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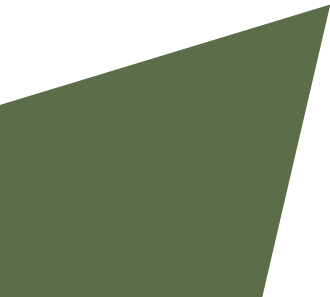
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Violation of the rights of Indigenous people and ethnic groups in Pakistan

Anish Malik

INTRODUCTION

In the recent years, Pakistan has faced increasing levels of violence resulting not only from a range of militant organizations, including ISIS affiliated groups, but also the operations of the country's military in its bloody counterinsurgency campaign in Baluchistan. The **present Pakistan** however harbors both religious and ethnic minorities along with violation of the rights of indigenous peoples. This has occurred alongside deepening social divisions and the country's continued governance challenges. In this context a climate of growing intolerance has flourished demonstrated by the growing influence of religious organizations such as Tehreek – e – Labaik Pakistan (TLP) and their ability to shape official policy. Pakistani Taliban and ISIS affiliates failed to derail parliamentary elections in July 2018 thereby killing hundreds of civilians.¹ The dangers are especially acute for those communities facing discrimination on both ethnic and religious grounds, such as Pakistani's primarily Shi'a Hazaras who are targeted as a visible ethnic minority as well as for their faith.

Violent attacks against minorities occur against a backdrop of discrimination in almost every aspect of their lives, including political participation, marriage and freedom of belief, by the widespread reluctance among law enforcement agencies to enforce legal protections against discrimination. Another major challenge faced by these minorities is the Blasphemy laws which are in their very nature arbitrary and often leads to miscarriage of justice but still the government is not declaring such laws unconstitutional and void. In particular, Pakistan's notorious blasphemy laws, often used to settle personal scores and achieve political gains, continued to disproportionately impact Pakistan's minority communities. Today, according to Human Rights Watch at least 17 people are on death row following a conviction on the basis of blasphemy laws most of whom are members of religious minorities.² Further, the prosecution of Pakistani's Ahmadi community, the largest Ahmadi population in the world is also encouraged by a constitutionally sanctioned legal regime, broadly referred to as the 'anti – Ahmadi laws'. Ahmadis are among the country's most persecuted communities, with many forced to conceal their faith for fear of attack.

Migration and a protracted process of social and religious homogenization has seen the Pakistani Hindu community dwindle over the decades. In addition to violent attacks a key challenge is the kidnapping and forced conversion of Hindu women and girls to Islam. Thus, the current situation of Pakistan has put forth a scenario where the religious and ethnic minorities are not only deprived

¹ The Current Situation in Pakistan | United States Institute of Peace, *available at:* <https://www.usip.org/2019/04/>, (Last visited on Oct.12, 2019).

² World Report 2019: Pakistan, *available at:* www.hrg.org, (Last visited on Oct.12, 2019).

of the basic human rights but are forced to migrate or face conversion at the hands of Pakistani stakeholders. The Human Rights Commission of Pakistan (HRCP) has highlighted in its annual report of 2018 the *'grim markers'* of the state of human rights in the country out of which religious persecution occupied the top place other being social media crackdown and sexual violence.³

DEFINITION OF INDIGENIOUS AND ETHNIC GROUPS

The term 'Human Rights' denote a wide spectrum of rights ranging from the right to life to the right to a cultural identity. They include preconditions for a dignified human life. These rights are inherent in all human beings irrespective of race, sex, nationality, ethnicity, language, religion etc. These rights are subject to violations and abuses such as observed for centuries in the State of Pakistan with respect to indigenous and ethnic groups. The term 'Ethnic group' refers to a social group or a category of the population that, in a larger society is set apart and bound together by common ties of race, language, nationality or culture.⁴ On the other hand, 'Indigenous people' view themselves as having a historical existence and identity that is separate and independent of the states now enveloping them. The United Nations Permanent Forum on Indigenous Issues has developed an understanding of the term on the following:⁵

- (i) Self – identification as indigenous peoples at the individual level and acceptance of the same by the community as a whole.
- (ii) Historical continuity with pre – colonial/pre – settler society.
- (iii) Strong link to territories and surrounding natural resources.
- (iv) Distinct social, economic or political systems.
- (v) Distinct language, culture and beliefs.
- (vi) Form non- dominant groups of society.
- (vii) Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

³ Pakistan watchdog slams 'grim' state of human rights, *available at: www.aljazeera.com*, (Last visited on Oct.12, 2019).

