare in South Asia (or in many other parts of the world). Sometimes, the incidents and intensity of the latter category can also exceed those of the former.

August 16, 1946

This essay starts with an atypical instance of communal violence commencing in Calcutta (now Kolkata) on August 16, 1946. It was the Direct Action Day of the Muslim League Party, headed by M. A. Jinnah, who wanted to compel the Congress Party and the British colonial rulers to accede to the demand of a separate state of Pakistan before the British granted independence to India.¹ The event of August 16, 1946, which was a surprise and large scale attack by Muslims upon the Hindus in the provincial capital of Bengal, had been planned by Bengal's Premier H. S. Suhrawardy long in advance. In the preceding months, the Premier took care to post Muslims as officers-in-charge of a large number of Police Stations in Calcutta so as to facilitate attacks by Muslims upon Hindus. For the same reason, during this period, the government of Bengal issued licences of firearms liberally to a huge number of Muslims.

In an extraordinary and unprecedented move, denoting contemptible connivance, the Premier remained seated in the Control Room of Calcutta's police headquarters. This could boost the confidence of officers-in charge of police stations, themselves Muslims, in refusing to take action against Muslims who started riots without any provocation. The British Governor of Bengal, in connivance with the Premier, did not deploy the army as long as the Muslims were attacking, and there was no retaliation by Hindus and

¹ For relevant details, see Gopal Das Khosla, "Stern Reckoning" in G.D. Khosla, David Page and Penderel Moon, eds., *The Partition Omnibus* (New Delhi: Oxford University Press, 2002), pp. 41–68.

Sikhs, who were utterly unprepared. Shortly after this retaliation started, the army intervened, and riots stopped. Meanwhile, tens of thousands suffered due to death, disability and homelessness. Even Suhrawardi lamented that he failed to anticipate the backlash on Muslims.

The lesson of August 16, 1946 was that riots would not have taken place but for government sponsorship. Moreover, the sufferings of victims would have been far less severe (even negligible) if the government deployed police-military personnel immediately after the outbreak of an unprovoked riot.

August 15, 1947

Pakistan became an independent state on August 14, 1947, India on August 15. In course of the next year, communal violence caused the death of about two million persons, and the displacement of about eighteen million. Much of this suffering could have been avoided if the Partition of British India took place in June 1948 and not in August 1947. The British Parliament fixed June 1948 as the date for transfer of power. The announcement of Partition could have taken place in August 1947, and the ordinary people would have the opportunity to engage in relatively peaceful exchange of properties for a smooth migration. Leaders like M. A. Jinnah and B. R. Ambedkar were in favor of a planned and peaceful exchange of population in order to lessen the pains of Partition. But the 46-year old Viceroy of India, Louis Mountbatten (known as Dickie), was known for cruelty during the Second World War, when he abused his authority, and caused avoidable casualties to British soldiers. In India, too, he behaved in a diabolical fashion. He speeded up Partition, and asked Cyril Radcliffe to prepare a plan for division of vast territories in about a month. This was unbelievable, for, even the normal division of a small family property would take a much longer time.

Horrendous atrocities could be anticipated, for, those who were on the right side of the border were expected to grab properties from those left on the wrong side of the border, and the latter would be anxious to flee. Mountbatten confirmed his sadistic propensity when he postponed the publication of the detailed Partition plan till after the Independence Day celebrations in India and Pakistan. Soon afterwards, all hell broke loose. British soldiers were not duly deployed to prevent or restrict the post-Partition riots. Actually, the number of British troops in India was reduced to a level much lower

than that in the tiny territory of Palestine. Whereas Louis Mountbatten was the principal architect of the communal holocaust of 1947–48, other leaders (e.g. Gandhi, Nehru, and Patel) could not escape their share of responsibility. They were never tried and punished for their crimes against humanity. The dominant lesson of the 1947–48 communal massacres was that the apathy of topranking politicians and administrators was the root cause of communal violence. British colonial rulers virtually sponsored the rioters, while Indian leaders tamely acquiesced.²

