

**SOUTH ASIA**  
**STATE OF MINORITIES**  
**REPORT 2016**

Mapping the Terrain



THE SOUTH ASIA COLLECTIVE

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# Acknowledgements

The idea of the South Asia State of Minorities Report 2016 was born in September 2015, with a small group of minority and human rights researchers and activists from across South Asia, deciding to come together to produce a periodic people's report, to systematically document and track the condition of South Asia's minorities and their access to rights guaranteed by international minority and human rights instruments. This is the South Asia State of Minorities Report Collective (in short: The South Asia Collective).

The goal that the collective set for itself was to contribute to advocacy for establishing South Asia wide minority and human rights standards and instruments, through building a body of evidence, and stimulate debate and discussion. An associated objective was to galvanise civil society, across the region, around minority, including human rights protection and aid in their advocacy work. The hope is that the process of periodic documentation and reporting will help give voice to minority groups and CSOs, in a region whose minorities are much violated, to demand their rights as equal citizens.

Our journey, from inception to conclusion of this first edition of the South Asia State of Minorities Report (2016), has been a most remarkable one. Notably, it has been a labour of love, with members of the collective giving their expertise and time freely, to produce what we commonly believe should be a public good – available to all South Asians and those interested in the region and its peoples, as a step towards making South Asia more caring, just, and peaceful. We have been generously helped in this endeavor by a host of friends and allies.

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We dedicate this first edition of the South Asia State of Minorities Report to justice and peace in South Asia.

### **The South Asia State of Minorities Report Collective**

*(with the following founding members)*

Law and Society Trust, Colombo  
Misaal - Centre for Equity Studies, New Delhi  
Nagorik Uddyog, Dhaka  
National Commission for Justice and Peace, Lahore  
Omar Sadr, Kabul-Delhi  
Social Science Baha, Kathmandu  
Women in Struggle for Empowerment, Lahore

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# Abbreviations

AAN	: Afghanistan Analysts Network
AFSPA	: Armed Forces Special Powers Act
AIDWA	: All India Democratic Women's Association
AIHRC	: Afghanistan Independent Human Rights Commission
AIPP	: Asian Indigenous People's Pact (AIPP)
ALRD	: Association of Land Reform and Development
AMA	: Assessment and Monitoring Authority
AMU	: Aligarh Muslim University
ANA	: Afghanistan National Army
APAMR	: Afghan Professional Alliance for Minority Rights
APDP	: Association of Parents of Disappeared Persons
APHRM	: All Pakistan Hindu Rights Movement
ASCPA	: Anti-State Crimes and Penalties Act
ASEAN	: Association of South East Asian Nations
ASK	: Ain o Salish Kendra
BBC	: British Broadcasting Corporation
BBS	: Bodu Bala Sena
BCS	: Bangladesh Civil Service
BDERM	: Bangladesh and Excluded Rights Movement
BDHR	: Bangladesh Dalit Human Rights
BJP	: Bharatiya Janata Party
BMMA	: Bharatiya Muslim Mahila Andolan
BNBEIS	: Bangladesh Bureau of Educational Information and Statistics
BNP	: Bangladesh Nationalist Party
BSE	: Bombay Stock Exchange
BSP	: Bahujan Samajwadi Party
BSSMU	: Bangabandhu Sheikh Mujib Medical University



CCITPIC	: Convention Concerning Indigenous and Tribal Peoples in Independent Countries
CDO	: Chief District Officer (CDO)
CDP	: community development project
CEDAW	: Convention on Elimination of all forms of Discrimination Against Women
CEFDAAW	: Convention on the Elimination of all Forms of Discrimination Against Women
CERD	: Convention on the Elimination of all Forms of Racial Discrimination
CESCR	: Committee on Economic, Social and Cultural Rights
CESLAM	: Centre for the Study of Labour and Mobility
CHRI	: Commonwealth Human Rights Initiative
CHT	: Chittagong Hill Tracts
CIA	: Central Intelligence Agency
CLO	: community-led organizations
CoE	: Council of Europe
CPA	: Centre for Policy Alternatives
CPA	: Comprehensive Peace Agreement
CPC	: country of particular concern
CPI	: Communist Party of India
CRC	: Convention on the Rights of the Child
DDPA	: Durban Declaration and Programme of Action
DfID	: Department for International Development
DFO	: District Forest Officers
DPT	: Diphtheria Polio Tetanus
EFA	: Education for All
EFI	: Evangelical Foundation of India
ESDFP	: Education Sector Development Framework and Programme
ETPB	: Evacuee Trust Properties Board
FATA	: Federally Administered Tribal Areas
FCRA	: Foreign Contribution Regulation Act

FIR	: First Information Report
FPTP	: first past the post
GCTOC	: Control of Terrorism and Organized Crime Bill
GDP	: Gross Domestic Product
GEED	: Gender Equity and Environment Division
GESI	: Gender Equality and Social Inclusion
GRB	: Gender Responsive Budget
HDI	: Human Development index
HDR	: Human Development Report
HRC	: Human Rights Council
HRCP	: Human Rights Commission of Pakistan
HRW	: Human Rights Watch
IC	: Interim Constitution
ICCPR	: International Covenant on Civil and Political Rights
ICDS	: Integrated Child Development Services
ICEAFRD	: International Convention on the Elimination of All Forms of Racial Discrimination
ICES	: International Centre for Ethnic Studies
ICESCR	: International Covenant on Economic Social and Cultural Rights
ICPPCG	: International Convention on the Prevention and Punishment of the Crime of Genocide
IDSN	: International Dalit Solidarity Network
IIDS	: Indian Institute of Dalit Studies
ILO	: International Labour Organisation
IMR	: Infant Mortality Report
INC	: Indian National Congress
IOT	: Indian Origin Tamils
IPC	: Indian Penal Code
IPTK	: Indian Peoples Tribunal for Kashmir
JJA	: Juvenile Justice Act
JMB	: Jamaat-ul-Mujahideen Bangladesh

JMI	: Jamia Millia Islamia
JNNURM	: Jawaharlal Nehru Urban Renewal Mission
JTSA	: Jamia Teachers' Solidarity Association
LeJ	: Lashkar-e-Jangvi
LGBT	: lesbian, gay, bisexual and transgender
LST	: Law and Society Trust
LTTE	: Liberation Tigers of Tamil Eelam
MCD	: Minority Concentrated District
MDG	: Millenium Development Goals
MEI	: Multidimensional Exclusion Index
MJF	: Manusher Jonno Foundation
MMR	: Maternal Mortality Rate
MP	: Member of Parliament
MPCE	: Mean Per Capita Consumption Expenditure
MRG	: Minority Rights Group
MSDP	: Multi-sectoral Development Programme
NCJP	: National Commission for Justice and Peace
NCM	: National Commission for Minorities
NCPR	: National Centre for Policy Research
NCRB	: National Crimes Records Bureau
NDA	: National Democratic Alliance
NEFIN	: Nepal Federation of Indigenous Nationalities
NEP	: National Education Policy
NEP	: New Education Policy
NGO	: non-government organisation
NHDR	: Nepal Human Development Report
NHFS	: National Family Health Survey
NRHM	: National Rural Health Mission
NRVA	: National Risk Vulnerability Assessment
NSAPR	: National Strategy for Accelerated Poverty Reduction

NSIS	: Nepal Social Inclusion Survey
NSSO	: National Sample Survey Organisation
OAA	: Office of Administrative Affairs
OAP	: old age pension
OfSCE	: Organization for Security and Cooperation in Europe
OHCHR	: Office of High Commissioner for Human Rights
PAF	: Pakistan Air Force
PCA	: Police Complaints Authority
PDSN	: Pakistan Dalit Solidarity Network
PIL	: Public Interest Litigation
PILER	: Pakistan Institute of Labour Education and Research
PPP	: Pakistan Peoples Party
PR	: proportional representation
PSA	: Public Security Act
RJD	: Rashtriya Janata Dal
RSS	: Rashtriya Swayamsevak Sangh
SAARC:	South Asian Association for Regional Cooperation
SAFHR	: South Asian Forum for Human Rights
SAHR	: South Asians for Human Rights
SAHRDC	: South Asia Human Rights Documentation Centre
SATP	: South Asia terrorism Portal
SC	: Scheduled Caste
SCSP	: Scheduled Caste Sub Plan
SEHD	: Society for Environment and Human Development
SEZ	: Special Economic Zone
SLIDA	: Sri Lanka Institute for Development Administration
SNTV	: single non-transferable vote
SSRP	: School Sector Reform Programme
ST	: Scheduled Tribe
SVRS	: Sample Vital Registration System

TC	: Trinamool Congress
TFR	: total fertility rate
TSP	: Tribal Sub Plan
U5MR	: under-5 mortality rate
UAPA	: Unlawful Activities Prevention Act
UDHR	: Universal Declaration of Human Rights
UNDM	: United Nations Declaration on Minorities
UNDRIP	: United Nations Declaration of the Right of Indigenous Peoples
UNHRC	: United Nations Human Rights Council
UNICEF	: United Nations International Children Emergency Fund
UNPFII	: United Nations Permanent Forum on Indigenous Issues
UPR	: universal periodic review
USCIRF	: United States Commission on International religious Freedom
VDC	: Village Development Council
VPRA	: Vested Property Return Act
WCAR	: World Conference Against Racism
WISE	: Women In Struggle for Empowerment
WPR	: workforce participation rate

## Note on Contributors

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## **Introduction**

# **Minority Rights in South Asia – Rough Road to Citizenship**

*Sajjad Hassan*

Despite many years of sustained growth and development interventions in South Asia, development indicators for the region remain dismal. The region, accounting for a fifth of the world's population, is one of its poorest parts (*see Table 1*). It is also where civil and political rights are severely restricted, with frequent reports of human rights violations across the region (Chakma, 2006:1; the World Bank 2009: 93).

Media reports, civil society programme reports, research studies and the odd official report, however limited, point to South Asia's minorities – religious, ethnic, linguistic and gender - being among the poorest and most vulnerable sections in the region; they are also victims of most conflicts and violence and atrocities by state and non-state actors. South Asia's minorities thus suffer doubly:

South Asia is characterized by its large population, growing poverty, weak governance structures and feeble democratic institutions, increasing militarization and sectarianism.... Governments in South Asia have pursued national security through destructive military apparatuses, rather than (seeking) security for citizens by actualizing their creative potential.... Most important, the nations of South Asia are still in search of a social contract that can satisfy their people, regardless of gender, faith, ethnicity or religion (Nepali, 2009:4).

Along with some of the oldest civilizations in the world, South Asia includes some of its poorest countries. Civil war, ethnic tension, religious persecution and terrorism are but some of the ailments of this region, as are the abuse of



**Table 1. South Asia development indicators**

	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka	South Asia	Developing Countries
Population, 2010 (million)	28	151	0.72	1206	0.33	26.8	173	20.7	1609	-
Life expectancy at Birth, 2010	60	69	67	66	77	67	66	74	66	68
Adult literacy (2011)	32	59	-	63	98	57	55	91	61	80
Female literacy (2011)	18	55	-	51	98	47	42	90	50	75
Infant Mortality Rate, 2010	75	39	34	46	11	36	73	9	48	41
Gross Domestic Product per capita, 2011 (\$)	1,637	2,459	6,516	4,638	10,681	1,999	4,220	7,572	4,331	7,347
Pop. below \$1.25 a day, PPP%, 2010		43.3	10.2	32.7	-	23.7	17.2	4.1	31.5	19.2
Human Development Index, 2010	0.453	0.539	0.569	0.570	0.688	0.527	0.526	0.736	0.562	-
Gender Inequality Index, 2010	0.720	0.539	-	0.590	0.350	0.496	0.561	0.408	0.616	-

Source: Tabulated by author from Mahmudul Haq Human Development Centre (2015: (246-247, 264)

government power, censorship, and human rights violations. Disappearances, torture, police abuse... these are common practices in the nations of South Asia (the World Bank, 2009:93).

It is evident that the condition of minority communities in South Asia is grim. K.N. Panikkar (2005: 1) summarizes the situation as:

The increasing infringement of the rights of minorities in the countries of South Asia ... has been a matter of considerable concern. ...In fact, the history of minorities in South Asia is a history of increasing discrimination and deprivation.....

Questions about the rights of minorities (as citizens deserving equal treatment and as minority groups deserving special rights for the protection of their identity) and the safeguards necessary to ensure them are central here (*see Box 1*).

Let us look at some recent evidence on the conditions of specifically South Asia's minorities. In the absence of any authoritative and standardized reports on the situation of minorities in the region we have to rely on the evidence that is available. The United States Commission on International Religious Freedom (US Commission on International Religious Freedom, 2015) reports on foreign governments with serious abuses of religious freedom. Its 2015 report included five of the eight countries in South Asia as demonstrating serious concerns, either perpetrating or tolerating abuse of religious freedom. Pakistan was categorized as Tier 1 (most serious) recommended country of particular concern (CPC),<sup>1</sup> one of the 17 countries that according to the report meet this level. India and Afghanistan were both Tier 2,<sup>2</sup> two of the eight so identified by the report. Bangladesh and Sri Lanka were among the other six countries studied by the 2015 report, signifying concerns with regard to religious freedom there.

The Minority Rights Group publishes its annual Peoples Under Threat Index - a global ranking of countries most at risk of genocide and mass killings based on a set of indicators that are a combination of risks suffered by minority groups and the safeguards available to check mass violence (Minority Rights Group, 2016a). Its 2016 report lists two South Asian

1. 'any country whose government engages in or tolerates particularly severe violations of religious freedom that are systematic, ongoing and egregious' (CPC: 5).
2. 'includes countries where the violations engaged in or tolerated by the government are serious and are characterized by at least one of the elements of the "systematic, ongoing, and egregious" standard, but do not fully meet the CPC standard' (CPC: 5).

### **Box 1. Why are minority rights important?**

There are two aspects to minority rights: Firstly, minority rights are central to the democratization project; secondly, and following from that, minority rights are a tool of inclusive development.

#### ***a. Minority rights as central to the democratization project***

‘An important dimension to promoting an equitable, just and inclusive democratic ethos and fashioning institutions and practices intended to entrench it, is the protection and promotion of minority rights’ (Salter, 2011: 5). As a corollary, it has also proved to be a tool for conflict prevention. The post-Cold War eruption of ethnic conflicts across Europe, Africa and Asia reflected in many ways the failures of states to tackle minority demands, concerns and grievances. This resulted in heightened attention to minority rights’ protection and promotion – most advanced in Europe where over the past 20 years multilateral structures, notably the Council of Europe and the Organization for Security and Cooperation in Europe’s (OSCE’s) High Commissioner for Minority Rights, have assumed a leading role both in developing new regional instruments for promoting the protection of minority rights and in monitoring their implementation on the ground.<sup>1</sup> According to the Council of Europe (1995: 2), the grounds for devising a minority rights charter were an understanding based on upheavals of European history that ‘the protection of national minorities is essential to stability, democratic security and peace in this continent.’ It was hoped that the climate of tolerance and dialogue that these measures would enable would result in a situation where, ‘cultural diversity is seen to be a source and a factor, not of division, but of enrichment for each society.’ In other words, the ability of minorities to express, preserve and develop their ethnic, cultural, linguistic and religious identities is a hallmark of a genuinely plural and democratic society (Council of Europe, 1995).

These arguments are as valid today as they were in the past. As the Minority Rights Group (MRG) (2013: 3) notes, ‘levels of inter-community and religious tensions are again rising fast. The resurgence of ethnic and religious nationalism, fractures associated with the “war on terror” and a backlash at growing levels of migration have all placed minority communities under renewed threat.’ There is much that South Asian societies can learn from the past in terms of use of minority rights as they seek to prevent conflicts and for deepening democracy.

... contd. ...

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1. A key example in this respect is OSCE’s 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life (see <http://www.osce.org/hcnm/32240>). The Lund Recommendations have since become a central reference document for law and policymakers in the OSCE region and a widely cited model for how to develop policy in this area in other parts of the world.

...Box 1 continued ...

### ***b. Minority rights as instrument of inclusive development***

Minority rights also have a more direct role to play in promoting inclusivity. Research is showing that ‘a large and growing proportion of those communities left behind in the race to meet the millennium development goals (MDGs) are in fact minorities and indigenous peoples, with poverty rates typically double, the national’ (Minority Rights Group, 2013:3). According to Rita Izak, UN’s Special Rapporteur on Minority Rights, ‘inequality, discrimination and poverty, disproportionately impact persons belonging to minorities who constitute hundreds of millions of the most economically and socially disadvantaged globally’ (United Nations, 2014).

There are specific reasons for this. Minority communities – who represent excluded and marginalized sections – are unable to challenge systemic patterns of discrimination and disadvantage that keep people in poverty because being minorities they ‘...often lack the power, social or legal standing, or access to decision- making required to challenge their disadvantaged status...’ (Mepham, 2014).

This brings us to the MDGs, the principle framework of the global fight against poverty. MDGs have achieved a great deal in directing attention and resources towards the fight for social and economic rights. But the criticism has been that because they prioritized social and economic rights (literacy, health, sanitation and so on) to the exclusion of civil and political rights (democratic participation and/or political freedom specifically); defined goals in technical terms that could be easily achieved and measured; and focused on aggregate whole-country/unit level improvements, MDGs have had little impact on the most disadvantaged sections of society. Aggregate outcomes may have improved (on health, education, incomes) but many sections have been left behind resulting in unequal development. This is truer of South Asia than other regions. Minorities make up large sections of those who have been left behind in the region even though sustained growth and development efforts might have helped society as a whole in improving their conditions. Izak’s point made in general terms applies especially to the region: ‘One of the reasons states failed to reach their development targets was because the MDGs did not sufficiently take into account persons belonging to minorities’ (United Nations, 2014).