⁴ Ethnic group | Britannica.com, *available at: <https://www.britannica.com/topic>*, (last visited on Oct.13, 2019).

⁵ Who are indigenous peoples?, *available at: <https://www.un.org/factsheet>*, (last visited on Oct.13, 2019).

INTERNATIONAL INSTRUMENTS GOVERNING HUMAN RIGHTS IN PAKISTAN

The following International Conventions bind the State of Pakistan to oblige and adhere to the human rights and furtherance of the same with respect to international community as a whole:⁶

- (i) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was ratified by Pakistan on 21 September 1966.
- (ii) Pakistan voted in favour of The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007 but till present does not acknowledge the same.
- (iii) The International Covenant on Civil and Political Rights (ICCPR) was acceded by Pakistan on June 23, 2010.
- (iv) The International Covenant on Economic, Social and Cultural Rights (ICESCR) was acceded by Pakistan on April 17, 2008.
- (v) The Convention on the Prevention and Punishment of the Crime of Genocide was ratified by Pakistan on 12 October 1957.
- (vi) The Convention on the Rights of Child (CRC) was ratified by Pakistan on 12 November 1990.

VIOLATION OF THE RIGHTS OF INDIGENOUS PEOPLE IN PAKISTAN

Many Indigenous Peoples live within the borders of Pakistan, yet the government of Pakistan refuses to acknowledge Indigenous Peoples; instead referring to most Indigenous communities as ethnic minorities. The Koochis, Rebari, Bakarwal, Kehal, Jogi, Kabootra, Sanyasi and Kalash are Indigenous Peoples in Pakistan. Kalash has now been declared as a religion.

Pakistan has signed or ratified several international human rights treaties and declarations, including the International Covenant on Economic, Social and Cultural Rights (CESCR), International Convention on Civil and Political Rights (ICCPR), Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination. Pakistan voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007.⁷

⁶ List of International Treaties/Conventions Pakistan Has.....Ministry of Foreign Affairs, available at: [www.mofa.gov.pk>contentlist](http://www.mofa.gov.pk/contentlist), (Last visited on Oct.13, 2019).

⁷ United Nation General Assembly, Press Release, GENERAL ASSEMBLY ADOPTS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES' MAJOR STEP FORWARD', TOWARDS HUMAN RIGHTS FOR ALL, SAYS PRESIDENT, available at: <http://www.un.org/press/en/2007/ga10612.doc.htm> (last visited on Oct. 13, 2019).

ONGOING RIGHTS VIOLATIONS AGAINST INDIGENOUS PEOPLE

FORCED CONVERSIONS AND RESTRICTIONS ON RELIGIOUS FREEDOM (VIOLATION OF ARTICLES 1, 15 OF UNDRIP)

Article 1 deals with the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. Article 15 states the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Blasphemy law in Pakistan requires punishment (including life imprisonment and the death penalty) for any insult of Islam, the prophet, or the Quran. Religious extremists in the country continually lobby for the death penalty to be enacted in the case of blasphemy. Blasphemy law is related almost solely to Islam, ignoring the millions of non-Muslim citizens of Pakistan.⁸ The law is being misused, sometimes for personal revenge. “The majority of blasphemy cases were based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire (minority) community.”⁹

The Kalash Indigenous People face particular religious discrimination. They are Pakistan’s smallest religious minority. Travelling Islamic scholars travel to Kalash villages and attempt to forcibly convert the Kalash to Islam. This is a systematic and institutional affront to their Indigenous religious heritage. If Kalash children attend public school, they are only exposed to Islam. Additionally, Muslims have blamed the Kalash for recent natural disasters, seeing the destruction as a penalty for the Kalash “non-believers.”

CULTURAL APPROPRIATION (VIOLATION OF ARTICLE 15 OF UNDRIP)

In September 2016 “Parched”, an Indian film about four Rabari women, was released. The film, which featured Radhika Apte, a popular Indian actress as the lead was screened at the Toronto Film Festival in 2015. Leena Yadav wrote and directed Parched.

An individual from the Rabari Indigenous group approached the Gujarat High Court seeking a ban on the film.¹⁰ Members of the Rabari claim the film portrays the female Rabari characters in the film in crude light; damaging the Rabari reputation and culture. The film incorporates

⁸ “Blasphemy Law Review in Pakistan” *Open Doors USA*, Jan. 30, 2017.

