

Islam and Human Rights in Pakistan

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ISHTIAQ AHMED, DEC 11 2015

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Although ideas of rights and dignity of human beings can be traced to antiquity, modern human rights originated in the wake of the European Enlightenment. The American Declaration of Independence and the French Revolution ushered in processes that some 150 years later culminated in human rights being proclaimed as universal entitlements of all individuals. Contemporary human rights theory is based on three axioms: one, that human rights are universal and belong to all individuals, irrespective of their religion, ethnicity, gender or sexuality; two, that human rights are absolute and innate, not grants from states or some metaphysical authority; three, that they are the properties of individual subjects who possess them because of their capacity for rationality, agency and autonomy.[1]

The 1945 UN Charter and the 1948 Universal Declaration of Human Rights (UDHR) obliges states to protect the human rights of their populations and provide redress of their violation through appropriate judicial procedures. However, since the UN system recognises states as sovereign entities, the concomitant non-interference principle has, in practice, meant that the human rights situation varies from country to country, and even those countries that have formally ratified UN treaties on human rights can get away with violation of those commitments with formal protests from UN monitoring agencies. Moreover, some treaties permit partial derogation. Historical, cultural and developmental factors are usually invoked to justify the derogations. Consequently, discrepancy between formal acceptance of UN human rights instruments and the actual practice of states is more of a rule than an exception.

Islam and Human Rights

Claiming to be heirs to Islam, a divinely ordained universal, inclusive civilisation which welcomes conversions of all peoples of the world, contemporary Muslim states have invoked cultural relativistic arguments to justify modifications of, and derogations from, UN-based international human rights norms and standards. Typically, human rights are recognised as necessary for individuals to live free and dignified lives, but subjected to Islamic standards which presume that if God's will and sovereignty are enforced through the all-embracing Islamic law, the Sharia, in all departments of life by the Islamic state—individual, collective, private and public—then and only then will true equality, freedom and justice accrue to all individuals.

The model of an ideal Islamic polity is traced back to the seventh century CE, when the Prophet Muhammad and his immediate successors ruled at Medina. Classic Islamic political theory dichotomised society into two distinct categories: Muslims and non-Muslims. In accordance with Quranic rulings, non-Muslim religious communities, called *dhimmis*, paid the *jizya*, or protection tax, and were entitled to internal autonomy. Originally only a special category of non-Muslims, the people of the Book—that is, Christians, Jews and an extinct group called Sabeans—were accorded the status of *dhimmis*. The same principle was extended later to include the Hindus of India.[2] Both tolerant and intolerant forms of this principle have existed, but both Muslims and non-Muslims remained subjects of the sultan and not proper citizens enjoying inalienable human rights.[3] From early times, segregation of men and women was taken for granted in Islamic society. Within the Muslim Umma (community), sectarian divisions resulted in the state privileging the dominant sect or sub-sects.[4]

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Considered in this light, the notion of an inclusive, undifferentiated citizenry and equal rights, as upheld in the UDHR and subsequent treaties and conventions, is not consonant with Islamic political values and norms. This point was set forth bluntly in 1981 by the Iranian representative to the UN, who rejected the UDHR by asserting that it was 'a secular understanding of the Judeo-Christian tradition' and therefore its adoption would result in trespassing Islamic law.[5] The main international forum of Muslims countries, the Organisation of Islamic Conference (OIC), issued a Universal Islamic Declaration of Human Rights in 1981. It recognised almost all the rights laid down in the UDHR, but added the rider that these were to be enjoyed within limits imposed by the Sharia. It was followed by the Cairo Declaration on Human Rights in Islam (CDHRI) of 1990.[6] The CDHRI's last two articles unequivocally reiterate that all rights are to be enjoyed in accordance with the rules laid down by the Sharia:

Article 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharia.

Article 25:

The Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

Such a disposition can be described as the 'clawback' approach which, on the one hand, accepts human rights, but, on the other, hedges them with restrictions which nullify their purpose and meaning. Thus, for example, the Sharia does not permit a Muslim to convert to another religion, a Muslim female cannot marry a non-Muslim, a Muslim male can marry up to four wives simultaneously, and the laws of inheritance confer a greater share to male descendants.

Pakistan and Human Rights

The last official census of Pakistan, from 1998, gave the total population of Pakistan as 132 million. Muslims (Sunnis and Shias) made up 96.28 per cent of the total population; Christians, 1.59 per cent; caste Hindus, 1.60 per cent; scheduled castes, 0.25 per cent; Ahmadis (known also as Qadianis), 0.22 per cent; and the rest, including Sikhs and Buddhists, a mere 0.07 per cent. The current estimated Pakistan population is close to 200 million. As a member of the United Nations, Pakistan accepts the human rights obligations under the UN Charter. It has ratified several UN treaties and conventions on human rights, including the International Covenant on Civil and Political Rights (1966) and the Convention on the Elimination of All Forms of Discrimination Against Women (1979), but with reservations on both so that Sharia laws pertaining to freedom of belief and freedom to enter marriage have precedence.