The post-2015 development agenda seeks to chart a new course planning to focus attention on addressing inequalities through targeted interventions to bring hard to reach sections out of poverty and also focusing attention on civic and political rights to address the root cause of poverty so as to challenge discrimination and exclusion. Minority communities are a core constituency for this work. Hence, this is a good time to be talking about minority rights of equality, non-discrimination and effective participation, among others, in South Asia.

**Table 2. Status of ratification of major relevant international instruments**

1	2	3	4
	International Convention on the Prevention and Punishment of the Crime of Genocide (1948)	International Convention on the Elimination of All Forms of Racial Discrimination (1965)	International Covenant on Civil and Political Rights (1966)
Afghanistan	✓	✓	✓
Bangladesh	✓	✓	✓
Bhutan		✓	
India	✓	✓	✓
Maldives	✓	✓	#
Nepal	✓	✓	#
Pakistan	✓	✓	✓
Sri Lanka	✓	✓	#

Source: Tabulated by the author from the Minority Rights Group (2014: 226-228).

Note: ✓ : Ratified; \*: Signature not yet followed by ratification;

#: Ratification of ICCPR and the Optional Protocol

countries - Afghanistan and Pakistan - having serious threat, and Sri Lanka as posing a middle level threat (Minority Rights Group, 2016b). Notably, safeguards against 'threats' that include voice and accountability, political stability and rule of law were weak or non-existent all across the region. The Minorities at Risk project also reports on conditions of minorities under severe threat. A long list of ethnic and religious groups from South Asia find mention in the project's reports all at risk of violence and violations of basic rights of minority groups.<sup>3</sup>

Negative outcomes for minority groups in South Asia represent failures of national instruments for minority rights (constitutional guarantees of equality and non-discrimination among others) as well as of poor

3. Minorities at Risk Project – mostly ethnic conflicts, armed conflict, hence Kashmiris, Nagas, Mizos, Assamese in India; Balochs in Pakistan; Pashtuns in Afghanistan; Tamils in Sri Lanka; and indigenous tribals in Bangladesh.

5	6	7	8	9
<b>International Covenant on Economic Social and Cultural Rights (1966)</b>	<b>Convention on the Elimination of all Forms of Discrimination Against Women (1979)</b>	<b>Convention on the Rights of the Child (1989)</b>	<b>ILO 111 Discrimination (Employment and Occupation) Convention (1958)</b>	<b>ILO169 Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989)</b>
✓	✓	✓	✓	
✓	✓	✓	✓	
	✓	✓		
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	✓
✓	✓	✓	✓	
✓	✓	✓	✓	

enforcement of international treaties and agreements, instruments that most South Asian nations are signatories to (*see Table 2*). Rule of law is flouted with regularity – there is only selective application of laws – and citizenship rights are not yet available fully equally to all as minorities are often denied these, fully or partially. The issue at hand is a ‘democracy deficit’ which calls for a new approach to delivering minority rights.

Beyond the weaknesses of minority rights’ protection and promotion regimes which is common to states in South Asia, is another unique feature of minority rights in the region - its regional dimension. Many ethnic groups and communities are divided across national borders, themselves often artificial and arbitrary and mostly recently created, dividing long-established communities. Then there have also been significant intra-regional migrations historically. Some migration streams are on-going. These regional dynamics contribute to creating majorities and minorities and also contributing to a feature of the region where a majority community in one country could be a minority in another. This under-grades the issue of ‘reciprocity’ where the treatment of a minority in one country is contingent

on how minorities are treated in another, or subject to bilateral relations between two countries. All these have implications for the condition of South Asia's minorities and the rights available to them.

The regional dynamics of minorities in India, Pakistan and Bangladesh (given their common experience of the Partition in 1947 and the creation of Bangladesh in 1972) and how it affects respective minorities – Muslims in India, Hindus and Sikhs in Pakistan and Hindus and 'Urdu speakers' in Bangladesh - is well-known. A similar dynamic exists between India and Sri Lanka too impacting largely the Tamil minority in Sri Lanka; between India and Nepal, affecting Madhesis in Nepal and Nepalis in India; between Nepal and Bhutan, affecting Bhutan's largest minority, Ngalungs; and finally between Pakistan and Afghanistan, the Pashtun minority in Pakistan being the main one affected. Clearly minority rights in South Asia are also a trans-border issue.

And yet, there is no South Asia regional instrument for minority rights' protection, though regional and sub-regional instruments are common elsewhere (*see Boxes 2, 3 and 4 for a list of the International instruments and mechanisms for minority rights protection*). The absence of an effective forum for peaceful dialogue on minority rights results in accusations and counter accusations between countries and lack of traction on redress leading to endemic violations of minority rights. There is also little systematic tracking and reporting at country and regional levels of the state of minorities and the violation of their rights in the region.

There are also very few studies on minority rights – academic or scholarly - that either compare or at least use a regional lens. And civil society space for advocacy, region-wide, is limited. Together, this means that the opportunities for spurring public debate in the region on the subject are lost and there is little push on states to improve rights' precepts and practices. But today the justifications for using a regional lens to look at minorities, even comparing and contrasting their conditions, is compelling.

Given the regional dynamic of minority rights violations in South Asia it is our contention that a regional, multilateral approach to constructing and entrenching minority rights' safeguards might be better suited to protect minorities, than national or international approaches that are clearly failing. A regional lens shifts the nature of the debate from the ethnic/religious character of a group (and its implications for the group's demands on the nation-state) to one of democratic rights and citizenship, equality and

non-discrimination – something that all South Asian states claim to provide. And a regional agenda on minority rights (with its implications for cross-border ‘reciprocity’) is also less threatening for South Asian states than the human rights agenda which is seen by states in the region as a foreign imposition.

There are other arguments too for a regional approach. Minority rights today are understood to be no longer the sole preserve of the nation-state. Regional and international instruments and mechanisms for minority rights along with human rights are now legitimate platforms for discussions and problem solving. In the context of South Asia’s minorities, with their strong regional dimensions, resorting to such a supra-national approach is all the more urgent. In any case, this is not the first time that national borders have been transcended in the region in finding solutions to minorities’ plight. Various bilateral agreements (between South Asian nations) on the question of minorities speak of this history (*see Box 5*).

There is also much learning to be imbibed using a regional approach. The world over, regional mechanisms have been the principle pathways building on UN mechanisms for establishing and monitoring minority rights’ standards and practices – a good example being Europe. South Asia lacks such a mechanism.

The principal official platform in the region is the South Asian Association for Regional Cooperation (SAARC), established in 1985 when seven South Asian nations signed the SAARC Charter. Afghanistan joined a little later. Commentators note that in its early years SAARC avoided any reference to ‘contentious’ issues – protection of human rights is not even mentioned in the SAARC Charter (Khan and Rahman, 1999: 93).

The Minority Rights Group (2016c) notes:

SAARC has not adopted any human rights convention or charter. It has not agreed to create any regional institution or mechanism to monitor adherence to, and implementation of, the various UN human rights conventions already signed by its member countries. Although member states have introduced ‘human rights’ into their official discourse in relation to the Charter, it has been limited to the right to development.

Overall, SAARC has established a number of conventions though none of them specifically mentions minorities or minority rights. Of the six conventions, two are directly related to suppression of terrorism, one is on narcotic



## **Box 2. Regional instruments on minority rights**

African Charter on Human and People's Rights (2003) African Charter on the Rights and Welfare of the Child (1990)
American Convention on Human Rights (1969) Additional protocol, re economic social and cultural rights (1988)
European Charter for Regional or Minority Languages (1992) European Framework Convention for the Protection of National Minorities (1995)
ASEAN Charter (2007) ASEAN Intergovernmental Commission on Human Rights (2009)
Arab Charter on Human Rights, 2008 Arab Human Rights Committee

*Source: Tabulated by the author from the Minority Rights Group (2014:222-233) and United Nations (2012:87-88).*

## **Box 3. International instruments for minority rights protection**

### **1. Convention on the Prevention and the Punishment of the Crime of Genocide**

Adopted in 1948, this was the first international attempt to affirm the rights of minorities to exist '...by outlawing the physical or biological destruction of national, ethnic, religious or racial group, this instrument formally recognized the right of minority groups to exist as group, which surely must be considered as the most fundamental of all cultural rights.'

### **2. Convention on the Elimination of all Forms of Racial Discrimination (CERD).**

Adopted in 1965, CERD is best known for prohibiting discrimination on the basis of 'race, colour, descent, national or ethnic origin,' and provides for special measures for the advancement of racial or ethnic groups – an implicit acknowledgment of minority rights.

### **3. International Covenant on Civil and Political Rights (ICCPR)**

ICCPR was adopted by the UN General Assembly in 1966. Article 27 of this legally binding instrument is the first international norm that universalizes the concept of minority rights:

*... contd. ...*

...Box 3 continued ...

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.

But the rights guaranteed under this provision must be asserted individually.

Other provisions in ICCPR that have considerable relevance in protecting the rights of minority groups include, inter alia, the principle of non-discrimination (Article 2); freedom of thought, conscience and expression (Article 18); freedom of expression (Article 19); prohibition against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence (Article 20[2]); freedom of association (Article 22); right to equal suffrage and equal access to public service (Article 25); and equality before the law (Article 26).

#### ***4. Convention on the Rights of the Child (CRC).***

Among the core human rights treaties with universal scope only CRC contains a provision (apart from Article 27 of ICCPR) specifically addressing the rights of minorities. Its Article 30 reads:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

#### ***5. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)***

Adopted by the UN General Assembly in 1992, UNDM is the first instrument devoted exclusively to minority concerns. It is inspired by Article 27 of ICCPR, but goes on to elaborate and add to the rights. Although a non-binding instrument, UNDM carries considerable moral authority. It is a comprehensive document, setting out both rights of persons (Article 2) and duties of the states (Articles 1, 4 and 5). Whilst rights are set out as rights of individuals, duties of states are formulated, in part, as duties towards minority groups.

drugs and another is on criminal matters. In 2002, two human rights instruments were included: promotion of child welfare and preventing and combating trafficking in women and children for prostitution. In 2004, the SAARC Social Charter was signed with 21 objectives. They mostly relate to cultural, social and economic issues; there are none on political or human rights although some have a bearing on minority rights. Notably, and reflective of SAARC's effectiveness, there is little traction on implementation of even the current regional agreements (Khan and Rahman, 1999:93-94).

To be fair, SAARC has been acknowledged to have encouraged people-to-people contact in the region especially the growth of multiple stakeholders groups although it has been criticized for allowing very little official and sustained contact on the part of civil society actors. But its failures with state parties are more disabling. There has been little traction from state parties or the media on the SAARC agenda. SAARC also lacks the implementation ability to convert agreements into roadmaps for action working multilaterally. SAARC also lacks a mechanism to settle disputes within its organization, something that has hindered the development of a regional South Asian concept of peace and security (Minority Rights Group, 2016c).

What of civil society efforts towards strengthening rights' frameworks in the region? The first serious effort by civil society bodies from the region in this direction came with the organizing of the South Asian Forum for Human Rights (SAFHR) in Kathmandu in 1998. The conclave that had participants from all SAARC countries, urged states to:

- create an office of a special rapporteur for monitoring minority rights
- adopt a South Asian Charter for Human Rights
- establish a South Asian Human Rights Commission
- establish a forum for monitoring and preparing a people's report on the status of the condition of minorities

These have remained mere wishful thinking. Little headway has been made by civil society groups to successfully lobby member states and SAARC to adopt these issues for official engagement and implement the recommendations.

Another notable attempt in this direction was the drafting of a Statement of Principles on Minority and Group Rights in South Asia by the

## **Box 4. International mechanisms for minority rights protection**

### **1. The Commission on Human Rights (CHR)**

The CHR is the highest ranking UN forum dedicated to human rights; it was set up in 1946 by the Economic and Social Council (ECOSOC) as one of its subsidiary bodies. CHR's initial terms of reference included submission of proposals, recommendations and reports to ECOSOC concerning the protection of minorities. CHR was abolished in 2006 and converted to the Human Rights Council (HRC), a subsidiary body of the General Assembly.

### **2. Sub-commission on the Promotion and Protection of Human Rights (till 2007) and the Human Rights Council Advisory Committee (since 2007)**

Both these bodies are made up of experts.

### **3. Working Group on Minorities (till 2007) and Forum on Minority Issues (since 2007).**

The only minority specific UN body.

### **4. Independent Expert on Minority Issues (IEMI) in 2005.**

IEMI is the first procedure mandate for minority issues. In its early works, it has focused on three broad strategic objectives:

increasing the focus on minority communities in the context of poverty alleviation, development and MDGs;

increasing an understanding of minority issues in the context of promoting social inclusion and ensuring stable societies; and

mainstreaming the consideration of minority issues within the work of the UN and other important multilateral forums.

IEMI functions under the auspice of the Human Rights Council.

### **5. Human Rights Treaty Bodies**

The following are committees of particular relevance for the implementation of minority rights:

Human Rights Committee (overseeing implementation of ICCPR);

Committee on Economic, Social and Cultural Rights (overseeing implementation of ICESCR);

Committee on the Elimination of Racial Discrimination (overseeing implementation of CERD); and

Committee on the Rights of the Child (overseeing implementation of CRC).

## **Box 5: Bilateral treaties affecting South Asia's minorities**

### **India-Pakistan**

#### ***The Liaquat-Nehru Pact (1950)***

Also called the Delhi Pact, this was bilateral treaty between India and Pakistan 'whereby refugees were allowed to return unmolested to dispose of their property, abducted women and looted property were to be returned, forced conversions were unrecognized, and minority rights were confirmed.' Its provisions read like a 'bill of rights' for the minorities of South Asia, with the aims of alleviating the fears of religious minorities, elevating communal peace and creating an atmosphere for the two countries to resolve their other differences. An underlying driver for the pact was avoiding a war between the two countries. According to the agreement, governments of India and Pakistan agreed to ensure to their minorities, 'complete equality of citizenship, irrespective of religion; a full sense of security in respect of life, culture, property, dignity; guaranteed fundamental human rights of the minorities, and participation in the public life of their country, to hold political or other offices and to serve in their country's civil and armed forces'

### **India-Bangladesh**

#### ***The India-Bangladesh Land Boundary Agreement (1974)***

Meant to resolve territorial disputes between India and Bangladesh through the exchange of 162 enclaves between the two countries affecting some 50,000 persons in all. Given effect in 2015.

### **India-Sri Lanka**

#### ***The Bandaranaike (Srimavo)-Shastri Pact (1964)***

On the status of Indian Origin Tamils (IOTs), paved the way for citizenship rights to Indian Tamils living in Sri Lanka. It apportioned IOTs between Sri Lanka and India – 600,000 Tamils were to be repatriated to India, whilst 375,000 were to be granted citizenship of Sri Lanka. The pact was followed with a goodwill Bandaranaike-Gandhi Pact in 1974 that had left 150,000 IOTs out of it ambit.

... contd. ...

...Box 5 continued ...

***The Indo-Sri Lanka Accord (1987)***

Also called the Rajiv-Jayewardene Accord, this treaty was signed between the two countries to ambitiously decide the political future of Sri Lanka's Tamil minorities. Though reduced to the status of a memorandum of understanding later on, the accord was to have paved the way for greater recognition of the rights of the Tamil minority with the accord being a significant recognition by the Government of Sri Lanka of the northern and eastern regions of the country as areas of historical habitation of the Tamil people in the country as well as repatriation of Sri Lankan and Indian Origin Tamils.

**Pakistan-Bangladesh**

***Agreement on 'stranded Pakistanis'***

The New Delhi Agreement (1973) between India and Pakistan for a three-way repatriation of refugees and prisoners of war, specifically Bangladeshis in Pakistan, Pakistanis (non-Bengalis) in Bangladesh and Pakistani prisoners of war. This was followed up by the Tripartite Agreement between Pakistan, Bangladesh and India in 1974 to further the three-way repatriation. Pakistan agreed to take back Urdu-speaking non-Bengalis from Bangladesh, although limited to 147,000, mostly those originally domiciled in West Pakistan or belonging to the central government or of divided families. Over time this has facilitated the repatriation of some 170,000 'stranded Pakistanis' to Pakistan and since 2008 notably, citizenship rights for those who chose to make Bangladesh their home in Bangladesh.

**India-Nepal**

***The Indo-Nepal Treaty of Peace and Friendship (1950)***

The treaty allows free movement of people between the two nations and gives mutual privileges to citizens of the two countries to travel, work, settle, buy property and do business.

**Nepal-Bhutan**

The 1993 agreement between Nepal and Bhutan for verification of Bhutanese refugees in camps in Nepal to facilitate their repatriation to Bhutan. In 2000, the process of joint verification promised by the 1993 agreement was initiated after much delay but has since failed to make any headway.

International Centre for Ethnic Studies (ICES). In 2008, this was developed into the South Asian Charter on Minority and Group Rights. The charter, instead of formulating new norms for the protection of minority and group rights, built on existing instruments such as the SAARC Social Charter, ICCPR, ICESCR, CERD and CEDAW and adapted them to the specific context of South Asia. Yet again, in the absence of a set of binding instruments and implementation mechanisms, the charter has remained mere wishful thinking (Khan and Rahman, 1999: 95). Recently, there has been some movement in civil society circles to form a 'People's SAARC' as a forum for regional civil society to engage SAARC and state parties including on the issue of minority rights through its Working Group on Minority Rights. But the challenge of getting state parties to take notice is not new. In sum, no civil society effort has been able to make much traction with respective state parties or even SAARC towards taking on board minority rights as an issue for multilateral regional engagement let alone crafting a regional instrument for minority rights. Getting states to agree to a set of good practices and grievance redressal procedures protecting minority and human rights has remained a pipe dream.