⁹ Jacob Peter, “The blasphemy laws” *The News*, Feb. 6, 2016.

¹⁰ *Masarubhai Rinabbai Rabari v. Union of India*, Decided on 19th August, 2019.

traditional Rabari dress into the film and the film's characters are clearly represented as Rabari women.

Following the petition, the Gujarat High Court sought responses from the Central Board of Film Certification in Pakistan, the Information and Broadcasting Ministry as well as Leena Yadav. Yadav maintains that the film is a fictional work and that the costumes are a mix of Gujarati and Rajasthani costumes, and that the Rabari are not specifically named in the film. Yadav claimed the characters are not Rabari women.

The cultural appropriation occurring in "Parched" is in contravention to the UNDRIP. Article 15 states Indigenous Peoples have the right to dignity of their cultures and traditions. Furthermore, UNDRIP recognizes the importance of respect for Indigenous cultures which was violated in the above case.

LACK OF ACCESS TO INDIGENOUS LANGUAGE AND QUALITY EDUCATION (VIOLATION OF ARTICLES 3, 13, 15 OF UNDRIP)

Article 3 states the right of self-determination, Article 13 states the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. Pakistan has the second highest rate of out-of-school children in the world, with 20% of primary school age children out of school. In Pakistan, the highest percentages of out-of-school children are in Baluchistan and the Federally Administered Tribal Areas (FATA.) 70% of children who are out of school are poor girls from rural areas.

Security concerns are also a barrier to education. The Taliban routinely bomb schools whose curriculum is deemed too secular or Western. This disproportionately affects girls, who are more likely to be taken out of school due to an attack. The already poor infrastructure and lack of funding for schools make rebuilding difficult and in many cases unlikely.¹¹ Indigenous Peoples face discrimination in the school system, both in person and through the education materials.

INTERNATIONAL RESPONSE ON THE ABOVE ISSUE

Pakistan submitted a National Report on June 6, 2012, in preparation for the Second UPR (Universal Periodic Review) process. The national report noted that the National Assembly and

¹¹Dreams turned into Nightmares: Attacks on Students, Teachers, and Schools in Pakistan, *available at*: <https://www.hrw.org/report/2017/03/27/dreams-turned-nightmares/attacks-students-teachers-and-schools-pakistan>, (Last visited on Oct.13, 2019).

Senate have Standing Committees on Human Rights, aimed at monitoring human rights issues and making legislation recommendations.¹²

Several countries made recommendations broadly focused on human rights. During the second UPR cycle, **Jordan** recommended Pakistan “continue developing the institutional framework with respect to the promotion and protection of human rights.” Additionally, **Nicaragua** recommended Pakistan to harmonize its legislative domestic framework with international human rights instruments to which Pakistan is a party. **Ecuador** suggested Pakistan “incorporate human rights into public policies and strengthen the human rights institutions” Pakistan accepted these recommendations. Additional countries made recommendations made during the second UPR cycle that were adopted by Pakistan in May 2013. Those recommendations are: “Review and align the legislation with freedom of religion and belief and freedom of expression, as stipulated in the ICCPR” (**Sweden**), “Increase action to tackle violations of religious freedom especially, but not only, against members of religious minorities” (**Italy**), “Take appropriate, efficient measures to prevent discrimination and violence against religious minorities, bringing instigators to religious violence to justice.” (**Slovakia**), **Germany** suggested Pakistan “review public school curriculum in order to eliminate prejudice against religious and other minorities.

PAKISTAN’S RESPONSE VIA ITS REPORT DATED OCTOBER 16TH, 2015.¹³

The Pakistan State Report mentions many issues relevant to Indigenous People, but rarely refers to them directly, and typically as “ethnic minority groups.” The report outlines the country’s work on guaranteeing the following rights: self-determination, the right to work, equal access to justice, the right to fair conditions of work, the right to social security, protections for the family, the right to an adequate standard of living, the right to health, the right to education, and finally the right to cultural life.

The report emphasizes the importance of self-determination, stating that the government supports that right for “all peoples subjected to colonization, alien domination or foreign occupation, including the people of Indian Occupied Jammu and Kashmir (IOK) and the people of the occupied Palestinian and Arab territories in accordance with the relevant United Nations Security Council resolutions.” The report states that “in collaboration with other institutions and

¹² UN General Assembly, Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution, Pakistan, available at: https://www.uprinfo.org/sites/default/files/document/pakistan/session_14_-_october_2012/ahrcwg.614pak1e.pdf (Last visited on Oct.13, 2019).