February 10, 1950

This was again a glaring instance of government-sponsored communal violence. But it was one-sided; there were no clashes; there were only attacks on the minorities, mainly the Hindus. Significantly, a crowd emerged from the Dhaka (Dacca) Secretariat, and formed a procession moving through different sections of the city, chanting vehement anti-Hindu slogans, and eventually holding a meeting at a huge park. Meanwhile, exactly at 1 p.m., all Hindu shops in the most important shopping centre of the city were attacked and looted. There was large-scale one-sided violence against the Hindus. Thousands died. Tens of thousands fled to India. Security forces remained totally inactive. No less shocking was the inaction of the government of India. In 1947, India's political leaders clearly assumed the moral-political responsibility for the protection of minorities (mostly Hindus) in Pakistan. In 1950, they shamelessly disowned it. The cause of the 1950 communal atrocities was the initiative by the government of Pakistan and the lack of determination on the part of the Indian Government.³

² For elucidation, see Madhav Godbole, *The Holocaust of Indian Partition: An Inquest* (New Delhi: Rupa & Co, 2006), Chapters 3, 4 and 5.

³ Jyoti Sengupta, *Eclipse of East Pakistan* (Calcutta: Renco, 1963), pp. 95–96. *Memorandum*, March 20, 1950, submitted before the Hon'ble Prime Minister of Pakistan by members of the opposition party (Assembly), East Bengal, pp. 335–36; Samar Guha, *Non-Muslims Behind the Curtain of East Pakistan* (Dacca, 1950), pp. 80–81; J. N. Mandal, Letter of Resignation to the Prime Minister of Pakistan, October 9, 1950, in The Foreign Relations Society of India, *Genesis of Communal Violence in East Pakistan* (New Delhi, 1950), p. 67.

March–April 1953

The Muslim League was the ruling party at the Center as also in the Punjab, the most important province of Pakistan's West Wing (the East Wing being called East Bengal at that time). As early as July 1952, the Punjab Provincial Muslim League passed a resolution fomenting a sectarian agitation against Ahmadis (also called Qadianis), a minority sect of Muslims. Agitators wanted the Ahmadis to be branded as non-Muslims, and dismissal of all Ahmadis occupying important government jobs, including Zafrullah Khan, who was then Pakistan's Foreign Minister. In January 1953, a delegation of the Ulama met Pakistan's Prime Minister and served an ultimatum that they would launch a direct action unless the abovenoted demands of anti-Ahmadi agitators were met in a month. On February 27, 1953, the Central Government rejected this ultimatum. The Central Government also decided to arrest the leaders of the anti-Ahmadi agitation. Arrests were immediately followed by large-scale anti-Ahmadi disturbances. Even amidst disturbances, on March 6, 1953, the Chief Minister of Punjab issued a proclamation which admitted the legitimacy of anti-Ahmadi demands.

A reign of terror was unleashed upon Ahmadis. Thousands of Ahmadis were killed. Subsequently, the Report of the Court of Inquiry into these disturbances stated that if these were treated as purely a question of law and order (and not as a political issue as Punjabi political leaders wanted), a District Magistrate and a Superintendent of Police would have easily quelled them. What happened eventually was that the military had to step in; it put down the agitation promptly. Disgraceful manoeuvres by politicians of the ruling party led to the death of thousands of innocent Ahmadis in a virtually onesided onslaught.⁴

March 25, 1971

On March 25, 1971, the Pakistan army launched a genocidal campaign against its own people in East Pakistan, who launched a struggle for liberation (and eventually, with the help of India, formed the independent country of Bangladesh on December 16, 1971). The campaign resulted in an exodus

⁴ Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953 Punjab: Government Printing, 1954), esp. pp. 1, 231, 237, 240, 263–65, 274–76, 285, 385–87.

of refugees to India (mainly to the neighboring Indian State of West Bengal). Eventually, about ten million refugees took shelter in India. Of them, nearly ninety-five percent were Hindus. The Pakistan army appeared to adopt the strategy of small-scale killing and large-scale expulsion of Hindus. These Hindus, again, took shelter mostly in West Bengal, which was the home to millions crossing over since the Partition of British India in 1947.