As a way around this problem and to build a people's movement to advocate and push for a regional mechanism on minority rights, a group of civil society organizations made up of minority rights activists and researchers from across the region came together in 2015 to form a collective – the South Asia State of Minorities Report Collective - to systematically document the condition of minorities in the region and use the report planned to be produced periodically as an advocacy tool for change. This trans-regional platform made up of research bodies and human rights and activist group working in the spirit of volunteerism seeks to push the agenda on minority rights in the region, to document and track performance, hold state parties accountable and build local and regional advocacy and related capacity on the subject. The current South Asia State of Minorities Report (2016) (and its future editions) is planned as the collective's principal tool for advocacy. It is hoped that the periodic reports on the outcomes for minorities and the quality of state provisioning for them (that is, locally led, well researched and grounded in facts using international benchmarks and sustained to build a body of evidence), will spur public debate on the subject in the region and create the conditions for state parties and SAARC to agree to give serious consideration to issues of minorities and how to deliver for them.

## Studying citizenship and minorities in South Asia

The *South Asia State of Minorities Report* has been planned as a people's report on the condition of South Asia's minorities put together by a multi-national collective of civil society organizations from the region – research, advocacy and activist groups with interest in minority and human rights.<sup>4</sup> The objective is to document and track the conditions of minorities in South Asia and the quality of state provisioning for them, benchmarking international standards and covenants that member states are signatories to in order to show breaches (where they exist) both in the laws and in their implementation. The wider objective of the report and the collective is to create public awareness on the subject of minority and human rights in the region and locally so as to act to improve the practice of minority rights' protection and promotion. Given its region-wide scope, besides documenting how minorities in each country perform, the focus of the report is also strongly on issues that have a regional and trans-border import and appeal.

The report aspires to be objective in its reporting and grounded in facts to build a body of evidence on outcomes for minorities and state provisioning that is well researched and uses robust methodologies and sources. It is hoped that this focus on facts and aspiring to be seen to be objective will help turn the debate on and around minority rights in the region from one of ethnic identity affiliation and accommodation that often mars any discussions of minority rights to that of citizenship rights – in essence, equality and non-discrimination - regardless of identity affiliations. In the context of South Asia's fraught post-colonial history, often centred on majority-minority relationships we think that it is important to transcend identity contestations and look at the subject of minority rights in terms of its rights, safeguards and non-discrimination core. This is really about promoting citizenship, a central challenge of the 'deepening democracy' agenda in the region.

We hope that in the long run public debates and discussions on questions of minority rights that the report will help engender will result in

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4. South Asia State of Minorities Report Collective (henceforth the Collective) made up of the following individuals and organizations, arranged alphabetically: Law and Society Trust, Colombo; Misaal-Centre for Equity Studies, New Delhi; Nagorik Udyog, Dhaka; National Commission for Justice and Peace – Women in Struggle for Empowerment, Lahore; Omer Sadr, Kabul; and Social Science Baha, Kathmandu.



individual South Asian states taking steps to create and strengthen national as well as regional instruments, structures and mechanisms for minority rights' protection and promotion. But for that to happen we will have to sustain the pressure so to speak – produce reports at short yearly or biennial intervals – to be able to build for the collective and create a profile in the media and among relevant policy circles besides the wider public as a credible source of information and insight on minority rights regionally. The collective is determined to do this and produce report cards periodically using the reports to lobby stakeholders for improved minority rights' outcomes.

Given this long term vision, the present first edition of the report (2016) seeks to establish a baseline on minority groups and minority rights' regimes, mechanisms and practices across country contexts in the region by mapping the terrain. Subsequent reports will build on this to assess country performance on minority rights based on events in the past year (country overviews) whilst also providing thematic analyses of a subject of topical interest for the region as a whole using a regional lens.

This report has many limitations not least the absence of disaggregated data by minorities, especially official data. This varies significantly across countries (also by minorities within the same country). With so little disaggregated data available our claim to provide hard evidence on minority rights has been tested. Mostly there is little hard evidence available especially in official sources and we had to rely on a mix of micro-case studies, sample surveys and programme reports of civil society groups besides media reports to base many of our arguments on. Secondly, given the voluntary nature of the present enterprise we have not had the resources to conduct research of our own to fill the big gaps in data. Almost all our data is sourced from secondary sources and these anyways are limited. Consequently, the evidentiary basis of much of our findings and arguments might appear to be weak. However, what working on the report has done is to help us map the state of data availability by thematic areas and countries so that we are in a good position now to be able to identify gaps in data for any robust evidence building exercise. In our subsequent reports we look forward to taking further steps in partnership with our partner groups to fill the data gaps. This is a large agenda and time taking but desirable given our long-term objectives.

This introductory chapter lays out the research agenda of the report, summarizes its findings and seeks to provide a regional overview using a regional lens to tease out key patterns and trends in minority rights' precepts and practices in the region, concluding with a set of region-wide recommendations.

The introduction is followed by six country chapters reporting on the condition of minorities (except for Bhutan and Maldives) following a common structure and providing as a conclusion country level recommendations. Country chapters also contain profiles of select marginalized groups and good practice case studies to showcase how minorities suffer disabilities and how they cope and to profile successful campaigns and interventions by and for minority groups for rights' protection and promotion to provide lessons for others to follow.

## **Research objectives, scope and data collection**

### **Research objectives**

The South Asia State of Minorities Report (SA-SMR) is envisioned as a people's report on the conditions of minorities in South Asia and their access to rights guaranteed by international minority and human rights instruments. The periodic report seeks to track and report the status of minorities by country on a range of internationally guaranteed rights while also providing regional insights and perspectives on the success and denial of rights and their possible solutions.

The goal is to contribute to advocacy for establishing South Asia-wide minority rights standards and instruments through building a body of evidence and spurring public debates and discussions including in and through the media. The focus is on collecting facts on enforcement (or denial) of minority rights; accounts of the processes of those denials; and the resultant conditions of minority groups, individually and collectively. Through this process we hope to bring facts to the notice of national, regional and international actors; advocate for better disaggregated data gathering and strengthened national level tracking and reporting of the condition of minorities; and developing regional perspectives and a constituency for solutions for minorities.

Linked to the last aspiration is an associated objective of the periodic reporting - to mobilize civil society across the region around minority rights' protection and promotion and aid in their advocacy work. We hope to support minority rights' networks - grassroots as well as policy groups - to document, report and raise their voices for minority rights. The report thought of as a periodic document aims to give voice to minority groups and civil society entities working on minority rights including to those working to

develop models for effective delivery of minority rights' programmes. The attempt is also to foreground minorities' voices and concerns along with deploying cold facts and hard evidence of how minority rights are provided or denied and how minority groups and their members cope.

## **Scope of the report and plan**

SA-SMR provides a descriptive examination of both the theory and practice (laws and policies and their implementation) of minority rights' protection in respective countries in South Asia, specifically within the SAARC region, looking at a range of rights guaranteed by international minority rights instruments particularly the United Nations Minorities Declaration 1992 (United Nations, 1992) the four rights to life and security; equality and non-discrimination; participation; and identity and culture.

We cover all eight SAARC member countries (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) although practical concerns meant that we could not cover Bhutan and Maldives in our detailed country reporting.<sup>5</sup> The report also makes comparisons on outcomes across countries to draw out regional patterns, strengths and weaknesses to better understand the dynamics and to propose nuanced recommendations. The country reports cover a range of minority groups – determined by religion, ethnicity, language and caste, as the case may be - to evaluate how a particular country's laws and practices impact on them. Here, given the salience of inter-sectionality we seek especially to focus on groups that suffer aggravated exclusions as a result of their minority status on multiple counts - religion and caste; caste and ethnicity; and religion and gender.

We provide country overviews about the conditions of minorities supported by data tables on a range of minority rights, on a year on year basis, based on events of past years. We also profile severely marginalized minority groups to provide a rich account of the lived experiences of very excluded minority groups to demonstrate how denial of rights impacts the lives of vulnerable groups and how they cope. And lastly, we survey and report on good practices in minority rights protection, especially community-led efforts by minority groups and by other civil society entities to point ways to change.

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5. In Bhutan's case at least, this also represents the degree to which minority voices are absent from political, development or minority discourses in the country. Despite repeated attempts we were not able to identify minority rights' partners in the country to work together on the report.

Given the significant challenges involved in reporting on the state of minority rights, year on year, due in part to less than robust availability of most relevant data in the most appropriate form we devote the first report (2016) to mapping the terrain to establish a baseline in terms of minority groups in a country and their rights' concerns; the structures of minority rights protection available in a country (laws, institutions, policies and mechanisms); the institutional environment (the political economy of minority rights' policymaking and implementation); rapid assessment of the working of laws and mechanisms using secondary data; and the availability of data in different sectors. This account takes a historical approach. With the baseline established, it will be easier to produce subsequent reports and also plan for efforts to create evidence and generate 'data', where availability is a problem. In the process of this mapping we also hope to build partnerships with stakeholders to help facilitate generation of new knowledge and evidence establishing alliances for minority rights advocacy.

Subsequent annual reports will assess performance on 'minority rights' by country based on events of the particular year using data and case studies to provide a snapshot of how the country performed. This country reporting will be preceded by an analysis of a thematic subject, a new one every year, on how different countries in the region performed on the subject using an explicit regional lens. This combination of cross-country regional and country-specific local perspectives and in-depth analyses of a thematic area and a broad-brush checking out of the performance on a range of minority rights based on events of a particular year should provide us a good balance of reporting and analyses of minority rights which will be useful for our larger advocacy work.

## **Methodology, data collection and sources**

The current report, 'Mapping the Terrain' of minority rights protection in South Asia, entails three levels of analyses:

- i. Firstly, assessing constitutional provisions and legal frameworks (the theory) determining minority rights protection in a particular country and checking them for compliance against international instruments for range, scope and depth. This analysis examines national laws and statutes against UNDM and other international instruments. Here we also look, although briefly, at the history of the development of the legal framework in a country to put the country's minority rights framework in a historical perspective. The aim is to provide a sense of movement

on whether the minority space has widened or narrowed and the factors influencing those changes. This section is based on secondary, material – a review of literature.

- ii. Secondly, checking out how national instruments (laws, policies and programmes in place) for minorities are being implemented across a range of minority rights (life and security; identity and culture; equality and non-discrimination; and effective participation) to determine the effectiveness of enforcement and how it measures up to the intent of international instruments. This analysis is based on an examination of public data (where available) disaggregated by minority groups; accounts of the working of agencies and programmes of the state as they relate to minority communities; case study research and programme reports of non-governmental organizations; and media reports and published works by national and international research and advocacy groups.
- iii. Thirdly, we also attempt to determine how the working of laws, and policies and practices are impacting outcomes for minorities at a macro level – school dropouts, infant mortality, poverty incidence and employment - against national averages. Given that the availability of disaggregated data on various well-being indicators is so severely limited this analysis mostly uses case studies and media reports to make the connection. But as we come out with more reports over time the attempt will be to try to strengthen our disaggregated data capturing and analysis capacity to make this aspect of the reporting more systematic. Ultimately, this analysis will be data intensive putting together standardized statistical tables on a range of well-being outcomes using datasets on various measures of well-being to compare outcomes across countries (and sub-national entities) and temporally by year.

Our ‘profiles’ of severely marginalized minority groups embedded in the chapters are designed to provide a window to understanding minorities’ life stories and how the working of minority rights’ regimes impact the groups to provide an account of the human impact of the quality of provisioning for minorities and how the groups cope. These accounts use multiple qualitative approaches and tools – ethnographic, as well as case study design – sourced largely from research and media reports and the working of the civil society/NGO sector to foreground minority voices and the case stories of their struggles for improved outcomes.

The ‘good practice case studies’ of minority rights’ mobilization and advocacy use the case study method to provide a rich account of community-led efforts for minority rights to draw out lessons for replicating their success in comparable situations. These are based solely on programme reports of minority rights’ NGOs and community organizations and interviews with programme staff, supported where available by media reports.

Overall, we rely wholly on secondary sources for our reports – official and non-official datasets; case studies; official and non-official evaluations and reports; media reports; NGO programme documents; and published works. The biggest challenge in this context is availability of disaggregated data (and insights) on the condition of minorities and the working of laws and programmes for them. This is an outcome we hope to encourage as we work across multiple countries and partners.

## Who are South Asia’s minorities?

Before we delve into a survey of the condition of minorities in South Asia, let us understand who they are. There is great variation in terms of distinguishing their ethnic, religious and linguistic characteristics reflecting the diversity in the region. But as with other situations, it is a particular group’s self-identification as a group and its numerical inferiority and ultimately non-dominant position that determines its minority status (*see Box 6*). This naturally relates to who the majority is in a particular country, a dynamic with connections to how national identities are constructed and defined. This is not to say that minorities are in any way monolithic categories or that they are fixed – there are many differences within groups and the categories can also be dynamic with changing identities. Table 3 gives a list of the principal minority groups by country.

Let us quickly review the situation of who the minorities are, by country.

### **Afghanistan**

The Afghan Constitution (of 2004) does not define minorities, but it does identify 14 ethnic groups and nationalities. Ethnicity (based on language) determines the construction of much of Afghanistan’s identity although religion too has played an important role. Pashtuns and Tajiks are the

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6. Whilst Pashtuns are politically dominant, Tajiks could be said to dominate in the realm of socio-cultural life and in people to people interactions. Persian/Dari/Farsi - the language spoken by Tajiks and Hazaras - is the lingua franca for all groups.

### **Box 6. Minorities - a definition**

There is no universally accepted legally binding definition of minority and minority rights. According to the Minority Rights Group (2015: 267), minorities are ‘disadvantaged ethnic, national, religious, linguistic or cultural groups who are smaller in number than the rest of the population and who may wish to maintain and develop their identity.’

The most well accepted definition of minorities, that by the Special Rapporteur on Prevention of Discrimination and Protection of Minorities is:

a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Capotorti, 1991:98).

As Khan and Rahman note (1999:3), this definition implies that the factors that must be taken into account in identifying minorities are:

- i. Numerical inferiority: Minorities are almost always imagined as numerically inferior although this is determined by reference to the size of ‘the rest of the population of a state’.

... contd. ...

main ethnic groups, with Pashtuns being dominant.<sup>6</sup> In the absence of a national Census, it is difficult to say what their exact numbers are but estimates put the Tajik population at 35 per cent (Pashtuns by the same reckoning are anywhere between 40-45 per cent of the population). There are a large number of ethnic minorities. As for religious minorities, these are mostly small groups with Sikhs and Hindus being the principal ones as also Baha’is. Shias (Hazaras mostly, but also Qizilbashs) are also seen as religious minorities.

## **Bangladesh**

Bangladesh’s Constitution makes Islam the state religion. However it protects the rights of all citizens. Article 28 (1) mentions ‘The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.’ Bangladesh’s national identity has been influenced by

...Box 6 continued ...

- ii. Non-dominant position: At the core, 'minority' is a political and sociological reality and is not merely numerical. The determining factor is the degree of political participation and social inclusion. 'In fact, minorities are possibly undermined not so much by their weaknesses in numbers, but by their exclusion from power' (Khan and Rahman, 1999:16).
- iii. Distinguishing ethnic, religious or linguistic characteristics: Only those groups within a population are considered minorities who differ from the rest of the population of the state in which they exist by reference to ethnicity, religion or language. In Article 1, the United Nations Minorities Declaration refers to minorities as based on national or ethnic, cultural, religious and linguistic identity.
- iv. Nationality: Minorities are citizens of the state that they live in. They generally exclude refugees, foreigners and migrant workers, although some formulations are more inclusive and also include non-citizens (see United Nations 2010:4-5 on this).

When applied to South Asia, this definition means disadvantaged religious, linguistic and ethnic groups are minorities as are Dalits (literally 'broken people' or 'crushed'); as well as indigenous people, variously called Adivasi.

Bengali language and culture, with the former playing a central role. More recently, religion – Islam in this case – has been increasingly becoming a central element of national imagination so commentators talk of a change in national imagination from 'Bengali' nationalism to 'Bangladeshi' (Bhardwaj, 2010:3). Non-Bengali speakers – indigenous groups and Urdu speakers – are the principal linguistic minorities, and Hindus and Buddhists are the main religious ones.

## **Bhutan**

Bhutan does not have a written Constitution but its national identity under the monarchy is constructed around Buddhism and the dominant Dzongkha linguistic identity. Interestingly and bucking the trend of numerical dominance marking majorities, Ngalungs, the dominant group in the kingdom



– living in the north-west, who profess Buddhism and speak Dzongkha – make up only 15 per cent of the population and are thus really a minority ruling elite. Sharchops (who are Buddhists but speak a minority language inhabit the north-east) are demographically the dominant group. They make up 50 per cent of the population and are the principal minority. But it is the Lhotsampas (the southerners professing Hinduism and speaking Nepali), making up 30-35 per cent of the population at last count, who are minorities in the true sense. (*see Box 7*)

## **India**

India's Constitution defines minorities as religious and linguistic, and these besides ethnicity are the main markers of minorities in the country. The Constitution defines itself as secular in religious terms, with Hindi language taking the pre-eminent, although not the sole, position. But increasingly, the national identity is being sought to be redefined in Hindu religious terms. Muslims (14 per cent of the population, 2011 Census), Christians (2.3 per cent), Sikhs (1.72 per cent) and Buddhists (0.7 per cent) are the main religious minorities, there also being a large number of linguistic and ethnic minorities. Although not officially defined as such, Dalits and Adivasis (included largely within the Hindu fold, but a significant section also professing minority faiths) form the largest section of the 'minority' population with a small upper caste elite dominating power and influence.

## **Maldives**

Maldives defines itself as an Islamic state. And despite the apparent homogeneity of a largely Muslim population there is significant ethnic and linguistic diversity – Sinhalese, Dravidians and Arabs with overlays of respective languages. These are also the lines along which minorities are defined. (*See Box 8*)

## **Nepal**

Nepal's new Constitution (2015) defines the country as 'a nation of minorities' given that no single group in the new dispensation is overwhelmingly dominant. The old order, recently pulled down, saw Nepal largely as a nation of Hindu hill-castes. The new Constitution recognizes minorities and bases this on multiple axes of caste, geography, ethnicity, language and religion in an effort to include them all. In that sense, Nepal's is a case of an expanded concept of national identity and of a definition of minorities.