¹³ United Nations Economic and Social Council. Report: “*Consideration of reports submitted by States parties under article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Pakistan.*” (Oct.16, 2015)

organizations, a number of steps have been taken for promoting the cultural life of indigenous people which includes celebrating Kalash traditional dance and dress.”¹⁴

VIOLATIONS OF THE RIGHTS OF ETHNIC GROUPS IN PAKISTAN

An ethnic group or ethnicity is a category of people who identify with each other, usually on the basis of a presumed common genealogy or ancestry or on similarities such as common language or dialect, history, society, culture or nation.¹⁵ Pakistan consists of various ethnic groups including Jatts, Rajputs, Punjabis, Pashtuns, Sindhis, Saraikis, Muhajirs, Baloch, Paharis, Hindkowans, Chitralis and other smaller groups which include Kashmiris, Kalash, Siddi, Burusho, Wakhis, Khowar, Hazara, Shina, Kalyu and Baltis.

In spite of being enriched with various ethnic groups, Pakistan has deprived such people several human rights. Ethnic groups experience discrimination in areas of politics, social and economic rights and lack of access to land, health, education and employment opportunities. Basic Human rights are not given to them. Pakistan ratified the **ICERD**,¹⁶ yet there has been very little improvement in the situation of those affected by caste and decent-based discrimination. The ethnic groups do not enjoy meaningful political participation. Recently a bill has been rejected by Pakistan National Assembly which proposed to allow a non-Muslim the President and Prime Minister of the country.

ONGOING RIGHTS VIOLATIONS AGAINST ETHNIC GROUPS

Religious extremism and **Talibanization of society** are the two main reasons for the disrespect of universality of Human Rights in Pakistan. An environment of fear has been created in the entire country because the Taliban have operated with impunity and hit their targets by choice.

Double Discrimination is faced by women belonging to ethnic groups as they are discriminated on the basis of their ethnicity as well as their gender which makes their condition even more miserable. Children are deprived of their cultural rights as the education system does not provide for imparting education in their mother tongue.

¹⁴ *Ibid.*

¹⁵ Oxford Dictionaries, Oxford University Press, Retrieved 28 December, 2013.

¹⁶ International Convention on the Elimination of All Forms of Racial Discrimination: A third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races.

FAILURES TO PROVIDE INFORMATION ON ETHNIC COMPOSITION

The census¹⁷ of Pakistan does not include 1.7 million naturalized refugees from Afghanistan found in Khyber Pakhtunkhwa and in cities of Karachi and Quetta.

Pakistan has failed, to provide demographic information relating to 'race, color, descent and national or ethnic origin' of groups as per the Committee's request in its 1997 Concluding Observations.¹⁸ Thus, in the absence of such information, effective measures can never be taken to improve the condition of ethnic groups.

NON-RECOGNITION OF 'ETHNIC' GROUPS LEADING TO DISCRIMINATION

Pakistan restrictively recognises "minorities" as only '3.72 per cent of the total population which consist of Christians, Hindus, Ahmadis, Parsis, Buddhists and Sikhs.' As a result, there is an inherent discrimination on the basis of ethnicity. Also, Public Administration recognizes only English and Urdu as official languages which further the discrimination.

HUMAN RIGHTS SITUATION IN SMALLER PROVINCES

Due to short sightedness of law and policy framework, the plight of ethnic groups in smaller provinces is pathetic.

Northern Areas- Here, the judicial system is under the bureaucratic control and thus does not guarantee fundamental rights to the people. **Gigot District** has seen a violent scene of sectarian clashes, where Shia community was mostly at the receiving end.

Balochistan- Here the situation has been extremely worrying since 2005 when action by army started. Hundreds of lives were lost including the killing of 79-year-old **Akbar Bugti**, tribal chief and the head of the Jamhoori Watan Party (JWP), who served as Chief Minister and Governor of Balochistan, in August 2006. **Balach Mari**, the son of another tribal chief was killed on 25 November 2007. **Nawab Khair Bux Mari** was imprisoned because of disagreement with establishment policies though on a charge of murder of a judge. He was denied medical treatment during the detention. **Akhtar Mengal**, who heads the Balochistan National Party (BNP) and is, like his father, a former Balochistan Chief Minister, was imprisoned in November

¹⁷ Census Report of Pakistan 1998, Pakistan Census Organization, Government of Pakistan, *available at:* http://www.statpak.gov.pk/depts/pco/statistics/other_tables/pop_by_mother_tongue.pdf , (Last Visited on October 13th, 2019)

¹⁸ Concluding Observations of the CERD on Pakistan (CERD/C/304/Add.25), 23 April 1997

2006 on account of terrorism. An anti-terrorism court convicted four of his security guards in December 2006, a month after he was arrested on the eve of a BNP protest rally against military operations and the illegal detention of Baloch activists. He was released in 2008.