The remarkable thing was that, from March to December 1971 (when Bangladesh became independent and refugees started moving back to Bangladesh), there was not a single anti-Muslim backlash in West Bengal or the rest of India. This was, indeed, a sort of record in modern history, for, there were numerous provocations in East Pakistan in the shape of killing of Hindus, forced conversion to Islam, large-scale destruction of places of worship (not to speak of molestation of women). Whereas the ordinary people deserved all praise, it must be stressed that the Indian ruling circle observed the utmost vigilance for the prevention of anti-Muslim onslaughts. Significantly, the world press hardly showered any praise on India's rulers and people for such a unique act of self-restraint for arresting communal violence.⁵

July 1983

Colombo (later and the whole of Sinhala-majority areas in Sri Lanka) witnessed anti-Tamil violence in July 1983, carrying all the signatures of government sponsorship. On July 23, 1983, in retaliation against the rape of Tamil schoolgirls at Jaffna by Sinhala soldiers, the local people ambushed and killed thirteen Sinhala army personnel. Even before this was reported in the press, there took place a week-long pogrom, starting in Colombo and rapidly spreading to a number of other towns, which left nearly 3000 Tamils dead, 150,000 homeless, and destroyed property worth Rs 3.5 billion (Crore = 10,000,000). Significantly, this anti-minority (i.e., anti-Tamil) riot did not merely represent unplanned mob fury. For, Sinhala rioters in Colombo not only marched to the playing of music, but also in the company of security forces, which extended support to rioters when they failed to pierce (e.g.) the iron gates of a shop. Rioters carried official documents to establish the

⁵ J. N. Dixit, *Liberation and Beyond: Indo-Bangladesh Relations* (New Delhi: Konark, 1999), Chapters 3, 4, 5.

identity of the owners of houses, shops, factories, etc. If, for instance, a shop was owned by a Tamil, but the premises belonged to a Sinhala, only the goods in the shop would be brought out and burnt. But if the premises, too, were owned by the Tamil shopkeeper, the goods as well as the premises would be set on fire. Many patients in hospitals were murdered. Buddhist priests not only helped mobs with food, drinks and weapons, but also led the mob in some places. Many rioters had the privilege to use government vehicles. Their operations took place simultaneously in many areas of the country, indicating the existence of a centralized planning and signalling apparatus, which could not but belong to the government. Even the violation of curfew regulations did not attract punishment. Neither the President of Sri Lanka nor any of his colleagues had the minimum sense of propriety to utter a word of apology or regret, not to speak of condemnation. Finally, needless to add, riots of 1983 marked the commencement of a civil war, which reached a genocidal conclusion in 2009, while India and the international community looked away.⁶

October 31, 1984

The assassination of the Indian Prime Minister by one of the security guards (who belonged to the minority community of Sikhs) unleashed a virtually one sided massacre of Sikhs. In course of about twenty four hours, several thousands died. There was no visible official initiative or sponsorship of this communal violence but deep connivance. Therefore, no attempt was made by security forces to prevent the outbreak of anti-Sikh violence or minimize its impact after the outbreak. If this was a matter of indelible national shame, no less was the way the major architects of this violence got away without any punishment. Being influential political leaders of the ruling party, they were not subjected to penalties even after a quarter century. Meanwhile,

⁶ J. N. Dixit, *Across Borders: Fifty years of India's Foreign Policy* (New Delhi: Picus, 1998), pp. 161–64; Ambalavanar Sivarajah, "Indo-Sri Lanka Relations since 1987," in Nalini Kant Jha, ed., *India's Foreign Policy in a Changing World* (New Delhi: South Asian Publishers, 2000), p. 195; S. Balaji, "Tamil Militancy in Sri Lanka: Implications for India's Security," in *ibid.*, pp. 209–11; P. Sahadevan, "India and Sri Lanka," in Lalit Mansingh et al, *Indian Foreign Policy: Agenda for the 21st Century* (New Delhi: Foreign Service Institute, and Konark, 1998), Vol. 2, pp. 169, 174; G. H. Peris, "Secessionist War and Terrorism in Sri Lanka: Transnational Impulses," in K. P. S Gill and Ajai Sahni, eds., *The Global Threat of Terror* (New Delhi: Bulwark Books for the Institute for Conflict Management, 2002), p. 90.