### **Box 7. Minorities in Bhutan**

The Bhutan Constitution deems Buddhism as the state's 'spiritual heritage' and aims to develop a society 'rooted in Buddhist ethos.' There is forced participation of children and government employees in Buddhist prayer meetings and restrictions are put on activities of groups that are not Buddhist. In any case, there is the imposition of Ngalung language/and dress code overall.

Bhutan is a unique case, with a minority elite (the Ngalungs making up 15 per cent of the population) being the dominant power in what is essentially a three-way ethnic make-up (Buddhist Ngalungs in the north-west: Buddhist Sherchops in the north-east; and Nepali speaking, Hindu Lhotsampas in the south). Sharchops (who speak a minority language) are demographically the dominant group making up 50 per cent of the population. They are the principal minority. But it is the Lhotsampas (the southerners, professing Hinduism and speaking Nepali), making up 30-35 per cent of the population at last count, who are minorities in the true sense.

Language and Buddhism form the bedrocks of the Ngalung state that seeks a homogenized society around Dzongkha language, dress code and Buddhist religion.

The homogenizing trend is so strong that in the late 1980s, a sixth of the population of the Nepali speaking Lhotsampas were stripped of their citizenship, paving the way for their expulsion in 1991-92. The backdrop to this was discrimination against Lhotsampas increasing from the late 1980s in the context of Bhutanese elite's fears of Nepali domination and of political/armed movements in the region. This resulted in land and jobs being taken away and the Lhotsampas being disenfranchised. More than 100,000 Lhotsampas turned stateless as a result of the disenfranchisement and were forced to take refuge in UN refugee camps in Nepal. This was one of largest forced migrations in history. Not one refugee has still been allowed to return. Some 60,000 have relocated to western countries including US and Canada. But with the media not covering the plight of the remaining Lhotsampas in Bhutan, the movement of international visitors being restricted in the south and those in Bhutan not wishing to share information on their conditions by phone or mail for fear of retribution, it is difficult to say what the situation of Lhotsampas in Bhutan is today. Other minorities too suffer disabilities particularly religious minorities barring Hindus who are prevented from freely practising their faith.

*Source: US Commission on International Religious Freedom (2015); Mishra (2013).*

### **Box 8. Minorities in Maldives**

Despite the apparent homogeneity of a largely Muslim population in the Maldives there is significant ethnic and linguistic diversity – Sinhalese, Dravidians and Arabs with overlays of respective languages. Maldives' indigenous population of some 393,595 (2011 count) is overwhelmingly Sunni Muslim with a Constitution that recognizes only Islam. This restricts freedom of religion and conscience. The law prohibits citizens from practicing any religion other than Islam and Islam itself can only be practised in the government version of Sunni Islam. The public practice of any other faith including other varieties of Islam is banned. And propagation of any religion other than Islam is a criminal offence. The government controls all religious matters including the practice of Islam. Recently the Parliament enacted a law on religious unity centralizing the control of all mosques and prayer houses taking powers away from local councils.

Of late, the absence of religious freedom provisions has been further reinforced (US Commission for International Religious Freedom, 2014:4). The government is beginning to monitor and restrict any act deemed by it to be unIslamic or anti-Islamic including blogs and Facebook pages. The Constitution stipulates that non-Muslims cannot become citizens. All public offices such as the president, ministers, judges and Members of Parliament are reserved solely for followers of the Sunni school of Islam. The US Commission for International Religious Freedom noted: 'There were reports of societal abuses and discrimination based on religious affiliation, belief, or practice, particularly incidents against those who did not conform to a strict, conservative interpretation of Islam.'

## **Pakistan**

Pakistan's Constitution defines Pakistan as an Islamic republic and recognizes minorities – religious and ethnic. The former are principally Hindus, Christians and Sikhs, and the latter Baluchs, Sindhis, Pakhtuns and Mohajirs. The national identity is centred around Islam – Pakistan's self-image of being the land of Muslims - with Punjabi language (and ethnicity) providing the additional core. Defining national identity purely in religious terms has however not helped Pakistan bridge its ethnic and religious divides and crucially is now leading to contestations around religion too with Sunni identity taking precedence to the exclusion of other Islamic sects, Ahmadis and Shias most prominently. These communities increasingly find themselves in a state of limbo neither included in dominant imaginations of the nation, nor clearly defined as minorities with clear rights.

## **Sri Lanka**

In Sri Lanka, national identity is an amalgam of Buddhist and ethnic Sinhalese elements. The Constitution defines itself as secular, but gives foremost place to Buddhism. The Tamil speaking population –mostly Hindus, inhabiting the country's north-east – is the principal minority that has felt largely excluded, the outcome of which and also the cause of continuing exclusion being the long standing armed ethnic movement that the Sri Lankan state has recently crushed militarily. Other minorities that have also felt wronged, more so recently, are Muslims dispersed across the country as well as Christians.

## **De-jure and De-facto Status of minorities in South Asia**

Some conclusions can be drawn from the previous section in terms of the current report based on what the national identities are, how these influence the definition of minorities – de-jure and de-facto - and what that means for minorities and their ability to access citizenship rights:

- i. In most cases, national constitutions define minorities, hence that is a good starting point to identify minority communities to focus on and assess their conditions. However, at other places identification is itself problematic. The Ahmadis' case in Pakistan is a peculiar one where a group is forcibly and officially turned into a de-facto minority and refused identification within the larger and dominant Muslim identity. They suffer a double jeopardy when they are neither officially declared a minority – thus accepting them as citizens entitled to basic rights – nor being able to access those rights without denouncing their religious beliefs.
- ii. Similar is the case of Bhutan where Nepali speaking Lhotsampas have been declared non-citizens and large sections have been forced out of the country effectively making them stateless. In Bangladesh, Urdu-speakers, otherwise called 'stranded-Pakistanis' and in Sri Lanka, 'Indian' or 'estate' Tamils, have similarly been disenfranchised denying them the basic rights of citizens – most are 'stateless' - not to talk of any special protective measures. Likewise, large sections of Muslim Bengali speakers in the Indian state of Assam are often labelled 'Bangladeshi', implying illegal migrants questioning their citizenship. This is taken to its extreme in the case of Maldives where all non-Muslims are non-citizens. There are other albeit less fraught cases too: In India, although Jews and Baha'is are clearly religious minorities they are not declared so

officially whereas smaller groups with similar socioeconomic conditions (such as Jains, considered a branch of Hinduism) have been categorized as a minority. This, within India's regime of minority rights has implications for protective and promotional rights for the groups such as 'personal laws' that govern family law matters as well as rights to manage their own educational institutions.

## **How do minorities in South Asia fare?**

In this section we provide a broad-brush survey of the conditions of minorities in the region, summarizing the findings of the country surveys on minority rights treating the material analytically to try and draw out patterns and trends across the region, using a regional rather than a country lens. Like the country reports, this survey too uses as its framework the UN Minorities Declaration 1992 and its four-fold minority rights of life and security, identity and culture, participation and non-discrimination in the socioeconomic sphere (*see Box 9*).

### **Life and security**

All countries in the region provide a guarantee of life and security to all their citizens. This includes minorities. Yet there is widespread physical violence and denial of right to life disproportionately of members of minority communities across the region. Minorities also suffer disproportionately when they are denied civil and political rights. We notice three broad trends here:

- i. Violence against minorities is, in essence, about state failure, that is, the state's inability to protect minority groups from violence by private parties. This is an aspect of state failure given that the police is unable to protect vulnerable minorities from attacks by non-state parties (mostly militant arms of xenophobic nationalist groups' movements and individual and group acts of violence), and that law courts are unable to hold the perpetrators to account, thus failing in the state's foremost duty to protect. In these situations state agencies are either overwhelmed by non-state actors or have weak capacity to protect minority citizens to begin with. Examples here include the violence by Afghan Taliban on Hazaras and women and other minorities in Afghanistan; by groups such as the Ansarullah Bangla Team and the Jamaat-ul-Mujahideen Bangladesh (JMB) on minorities and progressive bloggers in Bangladesh; by Bajrang Dal, Shiv Sena and other Hindu right wing groups affiliated to the Rashtriya Swayamsevak Sangh against Muslims and Christians

### **Box 9: Categories of Minority Rights**

There are principally four ‘minority rights’. Taken together, these are established rights under international law; they are inter-related and built on the framework of individual human rights.

#### **i. Protection of life and security**

Genocide Convention 1948, the United Nations Declaration on Minorities (UNMD) 1992 and the Durban World Conference Against Racism (WCAR) 2001<sup>2</sup> attempt to operationalize the right to survival and existence.

Article 1 of the UN declaration states: ‘States shall protect the existence....of minorities, within their respective territories....’ (United Nations, 1992).

The guidance for implementation on UN minorities declaration states:

‘Protection of minorities should focus primarily on the protection of the physical existence of persons belonging to minorities, including protecting them from genocide and crimes against humanity’ (United Nations, 2010:7).

The 2001 Durban Declaration and Programme of Action (DDPA) affirms that:

‘.....minorities, where they exist, must be protected and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind’ (para 66, p.13). It calls on states to protect the physical existence of minorities, including from genocide and crimes against humanity.

#### **ii. Protection and promotion of identity and culture**

UNDM (1992) recognizes that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public freely and without interference or any form of discrimination. These provisions are further strengthened by DDPA (2001) affirming that ‘the ethnic, cultural, linguistic and religious identity of minorities, where they exist, must be protected and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental

*... contd. ...*

in India; by Sipah-e-Sahaba, Lashkar-e-Jhangvi and Pakistan Taliban against Shias, Hazaras and other minorities in Pakistan; and in Sri Lanka in recent years against Muslims and Tamils by Buddhist nationalist groups such as the Bodu Bala Sena and Sinhala Ravaya.

- ii. Besides poor state capacity, violence against minorities also represents a weak rule of law, specifically the selective application of laws by agencies of the state denying minority groups' protection under the law and access to justice. Poor efforts by the police and security forces to prevent anti-minority violence (either directed at individuals or the entire community) from breaking out, and once it has, the weak efforts to contain it, is one aspect of this weak rule of law. Equally, other aspects of the criminal justice system including recording of crimes, investigating them and prosecuting perpetrators are all fraught, especially when it affects minority groups, in effect denying members of minority groups the right to equal protection under law. This selective application of the law is much more than weak capacity to protect; in most cases it represents collusion between state actors and anti-minority groups resulting in a systematic erosion of the rights of minorities to equal citizenship. These take many forms – state actors being influenced by majoritarian anti-minority ideologies and biases in discharging their responsibilities at best, to state actors abdicating their responsibilities allowing anti-minority groups to overcome state institutions and using those against minorities in its worst form. Biased policing and delivery of justice, much normalized across South Asia, is a good example of the former and genocides and pogroms not uncommon in the post-colonial history of the region that of the latter..
- iii. In some cases, it is not so much the weak application of the laws that is problematic, but the laws themselves contain the seeds of violence against minority groups. Blasphemy and anti-Ahmadi laws in Pakistan, Vested Property regulations in Bangladesh and laws against cow slaughter and conversions in India are examples of regulations that provide opportunities (in how they are applied) for biased state actors colluding with private anti-minority groups to perpetrate violence against vulnerable members of minority groups.
- iv. Finally, cases where the state directly denies the right to life to members of minority groups. Illegal detentions, torture, custodial deaths, extra-judicial killings and fake encounters and enforced disappearances are all human rights violations that occur with regularity in the region

*...Box 9: Categories of Minority Rights continued ...*

freedoms without discrimination of any kind' (para 66). DDPA enjoins upon states 'to prevent forced assimilation and the loss of cultures, religions and languages' and encouraging conditions for the promotion of national, ethnical, cultural, religious and linguistic identities of such minorities and for diversity and plural identities to be protected and respected (United Nations, 2010:7).

### iii. Equality and non-discrimination in the socioeconomic sphere

UNDM (1992) provides that persons belonging to minorities may exercise their rights individually as well as in a community with other members of their group without any discrimination. Non-discrimination and equality before the law are the basic principles guiding human rights. Discrimination can take many forms – formal and substantive discrimination; direct and indirect forms of differential treatment; de-facto and de-jure; and discrimination in the private and public spheres (United Nations, 1992:11). For minorities to enjoy non-discrimination there should be formal freedoms and equality (such as equal access to social services and employment in the public and private sectors) and programmes for empowerment of those who in the past have been the subject of discrimination or who suffer persistent discrimination. This might call for differential treatment of such groups such as through 'affirmative action'. The International Convention on the Elimination of All Forms of Racial Discrimination allows for 'special measures' as does the Convention on the Elimination of All Forms of Discrimination against Women ('temporary special measures') and the Human Rights Committee that enjoins states to take affirmative actions to diminish or eliminate conditions that are discriminatory (United Nations, 1992:10).

### iv. Effective and meaningful participation

UNDM (1992) affirms that persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Herein, the right to participate in 'public life' includes, among other rights, those relating to elections and to being elected, the holding of public office and other political and administrative domains. Also the right to participate effectively in decisions on the national, and where appropriate regional level, concerning the minority to which they belong or the region in which they live. This right, according to UNDM is 'in fact essential to preserving minorities' identity and combat social exclusion' (United Nations, 1992:12).

*... contd. ...*



with minority groups disproportionately affected. Much of this takes place in the context of nationalistic conflicts – in Kashmir and the North East in India, Baluchistan in Pakistan, against Tamils in Sri Lanka (and in the past in the Chittagong Hill Tracts in Bangladesh, besides against Maoists in Nepal). The global ‘war against terror’ has provided another setting for subversion of justice with national security providing a cover for large-scale violations of the right to life, minorities again suffering the most. In both contexts, harsh ‘extra-ordinary laws’, devised by the state to counter ‘anti-state’ violence provide the basis for systematic violations. The Armed Forces Special Powers Act, 1958, 1990, the (J&K) Public Safety Act 1978 and the Unlawful Activities Prevention Act 2004 in India; Protection of Pakistan Ordinance 2013 and its amendment, the Actions (in Aid of Civil Power) Regulations 2011 and Anti-Terrorism Act 1997 including its many amendments in Pakistan; Public Security Ordinance 1947, Prevention of Terrorism Act 1979 and Emergency Regulations, 2000, 2005 in Sri Lanka; and the Nepal Public Security Act 1989 and the Anti-State Crimes and Penalties Act 1989 in Nepal are instruments used by South Asian states against their peoples, mostly minorities. Besides violating due process, state impunity is a key factor here with law and the criminal justice system aiding impunity of state actors (to violate rights) and the systematic denial of justice, either juridical or compensatory.

## **Identity and culture**

Right to identity, culture and conscience, is a key minority right. It is particularly important for multi-ethnic societies and in helping promote diversity ensuring that these rights are available equally to all, including minorities. Overall, South Asia fares poorly on the right to identity and culture. Most states provide some sort of freedom of identity, but the general trend is to promote the identity and culture of the majority community towards integrating the various diversities into a homogenized conception of the nation. Majoritarian ideas and imaginations, themselves the outcome of the peculiar history of the region, are behind much of this push for assimilation. These result in severe restrictions placed on minorities. Let us look at different arenas closely.

- i. Religious freedom is a key marker of right to identity and culture. There exists a wide spectrum here with Maldives disallowing in law any practice that is non-Islamic; poor in Bhutan where registration requirements mean that only Buddhist and to some extent Hindu groups are allowed freedom of religious practice; poor again in Pakistan against

*...Box 9: Categories of Minority Rights continued ...*

These provisions imply that mechanisms are required to ensure that the diversity of society with regard to minority groups is reflected in public institutions such as national parliaments, the civil service sector, including the police and the judiciary and that persons belonging to minorities are adequately represented, consulted and have a voice in decisions which affect them or the territories and regions in which they live.

Participation must be meaningful and not merely symbolic and recognize, for instance, that minorities are commonly under-represented and that their concerns may not be adequately addressed. The participation of women belonging to minorities is of particular concern. What is needed is not just their formal representation in governing institutions but effective participation in decision making so as to promote among minority communities the ownership of decisions.

Ahmadis who are prevented from practicing their faith; to availability of formal religious freedoms in Afghanistan, Bangladesh, India and Sri Lanka (and Pakistan for religious minorities) but practical restrictions on freedom of religion there, given the atmosphere of fear and intimidation against religious minorities in all these countries.

- ii. Language affiliations and freedoms is another key right to identity. It is also mixed up deeply with issues of ethnicity and in the context of South Asian history it has been an important trigger of conflicts. Bangladesh's is the most famous case with the Liberation War (1971-72) waged by Bengali nationalists against, among others, the linguistic assimilationist policies of the Pakistan state. Tamil ethnic conflict in Sri Lanka too had its roots in the linguistic policies of the Sri Lankan state restricting Tamil language. Other prominent ethnic movements in the region – Kashmir and those in north-eastern India for instance - draw sustenance from perceived assimilationist policies and practices of the national government. In non-conflict contexts too language and ethnicity continue to be sites of discrimination and denial for minorities. This is reflected in language homogeneity and domination against minority languages. Urdu and other non-Bengali languages in Bangladesh; Baluchi in Pakistan; Nepali-speaking Lhotsampas in Bhutan; and minor languages

in Afghanistan are examples of this. India has shown the way in accommodating linguistic demands and autonomy through administrative decentralization and by creating linguistic/ethnic provinces but the fate of dispersed minority languages, especially Urdu, has been harsh worsening with the growing hegemony of Hindi, the dominant language.