Pakistan emerged on 14 August 1947 as a separate state, when British rule in the Indian subcontinent ended and India was partitioned to establish two states based on religious majorities: Hindus in India and Muslims in Pakistan. The partition proved to be one of the bloodiest upheavals in history, however. An estimated one million Hindus, Muslims and Sikhs were killed in violent riots, while 14–18 million crossed the international border between the two states to escape violence, discrimination and persecution. Yet, religious minorities remained on both sides.[7] Constitutional and legal development in Pakistan pertaining to human rights has oscillated between modernist and Islamist interpretations. Both standpoints derive from the phantasmagoria that the All-India Muslim League and its supreme leader, Mohammad Ali Jinnah, successfully projected a vision in which Muslims of all sorts of ideological persuasion and sectarian affiliations were given diverse and conflicting promises were given in order to mobilise their support for a utopian polity. Thus, for example, the ulema were given a free hand to project future Pakistan as an Islamic state, while to the British, the rival Indian National Congress, and modern educated Muslims, it was painted as a democracy. More importantly, the point that Jinnah hammered down with great flourish was that Hindus and Muslims were two separate nations who could under no circumstance live in peace in one state.[8]

Constitutional Vagaries and Human Rights

A complete reversal on the definition of nation was proffered by Jinnah on 11 August 1947, three days before Pakistan became independent. He said famously:

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You are free; 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 or caste or creed—that has nothing to do with the business of the State We are starting with this fundamental principle that we are all citizens and equal citizens of one State I think we should keep that in front of us as our ideal and you will find that in due course 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.[9]

Jinnah died on 11 September 1948. His close lieutenants in the Muslim League discarded the inclusionary vision on Pakistani nationalism, since the stand taken by Jinnah on 11 August 1947 completely contradicted the underlying ideology upon which the support of the Muslim voters and masses had been solicited to create a separate Muslim state. The Islamic underpinnings of Pakistani nationalism had been written in blood by the violent division of India and, notwithstanding the founder of Pakistan's about-turn, such a state could not be separated from its foundational ideology. Prime Minister Liaquat Ali Khan moved the Objectives Resolution in the Pakistan Constituent Assembly on 7 March 1949, which proclaimed that sovereignty over the entire universe belonged to God Almighty, in which the elected representatives of the people would enjoy delegated powers within limits imposed by Him. In the same vein, he went on to say that democracy will be practised and minorities will enjoy their legitimate interests and religious freedom within 'Islamic limits'. The non-Muslim members of the Pakistan Constituent Assembly expressed their apprehensions and objections to the notion of God's sovereignty limiting the powers of the elected representatives of the people, as it would create a bias in favour of the Muslims, but such concerns were described as unfounded.[10]

The Islamist Challenge

The Islamist ideologue Syed Abul Ala Maududi argued that, since Pakistan had been won in the name of Islam, it was immanently an Islamic state. In 1951, he compiled a 22-point political programme in favour of an Islamic state. Although elections were accepted as the basis of legitimate government, Western democracy, female equality and equal rights for non-Muslims were rejected. Maududi was able to secure the signatures of the leading Sunni and Shia clerics to that document.[11] Things came to a head when the ulema launched the *Khatam-e-Nabuwat* (finality of the prophet-hood of Muhammad) movement in 1953. The roots of the conflict went back to the early twentieth century, when Mirza Ghulam Ahmad (1835–1908), born at Qadian in the Punjab, began to claim that he was a prophet who received revelation from God. Mirza also claimed to be carrying the attributes of Jesus and of the Hindu god Krishna. Moreover, he rejected *jihad* (holy war) against the British. Such claims were unacceptable to the Sunni and Shia ulema, who denounced him as an imposter and his teachings as heretical. In 1912, his son, Mirza Bashiruddin Maumud Ahmad, made a statement to the effect that those Muslims who had not converted to Ahmadiyyat were outside the pale of Islam.[12] Nevertheless, Jinnah had made a prominent Ahmadi, Sir Muhammad Zafrulla Khan, Pakistan's first foreign minister. In 1953, mainstream ulema demanded that, since Pakistan was an Islamic state, only Muslims could hold key positions in the state. Therefore, since Ahmadi held beliefs that were irreconcilable with Islam, they should be removed from key positions. On that occasion, the central government acted forcefully and the agitation was crushed.[13]