one of them died, and two of them, nominated for contesting elections to the central legislature, failed to contest because of widespread public protests launched by members of all communities. But this amounted to only a shadow of justice. Significantly, no apology was tendered by authorities to victims of violence.⁷

December 6, 1992

The destruction of an old, unused, dilapidated mosque on this date, in the pre-sence of national/international television crew, was another incident of ineffable shame in the history of modern India. But for deepseated collusion between a large number of topranking politicians and administrators, this stupid act of self-destructive vandalism could not have taken place. The principal opposition party (the Bharatiya Janata Party, i.e. the BJP) had to pay dearly. Four democratically elected State governments were dismissed by the central government in New Delhi, and a large number of culprits were arrested, while both-sided communal violence raged for a few days in the country. In the perspective of heavy penalties levied on a large number of high ranking politicians, the incident of December 6, 1992 offered a sharp contrast to incidents on October 31, 1984 (in India) or February 10 (in Pakistan). Remarkably, apology was tendered by authorities to victims of 1992 vandalism – nationally and internationally.⁸

Bangladesh 2001–02

Before, during and after the general election of 2001, minorities in Bangladesh (principally Hindus) suffered from unbelievable unilateral atrocities due to active collusion/participation by two leading members of the ruling coalition, viz. the Bangladesh Nationalist Party (BNP) and the Jamat-e-Islami (JEI). The only redeeming feature of these atrocities, continuing for

⁷ In no way does this author condone terrorism by Sikhs in India's Punjab, which has been amply discussed in, e.g., K. P. S. Gill & Ajai Sahni, eds., *The Global Threat of Terror* (New Delhi: Bulwark Books & the Institute For Conflict Management, 2002), pp. 1, 2, 8, 9, 16, 18, 19, 20, 197, by George Fernandes, Arun Shourie, and Ajai Sahni. See also Ranjit K. Pachnanda, *Terrorism and Response to Terrorist Threat* (New Delhi: UBSPD, 2002), pp. 98–125.

⁸ For some insights into the larger perspective, see Pran Chopra, "Advance of Communalism or Retreat of Secularism," in Mehdi Arslan and Janaki Rajan, eds., *Communalism in India: Challenge and Response* (New Delhi: Manohar, 1994), pp. 74–82.

months and months, was the absence of large-scale slaughter. For, during the past decades, Bangladesh perfected the techniques of relatively bloodless ethnic cleansing, whereby unlimited threats of the use of force, coupled with a limited application of violence, led to the departure of minorities from Bangladesh (mainly for India) followed by an easy occupation of their properties by Muslims. A number of members of the Bangladesh civil society tried to contain violence, but they were no match for security forces and marauders. The governments of India and Bangladesh appeared to compete in callousness. India did not protest, even though, according to scholars in Bangladesh, this could have mitigated the sufferings of minorities. As to Bangladesh, it was in a stupefying state of uninterrupted denial. Some Muslim intellectuals, who wrote about, or otherwise publicized, the sufferings of minorities, were mercilessly persecuted.⁹

Gujarat 2002

This is another despicable episode in the history of modern India. Killing of Hindus on a train at a railway station generated a diabolical retaliation. Although violence was two-sided, the number of Muslims killed exceeded the number of Hindus killed in the ratio of approximately seven to one. The government's collusion with Hindu rioters was so glaring that the Chief Minister of Gujarat attracted severe domestic and international condemnation. The United States refused a Visa to this Chief Minister. Significantly, in the aftermath of 2002 riots, minorities did not leave for Pakistan (not to speak of Bangladesh).¹⁰

⁹ Shahriar Kabir, *Recent Persecution of Minorities in Bangladesh* (Dhaka: Dana Printers, 2005), pp. 3-32; Shahriar Kabir, *Jamat-e-Islami's Link with Islamic Militancy* (Dhaka: Dana Printers, 2005), pp. 3-48.