Siraiki language and people- It is situated in Southern Punjab and the people there have been deprived of control over their resources; revenues and land, right to have primary education in mother tongue, and identity.

Scheduled caste Hindus- Official statistics claim that scheduled caste Hindus represent 0.25% of Pakistan's total population which has been contested as being understated and is more than two million. Thus without proper numbers, discrimination is evident.

Tribal Areas- These people are deprived of economic, social and political rights. Constitutional prejudice is prevalent due to arbitrary administrative structure where the President enjoys unfettered control. The federal and provincial judiciaries lack jurisdiction in the Federally Administered Tribal Areas (FATA) and no act of parliament is applicable. The FATA are governed under a 'parallel judicial system', the pre-independence Frontier Crimes Regulation of 1901 (FCR) imposed by the British on the unruly Tribal Areas for the 'suppression of crime by infliction of the severest possible penalty,' which allows for collective punishment for individual crimes and authorizes tribal leaders to administer justice according to tribal custom.

Pakistan with regards to the tribal Pakhtun people is in plain contravention of its obligations under ICERD **Article 2(1)(d)**¹⁹ as it has failed to initiate any 'integrationist multiracial organizations and movements and other means of eliminating barriers between races.' and 'maintenance of unequal or separate rights' under **Article 2(2)**.²⁰

¹⁹ **Article 2(1)(d)** states that the States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

²⁰ Article 2(2) states that the States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Genocide convention²¹ has also been violated by Pakistan as killing of the members of ethnic group is evident. **Article 27 of ICCPR** states that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. This has been clearly violated by Pakistan. **Article 13 of ICESCR** which provides for equal educational opportunities for ethnic groups is also not being observed.

PAKISTAN'S INITIATIVES

Pakistan claims to have taken several measures in order to protect ethnic groups such as the creation of **Ministry of Human Rights** which has been separated from the Ministry of Law and Justice on November 3, 2008, establishment of a separate **Ministry for Minorities** and **National Commission of Minorities** to protect the rights of minorities as envisaged in the Constitution of Pakistan, special welfare funds which are operative since 1985. However these measures have proved to be ineffective to improve the situation.

INTERNATIONAL REACTIONS

The US government has expressed alarm at the reports of thousands Baloch separatists and Taliban insurgents disappearing into the hands of Pakistan's security forces and possibly being tortured or killed. Member of the European Parliament Marc Tarabella, in an article in The Parliament Magazine in 2015, wrote, "The main victims of this violence are the people of Balochistan who are being systematically targeted by paramilitary groups, allegedly sponsored by the Pakistani authorities. Extra-judicial killings and enforced disappearances are the most common practices".

During an all-party meeting in Delhi in 2016, Indian Prime Minister Narendra Modi said that Pakistan "shall have to answer to the world for the atrocities committed by it against people in Baluchistan." Former President of Afghanistan Hamid Karzai, also interviewed by the press while in India, appreciated Modi for his comments on Balochistan, and said that, "In Balochistan there is extreme suffering at the hands of extremists promoted by state structures in Pakistan. Therefore

²¹ Article II states that In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

the people's concerns need to be addressed and aired." In the 33rd session of the United Nations Human Rights Council, India raised the issue of human rights violations in Baluchistan, saying that "the people of Balochistan, amongst other provinces, have been waging for decades a bitter and brave struggle against their daily abuse and torture."

CONCLUSION

Human Rights simply amounts to a theoretical perspective in context of the alarming situation of recent Pakistan as is evident from its violation in every sphere of lives. The present reality of Pakistan proves that a representative government is essential for a democratic practice; it is not enough if the executive, judiciary and the legislature fail to play their respective roles to ensure constitutional and international norms of human rights with respect to minority groups. In such a situation an undemocratic and dictatorial nature of power manifests in different ways and there arises inequality in resource allocations, decentralization of power, increasing militant violence and the need of the hour is to uphold the rule of law, removal of political biasness, reinforce the functionality of state institutions and thus ensuring transparency and accountability in all functions and transform into a civilized nation where there is equal space and respect for each cult and religion.