Constitutional Development and Human Rights

The first constitution of Pakistan was adopted in 1956. It described Pakistan as an Islamic Republic. It was laid down that all laws should be brought into conformity with the Quran and Sunnah. The president, envisaged as a titular head of state, was required to be a Muslim. A bill of rights was included which upheld human rights, and all Pakistanis were given the right to vote without any reference to religion. The Islamists hailed the constitution as an authoritative commitment to Islamise Pakistan. However, a military coup brought Field Marshal Mohammad Ayub Khan to power. Khan drew up a second constitution in 1962. The constitution reiterated the commitment to bringing all laws in consonance with the Quran and Sunnah, and the condition that the president should be a Muslim was retained. Pakistani citizens, in principle, continued to enjoy the same fundamental rights and freedoms, without discrimination based on religion or sect. However, the epithet 'Islamic' was dropped and Pakistan became simply the 'Republic of Pakistan'. Immediately protests and demonstrations took place, and the first amendment reinserted the epithet 'Islamic'. [14]

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Military rule ended in December 1971, after Pakistan broke up and East Pakistan became a separate state in the wake of a bloody civil war. Zulfikar Ali Bhutto, whose Pakistan People's Party had won the most seats in the December 1970 election in West Pakistan, formed the government in the truncated Pakistan. A third constitution was adopted in 1973 by the Pakistan National Assembly, which not only required the president but also the prime minister to be Muslim. Further, they had to take an oath testifying to the finality of the prophet-hood of Muhammad. In 1974, the Pakistan National Assembly declared the Ahmadis non-Muslims after listening to the arguments of the caliph of the Ahmadis, Mirza Nasir Ahmad, as well as mainstream Sunni and Shia ulema.[15]

In July 1977, Bhutto was overthrown by General Muhammad Zia-ul-Haq. Zia declared the establishment of an Islamic order a prerequisite for the country. In 1979, his government announced the imposition of the Hudood Ordinances, i.e. punishments laid down in the Quran for the offences of adultery, fornication, false accusation of adultery, consumption of alcohol, theft and highway robbery. In 1983–1984, the Ahmadis were forbidden to use Islamic nomenclature for their worship, places of worship, and so on.[16] In 1982, a Blasphemy Law was introduced, which criminalised any insult to Prophet Muhammad and other prophets and laid down life imprisonment as maximum punishment for such an offence. In 1986, the Blasphemy Law was reformulated and capital punishment was prescribed as the maximum punishment. Thus, Section 295-C of the Penal Code established explicitly:

Use of derogatory remarks etc. in respect of the Holy Prophet: Whether by words, either spoken or written, or by visible representations, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be upon him) shall be punishable with death, or imprisonment for life, and shall be liable to fine.[17]

The blasphemy law was further brutalised when, through a constitutional amendment in 1991, 'imprisonment for life' was deleted; in the future, individuals proven guilty of blasphemy were to be awarded only the death penalty. The amendment passed during the government of Prime Minister Nawaz Sharif (1990–1993). However, it was adopted as law proper during the government of Prime Minister Benazir Bhutto (1993–1995).[18]

The Human Rights Commission of Pakistan (HRCP) has been reporting that, most of the time, the accusations of blasphemy have been fabrications.[19] On several occasions, fanatics have taken the law in their own hands and killed the alleged blasphemer. With regard to the judicial procedure, while the lower courts have typically found the accused guilty, at the higher levels the sentences have either been turned into long imprisonments or the accused have been set free and allowed to seek humanitarian asylum in the West. It is doubtful if assassins of alleged blasphemers have not been tried in court, punished, and the sentence carried out. The HRCP, Amnesty International, Asia Watch, and other such organisations have been critiquing Pakistan for extensive human right violations.

Women

The military government of Field Marshal Mohammad Ayub Khan made a special effort to reform Sharia law pertaining to personal affairs of marriage, divorce, and inheritance. On 15 July 1961, the Muslim Family Laws Ordinance (MFLO) was passed, which made polygamy conditional. The husband had to give a convincing reason to contract a new marriage. Only when permission was granted by the arbitration council, in consultation with the wife or wives, could a man marry another wife. The MFLO also fixed 16 as the legal age of marriage for girls. The ordinance was assailed by the ulema as a great transgression of the Islamic system. Such protests were rejected and the MFLO became law, which, despite recurring calls for its repeal, remains in force.[20]

General Muhammad Zia-ul-Haq, however, introduced cultural and legal changes that weakened the status and human rights of women. The law pertaining to rape was recast in traditional Sharia terms. It required evidence given by four pious Muslim male witnesses to prove the offence. Failure to provide such evidence could result in 80 lashes. Several women who claimed they were raped were unable to establish the crime due to the lack of four pious male witnesses. The military government of General Pervez Musharraf tried to revive the modernistic approach, and in 2006, the four-witness condition was discontinued.[21]

The HRCP annual report, *The State of Human Rights in Pakistan*, gives a long list of injustices and violent crimes