¹⁰ S. K Modi, *Godhra: The Missing Rage* (New Delhi: Ocean Books, 2004), esp. pp. 9-23.

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Appendix 1: Law, Democracy, and the Role of Islam in Afghanistan

Sanauallah Tasal

Democracy and the Role of Islam

Revolts leading to the formation of national governments have always enjoyed religious support in the history of Afghanistan. The Afghan people's revolts against the British invasion at the end of the nineteenth and beginning of the twentieth century exhibited religious and national impetuses. In the 1980s, furthermore, against the invasion of the Soviet Union, the national Jihad of our people mostly depended on an Islamic identification base of Afghanistan. But besides this, Islam and nationalism are interwoven in the history of Afghanistan.

Even before Islam we had movements which had regional fronts, but until these movements incorporated religious values, they did not prove durable nor did they exert a large influence. On the one hand, Islam is the basic motive behind the defense of the national identification of the people of Afghanistan; on the other hand, it granted unity and homogeneity to the incongruous and multinational Afghan society.

The Afghan nation and tribes have believed in only one center of spirituality: under the flag and direction of Islam. In turn, this has secured the political stability of the community and national unity especially in a time when the kingdom has changed to that of a non-litigious political negotiation center and Islam has become a source of allegiance. Religion and politics have never been separated from each other in Afghanistan. In the country's previous laws concerning the holding of government power, it was a condition that authorities should be Muslims. Authorities, in maintaining their power, have always utilized Islamic jurisprudence, and have gained allegiance from the people who stand side-by-side when performing religious ceremonies.

From Amanullah Khan to the present day, many authorities have been ousted and exiled for being "infidels." Invaders of the country, both

neighbors and other external powers, have exploited the strong Islamic conceptions and sentiments of Afghans for their own political purposes. And yet our problem is more complicated than this. Our so-called "infidel" governments are cursed by Allah: they neither utilize their intellect nor do they learn their lessons from bad experiences; thus, they fail to open the door for mutual understanding and negotiation with those they govern to prove themselves as true Muslims.

The Afghan System of Law

The Afghan system of law is very complex. Part of the system is based on Islam. Another part is based on the *Qanoone Tamoli*. And then part of our law is based on other modern laws. For example, the civil code of Afghanistan says that since everyone enjoys the rule of law, all civil cases should be decided by law. According to the Afghan statutory law, the first source of law is the law, the second source of law is Sharia, and the third source of law is customary. But then in the Afghanistan constitution, it says that Islam is the basis of the law. Accordingly, one can see that the statutory law and the constitution contradict each other.

Most sections of the Afghan constitution are based on Islamic Sharia (Hanafi Doctrine). For a long time, the formation of particular *Madrassas* (religious schools) was considered to belong to the traditional rights of the people; hence there were no bans or prohibitions placed upon them by the government. The teaching of religious knowledge was a part of the program of primary, secondary, and higher education in the educational institutes of the government. As a result, we can say that as an Islamic country, religion, nationalism, and politics form a cornerstone in Afghanistan.

Where no punishment is imposed according to Hodood, the Criminal law of Afghanistan could still be applied. For example, if someone commits a murder he is not jailed if he gives adequate compensation and this is accepted by the victim's family. The laws of Afghanistan's courts are made according to Hanafi jurisprudence; the reliable thing in this regard is *Mujal-atul Ahkam* (commandments' magazine), which was written in the Usmani Caliphate in Turkey, but on occasions where Hanafi jurisprudence is complicated and difficult to implement, then other jurisprudences are utilized. For example, Hanafi jurisprudence stipulates that in the case of "missing" or losing her husband, the wife has to wait for her husband for a period of

90 years; but in Hanbaly jurisprudence a period of four years is stipulated. Accordingly, four years is mentioned in Afghanistan's law. There are two challenges to law in Afghanistan. First, there is the pressure of modernization, the pressure to have a system of law which conforms to international law. Second, is to have a system of law that conforms to Sharia. In Afghanistan, Sharia has been considered the primary source of law now for the past two decades. Can these two systems of law be reconciled? If not, how does Afghanistan deal with the demands of the two opposing systems? There is a conundrum in that aligning Hanafi jurisprudence with international charters is likely to incur the objection of religious scholars (article 3 of the Afghan constitution states that no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan). On the other hand, interpreting international charters close to that of Hanafi jurisprudence is likely to meet with opposition from international community.