## **Socioeconomic rights**

Non-discrimination in accessing services and opportunities is a key minority right. This has implications for the socioeconomic condition of minorities and their well-being. Across the region, laws promise equal access and non-discrimination to all in public services and opportunities. And yet minorities make up disproportionate sections of the poor and excluded in all countries. Hindus and Christians in Pakistan, Muslims (besides Dalits and Adivasis) in India, Dalits and Muslims in Nepal and Dalits and indigenous groups in Bangladesh suffer the worst socioeconomic drawbacks. Their access to services such as health and nutrition, sanitation and education, as well as to opportunities such as remunerative employment, credit and markets, is limited. Discrimination is at the heart of exclusion with minorities denied equal access to services and opportunities that the rest of the population expects as a matter of right. Discrimination works at multiple levels – local, where services are provided, but also at the policy level, where absence of a mechanism to identify and check discrimination enables discrimination to play out unfettered.

Across the region there is a dearth of efforts to address the deprivations faced by minority groups in the socioeconomic sphere. It is possible through targeted programmes aimed at the specific disabilities and discriminations that minority groups face to deal with the situation. India has an elaborate programme of support for Dalits and Adivasis including better access to services, housing, employment and education. Recent support programmes for minorities seem to be very modest in their design in comparison. Their implementation leaves much to be desired. Across the region there is little policy focus on addressing minority disabilities including poor documentation, tracking and reporting of data disaggregated by minority groups and little attention to cast the spotlight on how universal anti-poverty programmes and services work especially for minority groups. Overall, minorities and minority well-being are not a policy priority. This is a serious weakness.

## **Effective participation**

Participation in public life including adequate representation and role in decision making in governing institutions is a key determinant of minorities' realization of equality and well-being. Most South Asian constitutions profess equality and non-discrimination to all citizens, including minorities. Yet, minorities' exclusion from participation in public life including in governing institutions is widespread. This has a wider impact on the realization of all other minority rights. Here we focus on the representational dimension of participation, looking at:

- political representation in elected bodies at the national and lower levels
- representation in civil services

There are broadly two trends here:

- i. Legally denied, where the law itself discriminates between groups and minorities are denied equal treatment, for example, in accessing public office. Pakistan does not allow a person of any other faith but Islam to stand for office as President. In the case of the Prime Minister though the law does not prevent non-Muslims, restrictions kick in in terms of preventing non-Muslims from taking oath of office thus effectively keeping this position out of reach of minorities. Ahmadis, given that they are deemed non-Muslims, too are denied this right of standing for office. Their exclusion in participation runs deeper as they are denied even the right to vote in elections. And whilst the Constitution puts in place mechanisms for protection of minority representation in national and provincial assemblies through separate quotas these are not robust enough to ensure either proportionate or meaningful representation of religious (and ethnic) minorities in these houses. Similarly Maldives, Bhutan and Afghanistan discriminate against minorities when they restrict their access to political office.
- ii. Denied in practice: India does not discriminate formally against minorities in access to political and public office including the highest ones. And yet minorities, especially Muslims, are very poorly represented in elected assemblies at national, state and local levels effectively blocking them off both from decision making and from a sense of being wedded to national processes. Critics have pointed to the design of the electoral system that encourages majoritarian outcomes combined with the absence of any proactive efforts to bring minorities, especially religious

minorities, into governing institutions as being the cause of much of this poor representation.

- iii. Nepal is charting a new course in the region in terms of crafting an inclusive regime of political representation and participation for minority groups. It seeks to do this through devising an electoral system that seeks not only to keep the doors to political representation open to all (through the first-past-the-post system) but combines that with measures for positive support to traditionally marginalized groups (Dalits, religious minorities and women among others) to be better represented in Parliament and newly devolved provincial assemblies through a combination of 'proportional representation' and 'quotas' for marginalized groups. The new arrangement is already showing results with a marked increase in the representation of Dalits, women and minorities. This is still an evolving system but one that holds promise for a region where the norm is for minorities to be kept out of political power.

Civil services and the public sector in general are equally unrepresentative in the region mirroring the barriers that minorities face to political representation. There seems little effort by states to encourage greater minority engagement through programmes such as quotas. India, with an elaborate system of 'reservations' for Dalits (Scheduled Castes) and Adivasis (Scheduled Tribes) and other 'backward' groups in Parliament and state assemblies fails to provide anything similar for religious minorities. The handful of countries that do reserve quotas among other measures to encourage minority representation seem not to be able to show many results of those policies - quotas for religious minorities in Pakistan in the army and civil services and for adibashis in the Chittagong Hill Tracts in Bangladesh, have not resulted in great improvements in their representativeness.

## **Scope of the Issue of Minority Rights in South Asia**

Several conclusions can be made drawing on the analysis presented in this introduction:

- i. The poor condition of minorities in the region effectively means denial of basic rights to vast numbers of people (mostly on account of the discrimination that minority groups face). These are rights that most states provide in their constitutions and that which they are committed to providing (through international covenants that they are signatories to). In

sheer numbers alone we are talking hundreds of millions of citizens who are denied basic rights to life, security, identity and culture, socio-economic well-being and participation. The vast scale of the denials also contributes to the poor ability of South Asian countries to meet their national development and well-being goals.

- ii. Poor rights for minorities have implications for conflicts. Behind many of the ethnic conflicts in the region – those fighting for greater autonomy within nation-states as well as movements for self-determination seeking independent states for themselves – are minorities and their perceived sense of grievances. Most negotiated solutions to these challenges – the Mizo Peace Accord, and that for linguistic accommodation in India; the Chittagong Hill Tracts Peace Accord in Bangladesh; and the Comprehensive Peace Accord in Nepal, for example – have been about agreements on arrangements that purport to provide better for minorities. Clearly, efforts at minority rights' protection and promotion are steps towards conflict prevention too.
- iii. Underlying this poor show of minority rights are weak policy commitments to delivering for minorities with little resort to robust institutional mechanisms for minorities or to targeted programmes and projects and poor attention to reviewing outcomes including through collecting and reporting data disaggregated by minority groups. In other words, minority rights, indeed human rights, are not a policy priority for most South Asian states.
- iv. Part of the reason for the weak policy priority for minority rights by South Asian states is the region's strong majoritarian atmosphere. Nationalistic mobilization, both ethnic and religious, seeks to create homogenous societies and the first victims of this dynamic are usually minority groups. In recent times, majoritarian mobilization has intensified across the region. As the Minority Rights Group (2010:110) notes, 'a growing trend of radical, sometimes militant, nationalism and religious extremism throughout the region, is posing a major threat to religious minorities.' Islamist mobilization in Pakistan, Bangladesh and Afghanistan, the Hindu right wing in India and Buddhists in Sri Lanka, all seek to move towards hegemony of one religion and culture at great cost to the countries' minorities. In this context, any talk of minority rights is seen by majoritarian groups and state actors as challenging the state and hence it is quickly delegitimized.

## **Majoritarianism and minority rights in South Asia**

Majoritarian impulse is inherent in nation-states. In the case of South Asian states, historical legacies strengthen the majoritarian trend. These are about the region's colonial encounter (including anti-colonial struggles) politicizing ethnic and religious identities. But more important as a factor was the creation of the post-colonial states through partition of much of the subcontinent splitting up ethnic groups across new and arbitrary borders and fears of the political elites all-around of further disintegration of successor states. Given this history the trend across the region has been for antagonistic nationalism (between successor states) with frequent conflicts (inter-state as well as against minorities) all with adverse consequences for minorities. As a result, denial of minority rights in practice even though guaranteed in law carries on with impunity.

There are other factors too which contribute to the rising trend of majoritarian nationalism in the region:

- i. Institutional design: Parliamentary democracy with the first-past-the-post electoral design which is common to most South Asian nations favours 'majority take all' outcomes and 'ethnic outbidding' with contestants pandering to majority votes even at the cost of marginalizing minorities. It is no wonder then that elections and electioneering in the region are the sites of much minority bashing.
- ii. Clash between elites for control over the state – related to the above is the tendency of elites in their contests over control of state institutions to pander to majority interests and sentiments even at the cost of minorities. Elite contests with their narrow interests have a tendency to structure national debates along ideological lines that then end up benefiting majorities at the cost of minorities.
- iii. The media across the region is a reflection of and a driver of populist sentiments. The media– print and electronic - fuels jingoistic nationalism again ending up working adversely for minorities.
- iv. Finally a word about democracy in the region and the place of minority rights in it. South Asia has had a mixed experience with democracy. Some states have had long experiences with democracy although mostly in its formal sense (of holding elections and periodically changing governments). Others have had a more chequered history where even formal democracy is only a recent phenomenon. The poor condition of

minorities across the region then is a reflection of South Asia's 'democracy deficit', with the idea and practices of citizenship and equal rights not having taken roots and access to rights, justice and opportunities contingent on peoples' ascriptive identities (Manchanda, 2010: 12).

Given these adversities, the protection and promotion of minority rights then is going to be about deepening democracy. In the current context that would imply developing the state to treat all groups equally by putting in place systems to check differential treatment such as anti-discrimination laws and mechanisms and affirmative action policies to help marginalized groups overcome exclusions and disabilities. Central to this venture must be creating and entrenching safeguards including minority rights' protection regimes, strong mechanisms for protecting human rights, establishing the rule of law, entrenching an independent judiciary, establishing non-discrimination policies and mechanisms, providing affirmative action policies and promoting diversity and multi-culturalism.

## Recommendations

Given that national laws that impinge on minority rights are vastly different between countries and the ground realities for minority and human rights are so challenging it will be important for any meaningful regional endeavour for improved minority outcomes to start small and build on the gains. What will also aid this process is if traction on outcomes overall is not made contingent on state-led efforts.

- i. Working to document and shining a light on minority rights' outcomes and the processes that lead to denial in each country should be a helpful starting point. This will require efforts towards establishing systems and processes for collecting disaggregated data on a range of relevant indicators as well as on insights on the processes through which minority rights are delivered or denied. Also helpful would be systematic documenting and reporting countries' performance on relevant international instruments and getting a conversation going on them. Given the wide variation in data availability by domain across countries with some countries quite advanced in specific domains and others without much of a system for data collection, collation, analysis and reporting, it will help to share experiences and insights on data collection and analysis across countries as a first step towards building a regional partnership that can also facilitate systematic documentation and reporting.



- ii. Effective documentation and tracking of outcomes and provisioning around minority rights can also contribute to raising awareness on the subject, especially when used with effective media strategies to educate people within individual countries and across on issues impinging on minority rights that have a regional and/or cross-cutting import. We noticed earlier how polarized public opinion is reflecting the jingoism prevalent in the media as well as society. Finding an entry point then to creating public opinion conducive to finding a common cause across borders on issues relevant to minority rights that are cross-cutting will be a necessity.
- iii. There are currently no regional forums specifically working on minority rights, especially those to undertake sustained practical work and advocacy with stakeholders. A number of loose civil society platforms and campaign networks exist mostly around human rights and regional peace. However, in the absence of sustained and programmatic work and capacity for advocacy their gains are minimal and fragmented. There is clearly need for region-wide platforms with a clear focus on minority rights to act as regional champions to enable systematic experience-sharing and collective brain-storming on minority and human rights' issues at the regional level, building consensus, lobbying with policy networks, preparing the ground and pushing the envelope on minority rights' issues with multiple stakeholders.
- iv. Equally, there is need for regional programmes supporting grassroots organizations of minorities to build community capacity and empowering minority groups to organize and raise their voice for their rights. There is a rich portfolio of grassroots activism throughout the region and many opportunities for experience sharing and learning from each other. A regional programme supporting community capacity building region-wide will contribute to enhanced outcomes for minorities at the grassroots level given the commonalities in the issues confronting minorities.
- v. This ground work for enabling minority rights' protection and promotion should pave the way for more concerted regional efforts for creating conditions for improved outcomes. These should start with actions on generic problems that result in minority rights' violations in the region using existing national laws and international and regional frameworks before moving on to creating new ones. Among these generic problems are impunity of state actors in cases of rights' violations; lack of

transparency across state sectors facilitating arbitrary state actions; discrimination in application of laws, provision of services and in enabling opportunities; and homogenizing policies and practices that restrict diversity and promote cultural homogeneity. Effective work on these issues will entail sustained and systematic civil society activism for better documentation of these pathologies (cases of impunity, discrimination and the like) to create a body of evidence to use as advocacy material for engaging with state actors to redress them using national laws and international conventions; and then public education and alliance building, to keep up the pressure on state parties for changed behaviour, improving results for minorities.

- vi. In parallel and given the challenges involved in minority rights' delivery, it will be necessary to strengthen safeguards for minorities where they exist and creating new ones where they do not at the national level. These are potentially about human rights' sensitization and training; targeted programmes for minority well-being; directed investments for these programmes; institutional mechanisms catering to minorities; a representative bureaucracy; and grievance redressal mechanisms. At the regional level this could take the form of a South Asia charter of minority and human rights, defining a basic minimum programme for minority rights protection and promotion along with an associated set of institutions to adjudicate and oversee the enforcement of the charter.

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## **Chapter 1** **Afghanistan**

# **The Vulnerabilities of Minorities**

*Omar Sadr*

### **Introduction**

Afghanistan has had outstanding achievements as far as the promotion and protection of human rights is concerned in its new phase of life after the Bonn agreement in 2001. After experiencing the worst forms of human rights violations, Afghanistan entered a new democratic life with a firm commitment to observing human rights.

However, despite these achievements, minorities have remained vulnerable to different aspects. The assimilationist policies of the nation-state have systematically attempted to integrate minorities into the dominant identity and culture thus homogenizing the country. The centralized structure of the state has marginalized the minorities from the decision-making process, and the representation of minorities in the government has remained low.

Minorities in the country were the main targets/victims of the recent inter-factional war in Afghanistan. They have faced rampant violations of fundamental and group rights as a result their existence as a community has been threatened. Religious, ethnic and linguistic minorities have faced targeted killings and massacres. They were prosecuted and were forced to convert their beliefs, languages, cultures and customs. Under threat to life and fear of death, they emigrated; their properties were confiscated or occupied.

This chapter analyses the condition of minorities characterized by their own national, ethnic, linguistic or religious identity in Afghanistan. It

focuses on the status of minorities with regard to recognition of their identity and cultural rights, political participation and representation, economic opportunities and security.

The chapter draws on available primary and secondary sources to describe more broadly the working of the national legal system, specifically the position of minorities under the constitutional law. It also explains how deficiencies in a pervasive definition of minorities and lack of recognition of group rights have challenged the promotion and protection of minority rights, and how not imposing effective sanctions through a defined procedure has caused insouciance of the state. After discussing the challenges of defining minorities, it looks at the condition of minorities from four different aspects – culture and identity, political participation and representation, non-discrimination and equality and life and security.

## **Relevance and challenges of research**

It should be acknowledged right in the beginning that there is no comprehensive report on the status of minorities in Afghanistan. Finding data on different political, social and economic indicators related to minorities in Afghanistan is a challenging task. The government and international agencies' data, statistics and reports are not disaggregated in terms of ethnic and religious groups. This makes the task of analysing the conditions and status of minorities tough. The current chapter relied on available reports by governmental and international organizations to the extent available; it also draws on media reports and newsletters and secondary sources to fill the gaps in primary documents.

During the civil war (1992-96) and the national resistance against religious fundamentalist—the Taliban movement (1996-2001) – Amnesty International and Human Rights Watch published some reports on the status of minorities in Afghanistan (Amnesty International, 1999; Human Rights Watch, 2001).

The status of minorities has been covered by the annual reports of the US government and think tanks. The US Department of State publishes regular reports on human rights practices. The US Commission on International Religious Freedom publishes annual reports on religious freedom in which it discusses the religious minorities of Afghanistan. However, these reports do not give a comprehensive picture of minorities in Afghanistan. There is exclusive emphasis on religious freedom, particularly Christianity.

At the national level, there have been few human rights or civil society organizations in Afghanistan which have been consistently active on the issue of minority rights. The Afghan Professional Alliance for Minority Rights (APAMR) is a civil society organization which is advocating for minority rights since 2001 when it was established in-exile in Pakistan. The organization represented Afghanistan at the 10th session of the United Nations Working Group on Minorities, the Sub-commission on the Promotion and Protection of Human Rights and the Commission on Human Rights, United Nations (United Nations Human Rights. nd).

The Afghanistan Independent Human Rights Commission (AIHRC) is a national body for the protection and promotion of human rights. The commission is composed of nine commissioners, each of whom covers a particular human rights area. The commission has distinct units for women's rights, children's rights and the rights of persons with disabilities, but it does not have a particular unit or commissioner on minority rights. While the commission is praised by international agencies, there have been systemic lacunae which affect human rights in general and minority rights in particular. Between January 2011 and June 2013 five commissioners' posts were vacant as President Karzai delayed filling the posts (Human Rights Watch, 2014; Kouvo, 2012). Besides, President Karzai did not release the 800-page AIHRC report on mapping war crimes and crimes against humanity in Afghanistan from the communist administration (1978) to 2001 (Human Rights Watch, 2015). Postponing the release of the report has reinforced a climate of impunity that affects minorities.

Minorities have two types of rights: One is collective rights that protect minority groups vis-à-vis the dominant population. Minorities deserve these rights as a group. These include right to language, recognition of identity, cultural codes and customs, right to self-determination and right to political participation. Second are the rights that a minority may exercise not as a group but as an individual. Right to work, right to property, right to vote and many more come under this category. However, it is an open secret that minorities are facing consistent discrimination based on linguistic, ethnic or religious affiliations at both individual and group levels and they are deprived of their fundamental human rights in Afghanistan. AIHRC's annual reports on human rights in Afghanistan do not cover minorities' conditions

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1. Hamida Barmaki, one of AIHRC's commissioners was killed in a suicide attack in January 2011, three other commissioners were dismissed by President Karzai in December 2011 and one was removed by the AIHRC board in October 2012.



as a separate category as they cover those for women and children. These reports provide a perspective on different social, economic and political rights with respect to an individual but not for groups. While the reports provide an analysis of human rights based on age and gender they do not say anything about religious and ethnic minorities. The reports under-estimate the minorities when it comes to fundamental human rights. Beyond fundamental human rights the reports blindly ignore the group rights of minorities in the country. There have only been three cases where the 2014 AIHRC report touched upon the group rights of minorities. However, these were also approached not as collective rights but as individual rights. The first case is the collective deprivation of Jugi people from citizenship rights. The report does not discuss who the Jugi people are, why they are deprived of their rights or whether they have any right to citizenship or right to self-determination. The second case is targeted killing of 14 Hazara passengers in the Ghor province by Taliban. The report discusses this case when it talks about right to free movement and passage. The third case is about the strike by Hazara students of the Faculty of Social Science in Kabul University against their administration and the education law. The students claimed that they were discriminated against based on ethnicity by the faculty and administration of the Faculty of Social Science. The report analyses the case from the individual rights' perspective as the right to strike and protest. It fails to take the case further and see it from the minorities' perspective.