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committed against women. These include increasing trends towards honour killings among Muslims and forcible conversions and marriages of kidnapped non-Muslim women to Muslim men. In 1998, the heads of the United Nations agencies in Pakistan issued a statement in which Pakistan was reminded that, since it had ratified the Convention on the Elimination of all Forms of Discrimination Against Women (though a proviso 'subject to the provisions of the Constitution' was added), gender discrimination and gender-related violence contravened its commitments, and it must take substantive measures to prevent them.[22]

Conclusion

This article demonstrates that the constitutional and legal relationship between citizens and the Pakistani state is mediated by the founding ideology of the state: Muslim nationalism. The two main strands of Muslim nationalism—the liberal-modernist and Islamist—seek legitimacy from the Sharia. In practice, it means that a logical and necessary link exists between membership in the Islamic community and citizenship. Such disposition is premised on the assumption that the true believer has to be differentiated from the non-believer, the heretic, and the hypocrite. It is further compounded by gender criteria favouring men. One need not labour the point that Pakistan's human rights theory and praxis deviate from contemporary international standards and norms.

Notes

[1] Darren J. O'Byrne, 'Theorising Human Rights', *Human Rights: An Introduction* (London: Pearson Education Limited, 2003), 27.

[2] S. M. Ikram, 'Interaction of Islam and Hinduism', in Toheed Ahmad (ed), *A Large White Crescent, Readings in Dialogue Among Civilizations: The Pakistan Experience* (Lahore: Apa Publications, 2011), 201-25.

[3] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1996), 156-8.

[4] Ishtiaq Ahmed, *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan* (London: Frances Pinter, 1987), 61-2.

[5] David Littman, 'Human Rights and Human Wrongs: Sharia can't be an exception to international human-rights norms', *National Review* (online, 19 January 2003), <http://www.nationalreview.com/articles/205577/human-rights-and-human-wrongs/david-g-littman>.

[6] *The Cairo Declaration on Human Rights in Islam* (5 August 1990), <http://www.fmreview.org/en/FMRpdfs/Human-Rights/cairo.pdf>.

[7] Ishtiaq Ahmed, *The Punjab Bloodied, Partitioned and Cleansed: Unravelling the 1947 Tragedy through Secret British Reports and First-Person Accounts* (Karachi: Oxford University Press, 2012), xxxvii-xxxviii.

[8] Ibid, 81-90; Ishtiaq Ahmed, *Pakistan: The Garrison State – Origins, Evolution, Consequences 1947-2011* (Karachi: Oxford University Press, 2013), 31.

[9] Ibid, 104.

[10] *The Constituent Assembly of Pakistan Debates, Volume 5, 1949* (Karachi: Government Printing Press, 1949), 1-102.

[11] Syed Abul Ala Maududi, *The Islamic Law and Constitution* (Lahore: Islamic Publications Ltd, 1980), 332-6.

[12] K. W. Jones, *The New Cambridge History of India: Socio-Religious Reform Movements in British India* (Cambridge: Cambridge University Press, 1989), 200.

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- [13] *Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953* (Lahore: Government Printing Press, 1954), 187-200.
- [14] Y. V. Gankovsky and V. N. Moskalenka, *The Three Constitutions of Pakistan* (Lahore: People's Publishing House, 1978), 29-86.
- [15] Muhammad Mateen Khalid (compiler), *Qadyaniat: In the Eyes of the Law* (Lahore: Ilm-o-Irfan Publishers, 2008).
- [16] Ishtiaq Ahmed, "Religious Nationalism and Minorities in Pakistan: Constitutional and Legal Bases of Discrimination", in Ishtiaq Ahmed (ed), *The Politics of Religion in South and Southeast Asia* (London: Routledge, 2011), 90-91.
- [17] Ishtiaq Ahmed, 'The Politics of Group Rights in India and Pakistan', in Ishtiaq Ahmed (ed.), *The Politics of Group Rights: The State and Multiculturalism* (Lanham, Maryland: University Press of America, 2005), 203.
- [18] I. A. Rehman, 'The Blasphemy Law', *Dawn*, (Karachi: 25 November 2010).
- [19] *State of Human Rights in Pakistan* (Lahore: The Human Rights Commission of Pakistan, see annual reports available online), <http://hrcp-web.org/publication/book-genre/annual-reports/>.
- [20] Ishtiaq Ahmed, 'Women under Islamic Law in Pakistan', in Ishtiaq Ahmed (ed), *The Politics of Religion in South and Southeast Asia* (London: Routledge, 2011), 106-8.
- [21] *Ibid*, 108-16.
- [22] Ishtiaq Ahmed, 'Globalisation and Human Rights in Pakistan', in *International Journal of Punjab Studies*, (Vol. 9, No. 1, January-June 2002), 57-89.

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