Another problem is that the mass media law in Afghanistan is based on a liberal notion of press freedom. But the penal code (*Qanoone Jaza*) of Afghanistan can easily allow the arrest and imprisonment of journalists. This is the challenge to press freedom in the country, and it means that journalists and members of the media can be held on flimsy charges. So in spite of the press freedom prescribed by our constitution, press freedom remains under threat because of the penal code of Afghanistan.

Afghanistan Criminal and Civil Law

The first article of the Afghan Criminal Law: this law manages punishment crimes, and retributions, perpetrators of crimes, for which limits (*Hodood*) are considered, and are given penalties in accordance with Hanafi jurisprudence.

Article One of the Civil Law

(A) On occasions where the constitution exists, assiduity is unlawful; the decrees of this constitution are applicable because of word or its scope.

(B) On occasions where no decree of constitution exists, courts should order in accordance with Islamic Sharia based on general principles of Hanafi jurisprudence in order to ensure justice in a good manner.

Article Two

On occasions where a decree does not exist in the constitution or in the general principles of Hanafi jurisprudence of Islamic Sharia, the court should give order in accordance with general customs, but under the condition that this custom does not contradict the decrees of this constitution or the principles of justice.

In civil laws, economic laws are based on the Western system, for instance, interest in banking systems which is forbidden in Islam, and also the lottery law is the opposite of Islam; but under Afghan law both are allowed.

Concerning punishments, a judge is entrusted with the right to issue punishment in Afghanistan's constitution, as in Western constitutions, but with the difference that he assesses punishment in accordance with Sharia.

Challenges for Law in Afghanistan

1. Government authorities are themselves not observing laws, because they are arrogant and conceited by power.
2. We have failed to explain to people the significance and values of laws and their implementation.
3. Disparate and divergent laws have been ushered in by various outfits including royalists, republicans, Communists, the Mujahideen, the Taliban, and democrats. None of these have been national laws in the true sense of the word.
4. A number of ideological laws have been duplicated from other laws without taking into account the local circumstances in Afghanistan. It must be recognized that Afghanistan has traditionally relied on traditional councils and assemblies in solving problems, with elders, khans, and those who presides councils as key figures in this.

Conclusion and Suggestions

Unfortunately, Afghanistan has frequently faced a lack of rule of law during its contemporary history. While it may have been found during more stable periods, it never found its place among the Afghan people, nor was

it recognized by them. In other words, our nation was devoid of law while our law was without a nation.

The nation owns the law and law owns the nation. Therefore there is a need to adopt democracy and discipline, eradicate corruption, while increasing development, security, and political stability – with laws established and implemented. In fact the implementation of law is more important than its formation. Ever since the Amanullah Khan era until the present we have often established either good or bad laws, but unfortunately they have often been confined to the drawing boards of administrative offices. We have failed to introduce the laws to our nation as a whole.

In light of the above, I make the following suggestions:

1. In accordance with new methodologies of political and social sciences the government should endeavor not to appear non-Islamic to the people. Corrupt governments never could be reckoned Islamic ones. No official task should clash with religious principles.
2. The organs established for religious affairs should not be symbolic, but they might study the causes, on an academic basis, of why opponents utilize them in excommunicating governments.
3. The experiences from the Amanullah Khan era up to the present are in front of us. Analyzing these experiences may bring solutions. Another solution is to increase mutual understanding and open opportunities for negotiation. This entails the government leaving its barricades and fortifications and communicating with the nation, thereby increasing public awareness of government programs.
4. It is also necessary to arrange all official and governmental affairs in accordance with Afghani traditions and national values, and not copy alien ideologies soiled with non-Islamic and non-Afghani guidelines and policies. This, however, does not mean that we may not learn from and utilize instruments, technology, and science from other countries.