The Government of Afghanistan does not produce regular annual reports on the status and condition of minorities. The Ministry of Justice prepared a report on the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in Afghanistan in 2012. The report provides an overview of laws, policies and achievements of Afghanistan with respect to minorities. However, it is not comprehensive enough to cover multiple dimensions of the status of minorities in the country. As the report states, it is based on an unrepresentative sampling of Uzbeks and Hindus.

Overall, there is no comprehensive literature on most of the minorities in Afghanistan. While some minorities such as Hazaras have been able to catch international media attention, many others have remained unknown and undiscovered. No substantial attention is paid to mini-minorities such

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2. The Jugi or Ja't, minority group lives in northern Afghanistan and is ethnically Tajik. Apparently due to several interventions by AIHRC the issue of citizenship for Jugis has been solved. They can now apply for citizenship and hence benefit from all entitlements stated under the Constitution (Moin, 2015).

as Balochs, Pashais, Nuristanis, Turkmens, Qizilbashs and Kyrgyzs in Afghanistan.

Lack of comprehensive and all-encompassing research and literature on minorities highlights the necessity and relevance of research on the topic. This chapter serves to shed light on the different aspects and dimensions of minorities in Afghanistan and bring forth the conditions and challenges that people face as minorities.

## **Mapping of minorities**

Muhammad Tahir Badakhshi was the first person in Afghanistan to raise his voice for minority rights in the 1960s. Badakhshi claimed that being a multinational country, the main national problem in Afghanistan was the systematic discrimination of minority ethnic groups by the ruling group. The oppression and discrimination kept the minority ethnic groups in a disadvantaged position and the ruling group systematically exploited them. This led to what he called 'National Oppression'. Contradicting his fellow leftist colleagues in the 1960s when the anxiety for leftist ideas was high, he said that the problem in Afghanistan was not class exploitation of the poor by the rich but was the dominance of one ethnic group over the other which led to national exploitation and oppression and consequently to a national clash. The national clash was intensified by the ruling ethnic group through a 'divide and rule policy'.

The ruling group mobilized its fellow ethnic group by indoctrinating it with a supremacist chauvinistic ideology. This supremacist chauvinistic ideology created a narrow nationalism that went on to define the nation based on the ruling ethnic group's identity and culture. Badakhshi called for a 'Just and Democratic Solution of National Question'. According to him a 'Just and Democratic Solution of National Question' contained affirmation of national oppression on oppressed ethnic groups and recognition of equal rights for all ethnic groups. Each ethnic group shall have right to self-determination. Accordingly, no identity, language and culture shall be subjected to an assimilationist policy (Ghairat, 1990; Maihan, 1990; Zohori, 1989).

The question of who is a minority and who is a majority has been controversial in Afghanistan. With no national-wide official census (Balland, 2015; Karimi, 2014), the issue of majority and minority has become politicized. The claim of 'majority status' was to downgrade the other communities' political and economic gains. It was also the source of legitimacy for ruling

the country and monopolizing power. The ruling ethnic group marginalized minorities from political participation and national politics and justified the framing of national identity based on racial and ethnic characteristics. Basically, 'minority' as a category was created and manufactured by the ruling elite to justify its authority.

Since the ruling elite was linked to the Pashtu speaking community, the concept of majority-minority was developed around the notion of ethnicity. Pashtun nationalists claimed that they were an absolute majority in Afghanistan. However, statistics provided by different Pashtun nationalists differed in numbers and percentages from 40 per cent to 60 per cent of the population. Anwar-ul-Haq Ahady (1995) claimed that Pashtuns were 50-55 per cent while Rostar Taraki (2011) argued that they were more than 60 per cent.

This perception of Pashtun nationalists and the ruling elite does not reflect the quality of population in Afghanistan. They are false and flawed. Moreover, Pashtuns' assumed majority status becomes incorrect if we look at linguistic and religious categories. From a linguistic perspective, Persian (Dari) is a widely spoken language, spoken by around 50 to 55 per cent of the population. It has not only been the native language of many ethnic groups such as Tajiks, Hazaras and Qizilbashs, but it has also been functioning as the lingua franca of the country for many centuries. The CIA Factbook indicates Persian (50 per cent), Pashto (35 per cent), Turk (Uzbeki and Turkmeni) (11 per cent) and 30 minor languages (Balochi and Pashai) (4 per cent) (Central Intelligence Agency [CIA], 2015). From a religious perspective 84-89 per cent of the population is Sunni Muslims, 10-15 per cent is Shia Muslims and 0.3 per cent is small religious groups (Hindus, Sikhs and a few Christians) (CIA, 2015).

Looking from the ethnic perspective, all the ethnic groups in Afghanistan are less than 50 per cent of the entire population. The Asia Foundation (2012) survey showed Pashtuns at 40 per cent, Tajiks at 33 per cent, Hazaras at 11 per cent, Uzbeks at 9 per cent, Turkmens at 2 per cent and Balochs, Nuristanis, Aimaq and Pashais at 1 per cent each (the Asia Foundation, 2012) and the 2014 survey showed Pashtuns at 40 per cent, Tajiks at 36 per cent, Hazaras at 10 per cent, Uzbeks at 8 per cent, Turkmens at 2 per cent, Balochs, Nuristanis, Aimaqs and Pashais at 1 per cent each, Qizilbashs at < 0.5 per cent and Safis at < 0.5 per cent (the Asia Foundation, 2014).

As the oppressed ethno-linguistic groups understand the majority-minority politics, none of them accept the inferior position drawn for them

by the ruling ethnic group. A counter-argument by the subjugated ethnic groups has been that Afghanistan is numerically a country of minorities. Each ethnic group in Afghanistan is less than 50 per cent of the total population.

Majority-minority politics brings us to the point where majority and minority do not remain just numbers and quantitative strengths or weaknesses and become an issue of socio-political subjugation and oppression. Defining a minority as a community with a small number of people is misleading and incomprehensive. It was because of such circumstances that Francesco Capotorti, the UN Special Rapporteur on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities defined minorities based on both their numerical quality and socio-political condition in his study for the UN Sub-commission on the Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the states – possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed toward preserving their culture, traditions, religion or language (Capotorti, 1991: 98).

The term ‘non-dominance’ in this definition indicates the socio-political condition of a group. Based on this understanding scholars consider the situation of a group in terms of its power relations to the rest of the population. K.N. Panikkar argues that numerical inferiority is not a sufficient condition for being a minority, rather it is the consciousness of being discriminated by other groups and the existence of actual disadvantaged positions vis-à-vis the other groups. He argues ‘the constitution of a minority is primarily contingent upon two factors. First, the self perception of the group as a minority in relation to other groups in society on the basis of certain experienced disadvantages and second, discriminatory or hostile treatment meted out by the majority’ (Panikkar, 2005: para 4).

Consequently, this chapter does not discuss Pashtuns, the dominant group, despite being numerically less than 50 per cent of the population. However, it considers Persian language because despite being numerically the majority language, sociologically it is a non-dominant and discriminated language. Similarly, the chapter considers Tajiks, Hazaras, Uzbeks, Turkmens, Balochs, Nuristanis, Aimaqs, Pashais, Qizilbashs, Kyrgyzs and Shias as they are discriminated and disadvantaged ethnic and religious communities.

## A Survey of Constitutional Law

Afghanistan is committed to international human rights norms based on Article 7 of the 2004 Constitution: '[t]he state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.' The Constitution obliges the state to establish a society based on the preservation of human rights, equality among all the ethnic groups and balanced development of all the regions of the country (Article 6). To monitor, foster and protect human rights at the national level the state is mandated to establish the Independent Human Rights Commission of Afghanistan. The commission is supposed to receive complaints, monitor human rights conditions and inform the authorities about the status of human rights in the country (Article 58).

Although the Constitution does not define the minorities in Afghanistan, it does refer to 14 ethnic groups, which according to it, constitute the nation of Afghanistan: Balochs, Tajiks, Hazaras, Uzbeks, Pashtuns, Turkmens, Pachais, Nuristanis, Aimaqs, Arabs, Qirghizs, Qizilbashs, Gujurs and Brahwuis (Article 6). The Constitution draws rights based on the liberal principle of citizenship. It states that all those who have citizenship of Afghanistan are called nationals of Afghanistan. It further stipulates that no member of the nation will be deprived of citizenship (Article 4), all the citizens have equal rights and duties and discrimination under the law is prohibited (Article 22).

Chapter 2 of the Constitution mentions the Fundamental Rights of citizens which can be categorized in three clusters of political, economic and civil and social rights. Right to national sovereignty (Article 4), right to vote and the right to (nominate) be elected (Article 33), right to establish and be a member of a political party (Article 35) and right to demonstration (Article 36) are citizens' political rights. Yet, the Constitution deprives Sikh and Hindu citizens of Afghanistan of the right to be elected as president. The Constitution sets the condition of 'being Muslim' as a criterion for nominating oneself as the President of the country (Article 62). However, this condition is not there in case of ministers and members of the national Shura (the issue of representation is discussed in detail in a separate section).

A citizen's economic rights are right to property (Article 40), right to work and employment (Article 48), right to free preventive healthcare and treatment (Article 52) and right to pension for retirees and financial aid to

survivors of martyrs, missing persons, elders, women without caretakers and disabled and handicapped persons (Article 53). A number of rights can be categorized as civil rights. These are right to express thoughts or freedom of expression (Article 34), right to form associations (Article 35), right to communication (Article 37), right to education (Articles 43, 44, 45, 46) and right to access to information (Article 5).

The Constitution does not refer to any group rights/collective rights or minority rights as a separate category. Group rights are those rights that are meant for cultural communities in order to protect their culture and identity and ensure their presence and participation in public affairs. These are exempt from existing laws, symbolic claims, right to representation, assistance for minorities and marginalized groups and recognition (Kymlicka, 1995; Mahajan, 2002; Parekh, 2000).

There are certain provisions with regard to assistance in three cases: language, education and nomads' livelihoods. The Constitution treats nomads as a disadvantaged group and hence obliges the state to provide them assistance. It says, '[t]he state...shall design and implement effective programs to develop the nomads' livelihood' (Article 14) and their education (Article 44). Similarly, in the case of languages, it says that the state shall design policies and programmes to develop all the languages of the country (Article 16) and prepare teaching material in the native/mother tongue of all the communities (Article 43).

The Constitution recognizes two cultural practices. First, language: the Constitution recognizes six regional minor languages (Uzbeki, Turkmani, Pachaï, Nuristani, Balochi and Pamiri besides Persian and Pashtu at the national level) as the third official language in their respective regions (Article 16), and second, Shia jurisprudence: '[t]he 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, if there is no clarification in this Constitution and other existing laws, the courts shall rule according to laws of this sect' (Article 131). With regard to other religious minorities, the Constitution does not say anything. The criminal code discriminates against religious minorities by exclusively applying Hanafi jurisprudence in matters for which the criminal law does not have provisions.

Shia Muslims and non-Muslim Sikhs and Hindus are not exempt from those provisions of law that are based on Hanafi jurisprudence. The Con-

stitution has some repugnancy clauses. While it recognizes Islam as the religion of the state, it allows the followers of other faiths to practice their religions within the bounds of law (Article 2). A number of provisions and articles of the Constitution contradict Article 2 that provides freedom for other believers to exercise their faith. For instance, Article 3 states that no law can be in contradiction to Islam and Article 130 allows the court system to apply Hanafi jurisprudence in matters on which the law is silent or for which there is no provision and Article 149 prohibits amendments to principles related to Islam in the Constitution.

Lastly, the Constitution does not consider minorities as far as the issue of symbolic claims and representation are concerned. Inclusion and exclusion of minorities in cultural and political symbols of the state such as the national anthem, national holidays, national language and the name of the state and the flag is an important point. The national anthem is exclusively in Pashtu language (Article 20), though the Constitution recognizes Persian and six regional languages. Islam is represented in the national anthem, in the coat of arms and the national insignia in the national flag (Article 19) and the name of the state. Despite having so many lacunae, the current Constitution of Afghanistan is much more progressive as compared to its earlier constitutions.

One of the huge challenges in implementing the provisions of the Constitution has been violation of the Constitution by the state apparatus itself. Afghanistan Freedom House has declared that the state violated the Constitution 92 times in the last few years. The report, which also covers President Karzai's term, states that the President took the Constitution hostage as he violated it so many times (BBC, 2016).

## **Cultural rights**

### **The question of identity**

Dominant literature about national identity in Afghanistan has taken the term 'Afghan' as a solid, natural and uncontested identity. It is assumed that Afghan as an identity has long historical roots and it is uniformly adopted by all the people of Afghanistan. The point, which has been repeatedly raised, is that there has not been any secessionist movement in Afghanistan. This has been taken for granted to prove the homogeneity of the country under one common identity. Besides, people's struggle against the British colonial invasion in the 19th century and the jihad against the Soviet are seen as con-

solidating points in the nation building process in Afghanistan. Common knowledge in Afghanistan also maintains that all foreign invasions unified different people against a common enemy.

While these arguments are true to some extent, the truth is much more complicated. The point whether historically and objectively the people of Afghanistan have a shared identity has been contested by many scholars. Social and political conditions and circumstances have shaped in a manner that the people do not feel as though they have the same identity. The sense of being discriminated against intensifies the crisis of identity.

To understand the nature of identity politics in Afghanistan two things should be distinguished at the beginning: a sense of belonging to the land/country and a feeling of shared identity. There is a strong sense of attachment to the country when it comes to the patriotism of the people of Afghanistan. The roots of this claim go to two points. First, different ethnic groups have lived over a long period of time in the country. Different dynasties have made empires and built cultures based on a common Persian-Islamic civilization. The Persian-Islamic civilization provided a common platform for all diverse groups to form their polity. Richard Eaton calls it Persian Cosmopolis and Frederic Starr calls it the Persianate world. This common background provided a context for peaceful coexistence of different ethno-linguistic groups. The current ethnic groups in Afghanistan draw their lineages to different ancient and middle age empires in medieval Khurasan, Sistan, Bactria and Kabulistan.<sup>3</sup> These lineages strengthen the feeling of belonging to a common history. Tajiks claim the Bactrian civilization, Safarid, Samanid, Ghorid and Kurt dynasties. Turks claim Gaznavid, Seljuks and Timorid dynasties. And Pashtuns claim the recent Durrani and Barakzai dynasties. Each ethnic group considers itself a barrier to the old heritage of current Afghanistan.

Second, geographically the two major ethnic groups, Tajiks and Pashtuns, are dispersed across the whole country. While Tajiks are mainly concentrated in the north, northeast and west, there are pockets of Tajiks in the south and southeast as well. Pashtuns' traditional homeland was south and southeast Afghanistan, however, different Pashtun tribes settled in the west, southwest and the north under Safavid, Durrani and Barakzai dynasties. The most systematic settlement of Pashtuns started under Amir Abdur

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3. Before modern Afghanistan was established in the late-19th century as a modern state, the region was called by different names such as Bactria, Khurasan, Sistan and Kabul.



Rahman (1880-1901) and continued under Shah Amanullah (1919-29) and Prime Minister Mohammad Hashim (1929-46) (Bleuer, 2012). Dispersion of the two large ethnicities has blocked attempts at secessionism by all other minor ethnic groups.

While all the people of Afghanistan have a sense of attachment to the land, there is contention over the acceptance of a common identity. The identity 'Afghan' was recently adopted for all the citizens of Afghanistan. The 1923 Constitution referred to the people of Afghanistan as 'Afghans' (Kingdom of Afghanistan, 1923: Article 8). Historically 'Afghan' was a synonym of Pashtun or Pathan. For instance, Henry Walter Bellew in his piece 'Introductory Remarks to An Inquiry into The Ethnography of Afghanistan' refers to Afghans as Pashtuns (Bellew, 1891). He uses Tajik, Uzbek and Hazara parallel to Afghan. Throughout his ethnographic study he does not find any historical reference to Afghans. The same is with Elphinston (1819) in his book *An Account of The Kingdom of Cabul*.

With the decline of the Durrani dynasty after Zaman Shah Durrani in 1800, the vast territory of the empire was divided among different vassals, khans and sardars into fiefdoms. The northern region Balkh and Badakhshan, the western region Herat and the central region were out of the control of Darul Saltana-e Kabul after Zaman Shah. It was at this time that the British empire came in contact with the eastern borders of the last Durrani empire. The political disintegration of the region on the one hand and lack of the British empire's contact with non-Pashtuns on the other made British diplomatic emissaries, political agents and travellers generalize 'Afghan' and 'Afghanistan' to all the people of Khurasan, Sistan and Kabul.

The issue of national identity, the name of the country and the name of the currency was raised in the constitutional assembly in 2003. The term 'Afghan' as national identity, 'Afghanistan' as the name of the country and 'Afghani' as the currency have been contested by minorities as they refer exclusively to Pashtuns and do not represent the ancient and historical identity of the country. It was argued that the names Aryana or Khurasan were not only inclusive but also connected the country with its past.