Appendix 2: The Role of Religious Scholars in Maintaining Peace and Order at National and Sub-national Levels

Abdul Rahman Ulfat

The Ulema have throughout the history of Afghanistan possessed a decision-making capacity. Their political influence gave (and gives) them an important role in bringing peace and stability to the country, and has made them able to decide the destiny of the country's regimes. The importance of the Ulema is evident in many examples in Afghan history. Leaders like Ahmad Shah Baba and Amir Dost Mohammad Khan were able to gain power because of the support of the Ulema who functioned as advisors in their regimes. The sparse presence of the Afghan government across the country, together with limited communications, made local religious movements very influential.

The power of the Ulema is apparent in the following two examples. King Ammanulla Khan had defeated the British forces in 1910–20; however, his decision to modernize the education system by allowing female students led to his downfall. Had Khan consulted the religious leaders before implementing the reforms they might have helped him in his efforts. However, excluding the Ulema from decision-making led to disgruntlement among the leaders who eventually stood up against the King and forced him to leave the country.

A similar situation faced the Soviet-backed Communist regime in Afghanistan during the 1970s. Deciding to target religious leaders ultimately brought the religious leaders together. Their decision to form Jihad groups consequently led to a violent confrontation, civil war, and the fall of the regime. Religious leaders played a vital role in the war against the Soviet Union, and this is most evident in the fact that most Jihad leaders were religious figures like Mulavi Khalish, Ustad Saiyaf, Mulavi Mohammad Nabi, Shiakh Jamil Rahman, and Sebghatullah Mujadadi.

So in looking at Afghan history and the current situation in the country: Do religious leaders have a role to play in contemporary Afghan society?

According to my opinion, considering the important role they have played in Afghan society for more than a thousand years and how increasingly important they remain in traditional society today, their political activism cannot be neglected.

The Ulema in Afghanistan are widely respected and listened to. Their continued presence on a grassroots level makes them able to influence young and old, men and women alike. They lead prayers in the mosques including Friday prayers, teachings and sermons, as well as attend every funeral and whisper Azan to the newborn. Looking at other examples from the Muslim world, Islamic clergy fulfill the role of counsel for the King in Saudi Arabia. They also maintain important jobs within the governmental institutions. In Afghanistan and other Islamic countries like Saudi Arabia and United Arab Emirates, the Ulema act as judges and maintain Islamic law in Sharia courts. Taking the above into consideration, it is apparent that the Ulema can play an important role in bringing peace to Afghanistan by reaching out to the grassroots and motivating them to refrain from violence and to participate in the rebuilding of the country. This could be done in each and every mosque in the country.

Religious leaders tend to be most influential in traditional societies like Afghanistan. In a country where 70 percent of the population are rural dwellers and many of them are illiterate, local communities come under the almost full control and influence of the religious leaders. The masses listen to them and tend to follow their message without any personal analysis of the situation and issues. Additionally they play an important role as figure-heads at the household level. As an indication of the special respect paid to these religious authorities, the local Mullahs are the only men who are allowed to meet publicly with Afghan women.

Having asserted the importance of the religious leaders in Afghan society, it is vital to understand the pivotal role these leaders can play in the peace-building process. Their allegiance to either peace or violence has a definite impact on Afghanistan's political development. Moreover, their religious speeches at Friday prayers or Eid may be the only guiding force in forming public opinion. Hence, having the Ulema on your side ensures support from the population. Thus peace-building efforts remain incomplete without including the religious leaders. The history of Afghanistan shows

how ignoring their political influence has, in most cases, led to upheaval and civil war.

The current Afghan crisis has been exacerbated largely because of the government's decision to exclude the Ulema from the political development after the fall of the Taliban. Believing that the brutal Taliban regime had quenched the popular support for the religious leaders, the Bonn Conference in 2002 fully overlooked the real impact of the Ulema on Afghan society. Furthermore, disrespect and the actions taken against the religious scholars aggravated the situation. Consequently, the religious leaders sided with the Taliban against the government and the international forces.

The Ulema's support for the Taliban made it possible for them to regroup and intensify the conflict. Hence, the Taliban found support and refuge among the local population in the villages and towns. The Taliban's human resources increase with each passing day mainly due to the support of religious leaders at public gatherings. Even if the religious figures do not directly support the Taliban, their hatred of the government paves the way for the Taliban forces.