The approved Constitution mentions 14 ethnic groups but calls every citizen of the country Afghan (Article 4). Unlike the previous governments' practices and unlike the 2004 Constitution, the post-Bonn government issued national IDs without mentioning the ethnic groups' identities. In 2011,

### Profile of a vulnerable minority: **The Kyrgyz community**

The Kyrgyz community of Afghanistan frequented the Pamir region for at least two centuries. However, by the beginning of the 20th century they had transformed this high-lying region into their permanent abode because of political developments. The ancestors of today's Kyrgyz community fled their winter quarters in Central Asia (particularly Kyrgyzstan and Tajikistan) and China (mainly Xinjiang) in the aftermath of the 1917 Bolshevik and 1949 Chinese revolutions. Subsequently they took refuge in the Wakhan corridor. Many commentators have concluded that the Kyrgyz community primarily escaped communist-enforced collectivization to safeguard their nomadic and traditional way of life (Kazemi, 2012: 2). In 1978, fearing the new communist regime in Afghanistan, many Pamir Kyrgyzs took refuge in Pakistan and later in eastern Turkey. After the Soviet invasion, many Kyrgyz people, who had taken shelter in the Pamir region of Afghanistan could not relocate either to the lower part of the country or to Kirghizstan. Thus, they were left in a peculiar situation, to say the least, in which they found themselves to be stateless.

The life of the Kyrgyz community was very difficult and they had to face all odds to sustain their lives in Afghanistan. The community, lives at an altitude as high as 4,000 metres in the Big and Little Pamir mountains of Afghanistan's Wakhan district in Badakhshan province. The Kyrgyzs living in the Wakhan Corridor of Afghanistan live in one of the most challenging environments in the contemporary world. Most of the Wakhan-Pamir area (approximately 82.9 per cent according to one estimate) is spread at high altitudes between 3,000 and 4,000 metres and this has been the home of around 2,000 Kyrgyzs. The exceptional cold and rough winter weather stretches for long periods, sometimes even for eight-nine months. The temperature sometimes goes down to -50°C. Because of its high altitude and the hardships that living here brings, the area is known as *bam-e donya* in the local language, meaning 'the roof of the world'. The Kyrgyzs inhabiting the Pamir region are known as 'vertical nomads'. Owing to the difficult cold climate, they annually move from low-lying winter quarters (*qeshlaq*) to higher summer pastures (*ailaq*). When commenting on the migration patterns of the Kyrgyzs, Ted Callahan notes the following:

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the government announced a plan for issuing national electronic ID cards. The cards were designed exclusively in Pashtu language, despite Persian and Pashtu both having the status of official languages. This issue became controversial in the national Shura while discussing the Population Registration Act. Besides, the issue of nationality was also a point of contention. While a majority of the Pashtuns favoured specifying the term Afghan for all the citizens, other ethnic groups such as Tajiks, Hazaras and Uzbeks argued specifying each particular ethnicity on the card. For the proponents of Afghan identity, the term Afghan is a matter of national unity and prevention of the state's disintegration. For Tajiks, Hazaras, Uzbeks and other minor ethnic groups, Afghan does not capture their sense of identity, as it is another word for Pashtun. They also assume that not mentioning a particular ethnic identity is an effort by Pashtun nationalists to obscure the non-dominance of Pashtuns (Bezhan, 2013; Stern, 2014).

The debate over this issue reached a stalemate in the national Shura between the pros and cons of 'Afghan' in December 2013. Society became polarized on this issue around two opposing poles. Pashtun nationalists got together all Tajiks, Hazaras, Uzbeks and other minor groups and claimed that they did not accept Afghan as their national identity. In a political debate on Zwandon television, Abdul Wahid Taqat, a retired military officer said all non-Pashtun ethnic groups would be 'bastards' if they did not accept Afghan and said they should be kicked out of the country (Zhwarleedona, 2013). This incident intensified the crisis of identity in Afghanistan. People from both sides staged demonstrations.

Finally, the national Shura approved the bill by specifying a particular ethnicity on identity cards. The law went to President Karzai for ratification. However, under pressure from Pashtun nationalists he did not sign the law till the end of his term. Although President Ashraf Ghani initially made a commitment to ratify the law he later delayed the ratification of the Population Registration Act till 1 December 2014. While the act mandates the government to issue national IDs for citizens mentioning their ethnic identity, it has not taken practical steps to start the process because of opposition by nationalists. In April 2016, the Law Committee of the Cabinet changed the controversial article of the act and added both nationality and ethnicity on the ID cards. The proposal for this change should go for ratification by the national Shura (Southasiamedia, 2016).

... Profile of a vulnerable minority continued ...

The Kyrgyz follow a short (usually less than 20 km), pendular migration cycle, moving from their summer camps (*jailoo*) on north-facing slopes (*terskey*) to winter camps (*keshtow*) on south-facing slopes (*kongey*). The migrations typically occur in October (*jailoo* to *keshtow*) and June (*keshtow* to *jailoo*).

However, data on the total number of the people in this community is debatable. In the absence of any concrete data on the number of Kyrgyzs, on the basis of his observations Callahan has calculated that their total number is 1,500 individuals living in 250 households. In terms of their religious practices, the community could be considered as Sunni Muslims. The community does not engage in agricultural production, partially due to the nomadic nature of their habitation and also to some extent owing to the higher level of their ecological surroundings. But the lush pasturage of the Wakhan district has been the home of the nomadic Kyrgyz community for many years. In a striking passage, Marco Polo noted that 'when you have got to this height you find a fine river running through a plain clothed with the finest pasture in the world' (Callahan: 1). The case of green and rich pastures also finds a mention in more recent travellers' accounts. In the absence of agricultural production, the Kyrgyz community depends exclusively on livestock. The community's primary economic activity is semi-nomadic pastoralism. They derive most of their subsistence from secondary pastoral products (dung fuel, milk products, wool). The nomadic Kyrgyz community tends sheep, goats and yaks. Sorting wool from the animals constitutes one of the primary sources of income for the community. The members engage in trading wool, meat and milk with customers from Afghanistan's lowlands. A class difference within community members is also noticeable. It is usually the poorer families that tend the sheep and goats owned by the richer tribe members. In the absence of any modern storage facilities, various milk products produced from livestock farming like cheese and curd are usually stored in yurts (round felt tents). The Kyrgyz nomads can, however, afford some luxury items like radios, watches and sewing machines as they trade in animal products in lower Afghanistan. Their closest neighbours, the Ismaili Shia Muslim Wakhis community is concentrated one level below them in the Wakhan Corridor, at 2,000–3,000 metres; this community engages in agriculture. The Wakhis and the Kyrgyzs are engaged in economic

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## **Education of minorities**

Education is mentioned as one of the fundamental rights of citizens in Afghanistan in the chapter that deals with the fundamental rights and duties of citizen in the 2004 Constitution. The state is obliged to provide free education to all citizens up to the bachelor level. To protect minorities' identity and culture, it is stipulated in Article 43 that the state is responsible for providing education based on the native language and mother tongue of citizens. The Constitution also emphasizes education for nomadic communities (Article 44). However, Article 45 underlines a monolithic and unified education syllabi and curricula for all the people of Afghanistan. Article 45 states, 'the state shall devise and implement a unified educational curricula based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.'

While Afghanistan is a multi-ethnic and multi-religion country, establishing curricula based on a unified national culture and one particular religion for all citizens is against the principles of cultural diversity, multiculturalism and minority rights. This point does not suggest that education curricula should not be based on religious teachings of Islam for Muslims who constitute an absolute majority in the country, but since Hindus and Sikhs are also the citizens of Afghanistan they too should have the opportunity to have curricula based on their own religious teachings. While the Government of Afghanistan claims that it 'has established four school (two in Kabul, one in Ghazni and one in Jalalabad), one new school will be built in Kunduz province for the Hindu minority (Ministry of Justice, 2012). Hindus and Sikhs state that two primary private schools were established on their own initiative in Kabul and Jalalabad in 2012 (Nim-Rukh, 2014). They also complain about societal discrimination in public schools because of their religious beliefs.

History textbooks in schools are not without prejudices and cultural biases. These prejudices are evident in three cases. The first case is the depiction of Amir Habibullah Kalakani. Kalakani, a Tajik Amir in the modern history of Afghanistan, is defamed and projected in a humiliating way. Instead of calling him Amir/Shah (king), the textbook calls him Bacha-e Saqau (son of a water carrier) in an insulting manner. The 12th Grade history textbook does not talk about his reign but it considers his revolt against Amanullah and calls him an outlaw and rebellious (Ministry of Education, 2011). Kalakani's portrayal as an outlaw is rooted in ethnocentric Afghan national-

... Profile of a vulnerable minority continued ...

ties based mainly on bartering (of livestock and agricultural products). Apart from milk products, some manufactured goods are in great demand in the lowland. Women are usually engaged in weaving carpets in the Pamir region. Carpets woven here are sold to traders in the city of Van. The nomadic population in the lower Pamir region also trades with bordering countries like Pakistan. They engage in barter and prices for goods are determined in terms of sheep. Usually traders from Afghanistan's lowland come to the Kyrgyz community (Callahan: 5-6). But there are also many instances of Kyrgyzs transcending the boundaries to trade at either Goz Khan (road head for Big Pamir) or Sarhad-e Boroghil (road head for Little Pamir). There is evidence that some Afghan Kyrgyzs in the Pamir mountains sell livestock in places like Kabul and lower Afghanistan.

### **Social life of the Kyrgyz community**

In the recent documentary film, *Ancient Nomads* by Ayanfilm, Osmon Ajy (an elderly man living in High Pamir) comments: 'We came here hundred years ago, but we don't know where we come from. We have all customs of our fathers.' These Kyrgyzs do not indulge in social relationships with other people in the region – the Tajiks of Badakhshan. For instance, there are no inter-marriages between Kyrgyz and Tajiks of Badakhshan. Osmon Ajy notes the strict community custom on the issue of inter-community marriages: 'We do not receive girl from others and we do not give girl to others.' Although the community is connected to others through their economic affairs, the social exclusion of the community, like most other 'backward' nomadic communities, appears to be of much significance. Exclusion from developmental activity can also be witnessed in the apathy of different political and institutional outfits in the country. For instance, there was no school for the community in High Pamir till 2009. It was at the constant insistence of the community that the government established a school for them. The nomadic culture and extreme climatic conditions make it virtually impossible to run the school throughout the year. However, the school teaches children from the community for four and half month in a year in Persian (Dari) medium. At present there are 64 students studying in the school. A look at the school shows the conservative character of the community as girls do not attend the school. The film *Ancient*

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ism. While the modern history of Afghanistan, especially 19th century history is full of chaos and inter-familial wars between the Durrani and Barakzai dynasties, the textbook does not characterize any Durrani or Barakzai khans and sardars as outlaws and rebels.

Degradation of a Tajik king in official narrations and textbooks is perceived to be discriminatory and biased for Tajiks. Tajiks see this as their humiliation in general. In recent years there has been a movement for rehabilitating Kalakani's image in official narrations and textbooks. As Amir Kalakani was buried after being hanged in an unknown place, a people-centric commission called the 'Commission for Aggrandizement and Interment of Amir Habibullah Kalakani' was formed to find out the unknown grave of the king and re-burying him with due respect (Mutarif, 2016). The commission advocated the cause for six months among the people and political leaders and asked the government to accomplish this task officially. Finally, on 21 July 2016, the commission provided a 10-day deadline to the President to issue an official decree for aggrandizement and interment of Amir Kalakani. However, Ashraf Ghani refused to issue the decree. After the negative response from the government the commission took on the responsibility of performing the task.

The second case is of abnegation of ethnic massacres and slavery under Amir Abdur Rahman. Amir Abdur Rahman, the Iron Amir, established a centralized state at the expense of the massacres and slavery of ethnic groups. Hazaras, Tajiks, Uzbeks and Ghalzais were massacred and slavery became legalized under his reign. While the textbooks are silent on these dimensions of his reign, they do not acknowledge abolition of slavery under Shah Amanullah as well. Hazaras state that massacres, slavery, suffering and losses of the Hazara ethnic group under Abdur Rahman's discriminatory policies and authoritarian rule should have been acknowledged in textbooks.

There has been progress in the last few years with regard to the right of minorities to education in their mother tongue. However, the progress has been slow. Besides two official languages of the state at the national level, the 2004 Constitution also recognizes six minor languages, Uzbeki, Turkmeni, Pachai, Nuristani, Balochi and Pamiri, as third official languages in their localities. The Education Law states, 'In the areas where spoken language of the majority of the people is the third official language in the country...in addition to teach Pashto and Dari [Persian] languages, opportunities for teaching of the third language as a teaching subject shall be prepared. In

... Profile of a vulnerable minority continued ...

*Nomads* features Sapyra, a girl from the community, who says that studying in the school is considered shameful for girls. But a more thorough study is required to see if the community is conservative.

Most of the community members cannot afford modern medical facilities. There is no doctor and no medical centre for the community in the High Pamir region. The government has provided it with a bus that has medical facilities, but lack of oil and a driver mean it is a mere show case. As a consequence of lack of medical facilities at this rough and high altitude, the Wakhan-Pamir area has some of the world's highest rates of maternal and child mortality. In the absence of any official government data, a recent survey indicates that the maternal mortality rate (MMR) among the Kyrgyzs of the Big Pamir was likely to be 'more than 4,000 per 100,000 live births'. A Kyrgyz woman's lifetime risk of maternal death is nearly one in three. Child mortality figures among the Kyrgyzs are also alarmingly high. In the Big Pamir area, more than half the children die before the age of five (Callahan: 7). *Ancient Nomads* shows the lack of medical facilities and rough environmental conditions, which in turn are responsible for high child mortality rates. For instance, the film points out that Rayaullo's four children have died and now he does not have any child. It cannot be denied that the lack of, or in some cases complete absence of, modern developmental projects is because of the remoteness of the Pamir region. In addition, there have been no state sponsored efforts to impart training/skills to the community that is best suited for living a dignified life at that high altitude.

Caught in the Pamir region, this pastoralist ethnic Kyrgyz community which has been living in the harsh environment for centuries is excluded from the larger international political discourse. As part of the national discourse, Kyrgyzstan has periodically voiced the excluded nature of the Kyrgyz community living in the Pamir region of Afghanistan, citing their miserable living conditions. But the post-Soviet Kyrgyzstan has done little to ensure the return of their 'brethren' Kyrgyz community to their homeland. After the collapse of the Soviet Union, discussions between the Afghan Kyrgyzs and the Kyrgyzstani government began in 1996 for their repatriation and in 1999 a formal petition was made to the then President Akaev

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order to teach the third official languages of the country, the ministry of education in the field of teachers training, textbooks, teaching materials, shall provide and apply effective programs' (Education Law 2008, Article 32[3]).

The Ministry of Education has established the Department of Ethnic Languages to promote and develop syllabi for minority languages. However, full schooling is not available in the mother tongues of all the minorities. A government report claims that it has included minority languages according to their respective population as 'Uzbek language in 11 north provinces where Uzbeki are spoken, Turkmeni in 4 provinces, Nuristani in one province, Pashai in 6 provinces, Balochi in one province, Gujari in 6 provinces and Shegnani in one province in to education curriculum as third languages of the country' (Ministry of Justice, 2012).

School textbooks are not published in many minority languages for all the 12 grades. Lack of teaching staff has also been one of the problems for minorities. Many of the minority languages in Afghanistan do not have a script or written form. Pashai did not have script till July 2003 (Yun, 2003). Textbooks in Pashai have been published up to 12th Grade but teaching has not yet begun (Hanifullah Shahab Pashai, personal communication). Teaching in Turkmeni is just up to Grade 2 and in Gujari it is till Grade 5 and in Uzbeki it is up to the Grade 9 (DW, 2011). The first Uzbeki dictionary in Afghanistan's Uzbeki dialect and scripture was published in 2008 by Noorullah Altai, Professor of Uzbeki language at Balkh University (BBC, 2008a). Similarly, for the first time the *Quran* was translated to Uzbeki Afghanistan script in 2015 (MWF, 2015). Nuristani medium textbooks till the 6th Grade are under publication (BBC, 2008b). Textbooks have been written in Balochi up to the 8th Grade by Abdul Sattar Purdely, Professor of Balochi language. There are three Balochi medium schools for Balochs in Nimroz, Afghanistan. A chair of Balochi language has also been established in Kandahar University with the efforts of Hassan Janan and Purdely (Zurutuza, 2014).

## Participation and representation

Since the Bonn agreement, there is a form of unstated and informal power sharing among the ethnic groups in the government. Some of the reports argue that all ethnic groups are represented at different levels of governance (Katzman, 2015: 2). However, this contestation is naïve and baseless. Since the political system is highly centralized, the prime focus of power sharing has been in capital Kabul and the political participation at the provincial

*... Profile of a vulnerable minority continued ...*

for the repatriation of the Kyrgyz community living in Afghanistan. However, a lack of funds for the repatriation appears to be an issue in the integration of the Kyrgyz community in Afghanistan. Given this background the future for Afghan Kyrgyzs is not particularly promising. Political leadership in the entire region is weak and this limits the possibility of collective action for the benefit of the Kyrgyz community. Thus, the emergence of a different modern nation-state in the area after the Soviet collapse has not brought about any fundamental change in the life of the Kyrgyz community of Pamir region.

There is general ignorance about the ethnic Kyrgyz community living on the roof of the world in both Afghanistan and Kyrgyzstan. Several Afghanistan Analysts Network (AAN) interlocutors in the Afghan Ministry of Border, Ethnic and Tribal Affairs conceded that they knew or had heard very little about the Kyrgyz community in the Pamir. Thus, for instance, it is striking to note that the six periodicals published by the ministry contain no news or information about the Kyrgyzs in Afghanistan. Moreover, there have been no public textbooks in Kyrgyz language in Afghanistan. It is clear that the community continues to be a subject that needs to be thoroughly explored. In fact, this inadequacy of data/studies on the part of state institutions suggests a general environment of exclusion of the ethnic Kyrgyz community of Afghanistan.

level has been overlooked. The local people have no role in the election of local governors and administrators. In most of the provinces, the governor does not belong to the province. For instance, while a majority of the residents in Laghman province is Pashia minority, the governor is not Pashai. The same is true for almost all the provinces.