In this part, I would like to bring readers' attention to the report by the Cooperation for Peace and Unity Research and Advocacy Department (CPAU). In its report, the center focused only on two provinces – Maidan Wardak and Kunduz – and emphasized the importance of religious leaders and their potential role as civil society actors in the current reconstruction and development drive in Afghanistan. The following points are brought up in the report:

Overstated self-perceptions of influence

The study finds that the Ulema in Wardak and Kunduz seem to overstate their influence. The Wardak Ulama seem to be threatening to destabilize the area if they are discontent with the situation, something which seems to be self-defeating since governments generally dislike being held to ransom and are less likely to listen to them. The Wardak and Kunduz Ulama have adapted very differently to the current situation, and the Wardak Ulama seem overly restricted and unable to do anything.

A vocabulary of violence

The violent vocabulary of the Wardak Ulema, emphasizing their wish to remain involved in the conflict, is alarming. A slight paradox is that they are apparently “too scared” to be involved because of reprisals by the Taliban, which makes us assume that they might be waiting for a clear winner to appear and then switch sides. Our understanding is that Mullahs have been, and can be, very courageous – and their statements about wanting to preach about development seem to indicate they are not scared, but waiting to align with the winning side.

Social security

We are concerned about the weakness of the social security network and think there may be an opportunity for the government to include zakat within other taxes such as income tax. Since we already pay around 10 per cent, a small increase could be set aside for zakat, and social security functions. The Ministry of Social Welfare is currently underfunded. This might be a way of avoiding corruption, since direct collection would be a disaster; however it would strengthen the religious credentials of the government.

A new generation of religious leaders

One of the findings of this report is that the older religious leaders are being sidelined by younger colleagues and thus have a rather limited impact on the current political development. The young Mullahs are more effective at taking control of developments in the political arena, and they involve the younger generation in religious processes. The new Mullahs use the vocabulary of democracy and human rights and want to reconcile these issues with Islam. A common characteristic for these young Mullahs is that they perceive their role as one that encourages peace, provides education, and serves the needs of their communities.

Religious education abroad

The tension between the religious and secular education system has played a significant role in the current development of Afghanistan. While secular education has been a main priority, until very recently little attention had been given to religious education. A significant number of Afghan religious students study in Pakistan, and at the height of the refugee crisis in the 1980s and 1990s, tens of thousands of Afghans may have been studying there. While the numbers have since declined, graduates from Pakistani madrasas are an important element in the development of religious civil society in Afghanistan. The current marginalization of Islamic (madrasa) education may increase the tensions and destabilize the relationship between religious and secular education systems.

Religious leaders and development

Both in Sayedabad and Kunduz there is a common will and interest among the Mullahs to become involved in development activities. Many Mullahs seem to view these projects as apolitical, however, with the assumption that development will not contravene Islamic principles. The Mullahs believe that they can have a positive role in development, and seek opportunities for participation. They generally seem to view themselves as the key to reaching the people, and as one Mullah stated: "Ordinary people are listening to us. If we are given the opportunity and authority then we can preach to the people so [that] they [will] participate effectively in the process."

Conclusion

So to conclude, after viewing the historical legacy and the current situation in Afghanistan, it is essential that the government and the international community start to remap their strategy. The inclusion of the religious leaders in state-building activities means gaining the support of a larger part of the Afghan population. As such, inclusion will stop providing sanctuaries for warring groups; it will further curtail logistical support, as well as limit the opposition's human resources pool. Moreover, the same religious leaders

can play an important role in the reconciliation process with those parts of the warring opposition that are willing to reconcile under certain terms and conditions. The religious leaders can be the bridge between Afghan government and government opposition groups, and thus pave the way for stability and peace.

The role of religious leaders remains significant in Afghan society, and it is the key to peace-building, its maintenance, and long-term stability. Strategic utilization of these influential groups can deliver major dividends for peace and prosperity. Ignoring the role of these key players will only further jeopardize the process of peace-building and can only lead to failure.

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