This section looks at the question of political participation in three institutions – the executive, the national Shura and the Afghanistan National Army.

### ***Executive***

The National Unity Government came out of a political agreement between the two leading candidates, Abdullah Abdullallah and Ashraf Ghani

in the 2014 elections. Pashtuns got key security sector ministries such as the Ministry of Defence, Ministry of Interior Affairs<sup>4</sup> and the National Directorate of Security, National Security Council and key economic sector bodies such as the Ministry of Finance and National Bank (Clark, 2015; Rahel, 2014). Overall Pashtuns form around 48 per cent of the ministries and executive bodies. ‘During Karzai’s presidency, [National Security Council] was heavily populated by ethnic Pashtuns’ (Katzman, 2015: 6). Under President Ghani, the National Security Council continues to be dominated by Pashtuns.

There is no census or any statistics on the political participation of citizens in the bureaucracy and civil services and other government positions segregated by ethnic, linguistic and religious identities. However, some reports indicate over-representation of Pashtuns through arbitrary appointments by President Ghani. These appointments have challenged and side-lined the formal bureaucratic functioning of the state such as the Independent Administrative Reform and Civil Service Commission which has the authority to appoint civil servants. Despite the international community’s trust and hope in President Ghani to tackle the issue of corruption and the patronage system, appointments in the President’s Office of Administrative Affairs (OAA) are predominantly Ghilzai Pashtuns.

It is said ‘the ethnic composition of senior appointments made within the OAA betrays a clear favoring of technocratic Pashtuns: 75 per cent (21 appointees) are Pashtun while 14 per cent (four appointees) are Tajik. Ghani’s list of advisors is also made up mostly of people of eastern Pashtun origin: 69 per cent (22 appointees) Pashtun against 19 per cent (six appointees) Tajik. Ethnic-Hazaras and Uzbeks each hold less than 3 per cent of the appointments’ (Sharan and Boss, 2015). Another report also claims that out of 26 high ranking positions in OAA, Pashtuns have absolute majority. There are only two Tajiks and one Hazara and Uzbek each in the lower ranks. The number of positions and bureaucratic offices has increased to a large extent as compared to the previous administration. This could be characterized as bureaucratic inflation. For instance, there are three different offices for policymaking under different names in OAA. The number of directorates has increased from 19 to 27 (Samim, 2015). These unnecessary expansions of the bureaucratic structure were to get in more of Ghani’s co-ethnic Pashtuns.

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4. In April 2016, General Taj Mohammad Jahid, a Tajik was approved as Minister of Interior Affairs (Tolonews, 2016).

Good practice case study:

## The Pashai language development programme

In this case study we try to understand the initiative taken by the Pashai Community Development Project (CDP) to enhance the possibility of the Pashai language programme becoming a success in Afghanistan. Pashai is spoken by the Pashai ethnic group, located in the north-east corner of Afghanistan. It is interesting to note that the term 'Pashai' is used to refer to a 'specific language, to the speakers of that language, and to the area that some of the Pashai speakers inhabit' (<http://www.everyculture.com/Africa-Middle-East/Pashai.html>). There are different theories on the origin of the Pashai community in the north-east pocket of Afghanistan. One theory suggests that the 'Pashai were members of the classic Gandhara culture and that they were pushed out of their original homeland in the lowlands by an invasion of Pashto-speaking Afghans from the Sulaiman Mountains. The Pashai then found refuge in the high mountain valleys of the Hindu Kush, where their descendants live today.' The second school of thought draws its sources from ethnographic research and claims that it is possible that all the groups, living in the mountain areas including the Pashai, share a common historical root that might predate the rise of the Gandharan civilization (<http://www.everyculture.com/Africa-Middle-East/Pashai.html>).

The Pashai literacy project is an important component of the larger Pashai CDP that aims to bring about change in the life and culture of the Pashai people. In other words, the broad aim of the Pashai CDP, which also includes developing the Pashai language and adult literacy project, is to empower Pashai community members with the fundamental skills and knowledge required to participate in activities that improve their livelihood. Not much data is available on this unique initiative though. The project was started in 1999 by the charity SERVE in response to community members' request for an adult literacy programme. In 2006, with support from the provincial government the project expanded to include Pashai language literacy classes for girls. Simultaneously, the project started the process of creating a Pashai and Pashto bilingual education programme within the formal education system. The project is also known as Eastern Region Literacy Project of SERVE Afghanistan ([http://portal.unesco.org/education/en/ev.php-RL\\_ID=59427&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-RL_ID=59427&URL_DO=DO_TOPIC&URL_SECTION=201.html)).

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Minority groups have been marginalized in President Ghani's appointments which has intensified their grievances (Parsa, 2015). Amrullah Shaleh, former Tajik director of the National Directorate of Security has said that Ghani monopolizes the power in his person and patronage (Azadiradio, 2015). Ismail Khan, a former Tajik governor of Herat, has also claimed that Ghani is making appointments without consulting the people. 'Ghani's moves were distancing him from the people and focusing power in his own ethnic Pashtun community, neglecting other ethnicities' (O'donnell, 2015).

Besides, no ministry is inclusive of Baloch, Pachai, Nuristani, Kyrgyz, Qizilbash, Gujur, Brahwui, Hindu and Sikh ethnic groups. On 28 March 2015, the *Open Society Daily* published a report in which it criticized the under-representation of Hazaras and Uzbeks in the Ministry of Economy. There is no Hazara or Uzbek in the two deputy ministers and 16 directorates, the report indicates. Out of 500 staff members in the ministry, only 18 are Hazaras who are working at the low ranks and do not have any role in either framing policy or in decision making. The role of other minor ethnic groups is completely invisible (Kalili, 2015).

### ***National Army***

In the past there was an informal understanding on the share of ethnic groups in the Afghanistan National Army (ANA). In 2006, the Minister of Defence declared in a decree that appointments in the ministry will be based on ethnic quota – 44 per cent Pashtuns, 25 per cent Tajiks, 10 per cent Hazaras, 8 per cent Uzbeks and 13 per cent other ethnic groups. The order was criticized by Tajik, Hazara, Uzbek and other minor ethnic groups as unjust. They argued that while there was no national-wide census based on ethnicity in Afghanistan, the quota determined by the Minister of Defence under-represented non-Pashtuns (Amaj, 2012). In 2011, as a result of the quota system in ANA and the Ministry of Defence, 'the 26 top positions were occupied by 11 Pashtuns (42 per cent), 9 Tajiks (35 per cent), 4 Hazaras (15 per cent), 1 Nuristani and 1 Uzbek (4 per cent each)' (Guistoizzi and Quentin, 2014: 34). However, ethnic discrimination is rampant in recruitments, appointments, getting leave and many other issues in the army (Alarabiya, 2011).

### ***National Shura (Legislative)***

The electoral system in Afghanistan is based on a single non-transferable vote (SNTV) system. Civil society and people's efforts to ratify the proportional representation electoral system have failed so far. President Hamid

*...Good practice case study continued ...*

To understand the significance of the programme we must take a brief but necessary historical detour. After the establishment of the Khalqi government in 1978, seven national languages were selected: Dari, Pashto, Uzbeki, Turkmani, Nuristani, Balochi and Pashai. From 1986, under Najibullah's rule, Dari and Pashto were given preference in practice. Under the Taliban regime, which started from 1996, there was no official language policy. But Pashto became the de facto official language of the government. Many commentators also opined that the Taliban regime did not encourage and promote speakers of minority languages in Afghanistan's multi-lingual settings (Ju-Hong Yun). Along with this, apart from religious teachings, any other mode of teaching was discouraged or not allowed. One has to read the significance of the project against this background where different linguistic communities were not encouraged to practice their own language.

Approximately 500,000 people living in eastern Afghanistan speak Pashai language. The Pashai ethnic community lives in extreme misery and is mostly concentrated in the eastern zone of Afghanistan that features isolated, mountainous and heavily populated valleys in Nangarhar, Laghman, Kapisa, Nuristan and Kunar provinces. The altitude is high (between 1,000 and 4,000 metres). They were traditionally agriculturalists by profession. Dealing with animal husbandry and agriculture were the two most important occupations for the community. Twenty years of war destroyed traditional livelihoods, and land was made untenable for vegetable production, a situation compounded by over seven years of drought. Miserable conditions of community members, living in a most distressed situation, were not only confined to their economic affairs and livelihood as the Pashai people could not find any cultural acceptance for their language. The spoken form of the language has been there for roughly 2,000 years, but the written form started only in 2003. More than 80 per cent speakers of the language (which includes about 98 per cent of the women), are illiterate (Ju-Hong Yun).

On the other hand, Pashto is the language of politics, economics and education in the region. It was in this backdrop that the Pashai programme was initiated. After the Taliban regime ended in 2001, people could again speak and use their own language. New schools were established. But most of the Pashai adults were unable to take advantage of the new educational opportunities offered after the war, partly because it had been so long since they had had any opportunity to study in Pashai language as the medium of instruction till then

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Karzai adopted the SNTV system without considering the concerns of the people (Suhrke, 2007). Based on this system there is no separate representation right for ethnic and religious groups. The electorate is according to the provinces.

However, the Constitution gives nomads (*Kuchis*) a separate representation right and determines the whole country as their electorate area. Nomads have been allocated 10 seats (seven men, three women) in the Lower House and two seats through a presidential decree in the House of Elders (Constitution of Afghanistan, 2004, Article 84[3]). There are two main problems in separate representation rights for Kuchis. First, allocation of 10 seats for the nomadic community is unjust as it results in over-representation of Pashtu speaking people. While different ethnic groups such as Balochs, Kyrgyzs, Turkmens and Pashtuns have nomadic populations, these seats are exclusively utilized by Pashtun nomads. The report of the United Nations High Commissioner for Human Rights also indicates that this category benefits Pashtuns as it gives them a higher percentage of seats (Human Rights Council, 2009). Second, the nomadic communities have declined sharply in recent years because of two reasons: (1) The government has settled the communities in the plains on the north of the Hindu Kush<sup>5</sup> and around the Helmand Valley (irrigation) project; and (2) the inter-factional war has disturbed migratory patterns of nomads and resulted in a change in their lifestyle (Petrov, 2014). Hence, most of the nomads are settled communities now. A majority of the Kuchi representatives in the national Shura are not nomads, rather they are settlers. The Afghanistan Freedom House has also stated that allocating a separate quota for Kuchis is a kind of prerogative for them which puts them in a privileged position as compared to the rest of the citizens (BBC, 2016).

In 2013, the issue of separate electorate for Hindu and Sikh minorities became controversial. To ensure representation in the national Shura, the Hindu and Sikh communities lobbied for a quota. During deliberations on the electoral law, the Upper House proposed to add a seat particularly for Hindu and Sikh communities in the Lower House that increased the number of seats from 249 to 250 but the Lower House disagreed. A joint commission of both the Lower and Upper Houses was mandated to discuss the issue and solve the disagreement. The commission dropped the proposal from the election law's draft. But on 3 September 2013, one seat was added

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5. In north Afghanistan, the government had given fertile land of Tajiks and Uzbeks to Pashtun nomads. This issue led to communal violence in the region in later years.

*...Good practice case study continued ...*

was Pashto. In the post-war period, all the new schools focussed on the children and Pashai adults felt it was inappropriate for them to study alongside children. Specific adult literacy projects for Pashai adults were not available. Pashai adults in some areas had no access to adult education and women and girls were denied formal and non-formal education of any kind. It is in this context that the Pashai language development programme was started in 1999 by the charity SERVE, as part of its response to community members' request for an adult literacy programme. On the request of the local community members in 1999 the project leaders surveyed the area and initiated the project in the post-war period. To meet the challenges, a distinct Pashai language development and literacy programme, a part of the larger Pashai CDP was taken up to encourage those whose mother tongue is Pashai.

## **SERVE**

SERVE Afghanistan was established in 1972 in response to a famine in Ghor province. Till the end of the Soviet invasion, it did not take up different issues on the ground very frequently. It was only in 1991, after the Soviet occupation had ended that SERVE returned to Afghanistan and started the SHIP school for the deaf. Later, SERVE Afghanistan started projects in different regions of Afghanistan, and today it is engaged in various community developmental programmes. The Pashai language development programme is an important part of the larger projects of the organization.

## **The programme's goal**

This community-owned initiative is aimed at delivering literacy and enabling the Pashai people to find means of earning a livelihood. It is not merely a language development programme, but a literacy for livelihood programme. Issues like public health and nutrition and education have occupied centre stage of the entire programme. The programme's target is empowering around 1,000 Pashai men and women every year. The purposes of the project can be divided into three broad themes: 1) to help tribal people maintain their ethnic identity by recording their history and cultures in writing in the Pashai language, 2) to enable community members to participate in activities aimed at improving their material living conditions by imparting them the knowledge/skills needed to foster and build self-reliance, 3) to integrate the Pashai people, excluded politically and socially till the Taliban regime, with the majority population by

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to the Lower House for Hindu and Sikh communities through a presidential decree (Foschini, 2013a). However, the Lower House rejected the presidential decree. The representatives argued that adding a quota for one community and ignoring the others would not be just. As the house had allocated a seat for Hindus and Sikhs, it should do the same for other minorities as well. Further, it was said that the community is so tiny that it could not qualify for a seat in the Lower House considering its electoral constituency (Foschini, 2013b).

## Non-discrimination and equality

### Livelihood, income and employment

There is no report on the income, employment and livelihood status of the people of Afghanistan based on national or ethnic, linguistic or religious communities. The statistics and numbers hide the realities between the majority and the minority. The Government of Afghanistan publishes a nation-wide survey called the National Risk Vulnerability Assessment (NRVA) that covers different aspects such as demography, livelihood, income, employment, labour force, food security, health and agriculture. NRVA (2014) claims that it provides the most comprehensive statistical information on Afghanistan (Central Statistics Organization, 2014). While the report does not give a break-up of ethnic and religious communities, it acknowledges that national statistics conceal the differences within the population.

Further, the Ministry of Economy along with the World Bank has published the Poverty Status of Afghanistan based on NRVA 2007-08. The report provides profiles and magnitude of poverty, employment, labour force and access to social services in Afghanistan (Ministry of Economy, 2010). Like NRVA, the Poverty Status of Afghanistan examines the status of minorities with regard to mentioned indicators. The report provides figures and statistics on different areas disaggregated by gender, geographical region and socioeconomic characteristics. However, it is silent when it comes to minorities. The report of the UN High Commissioner for Human Rights emphasizes the importance of disaggregated data by ethnic and

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5. In 2005, Anarkali Honaryar, a Sikh woman, was elected from Kabul to the Lower House and Ganga Ram, a senior Hindu from Kandahar was appointed from Kandahar to the Upper House. In the next election, none of the Hindus and Sikhs were able to succeed in the elections to the Lower House. The President appointed Honaryar as a member of the Upper House.

*...Good practice case study continued ...*

enabling them with the skills and knowledge that are essential for survival in the modern world and which bring them dignity. Thus, the project is not only confined to the narrower circle of literacy. Instead its aim is to go beyond the typical literacy project and thus make a difference in the larger socio-economic-cultural struggle of an ethnic community whose life and language were on the verge of decay.

## **Activities**

Although the oral form of Pashai language has been in use for about 2,000 years, the language was unwritten until 2003. The project was introduced to elders in the community, who chose members to form a Pashai Language Committee. This committee is responsible for developing and overseeing activities aimed at the development of the Pashai language. The Pashai Language Committee initiated planning for the Pashai literacy and language development programme and is responsible for collecting and updating the written form of Pashai language. Writing and reviewing textbooks for printing have been one of the major concerns of the committee. Hence in July 2003 the project leaders organized a two-day seminar that focussed on developing a Pashai alphabet. Most village elders, who are Pashai language speakers participated in the seminar. The delegates also included literacy teachers and delegates from local schools. Although an expert linguist led the seminar, decisions relating to the development of the alphabet were made by the Language Committee members. From 2006, special emphasis was given to a girls literacy programme (Ju-Hong Yun).

After the development of Pashai language script, the Language Committee, with help from different teachers started organizing Pashai language classes in 2006. The local government also extended help and in August 2006, the Language Committee obtained permission for Pashai programmes from the local government. The journey then continued and as per 2003 estimates, 58 adult classes had been held in 43 different villages which catered to the needs of 1,450 participants.

Taking the thread of the original Pashai language development programme forward, a recent and encouraging development is now noticed. The Pashai Youth United Association was established in 2013. Initially it was established as an unofficial body in the four provinces of Laghman, Kunar, Nengarhar and Nuristan. In 2015, it was reg-

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tribal groups (Office of the High Commissioner for Human Rights, 2010). It is crucial to highlight that the Government of Afghanistan and research communities should take this point into consideration and provide data and statistics on minorities.

## **Land**

Land and property has been a subject of dispute in Afghanistan as a result of continuous conflict in the country. However, like in the other areas data on this has not been documented according to ethnic, linguistic and religious groups. The Afghanistan Freedom House (2016) report indicates that in the last 13 years most of the public and private properties have been usurped by local chiefs, power brokers, ex-warlords and politicians. The report claims usurpation of almost 2 million acres of land by 15,800 individuals in 18 provinces that made President Karzai use the term ‘the Black Season of Land Grabbing’. The report does not provide a full picture of land disputes and usurpations with regard to minority groups as it only covers the condition of Hindus and Sikhs. The report indicates that more than 90 per cent of Hindu and Sikh properties have been usurped in Kabul, Khost, Nangarhar, Qandahar, Ghazni and Helmand provinces in the last few years. In some of the provinces, their temples and cremation grounds have also been grabbed. As a result 99 per cent of the Hindus and Sikhs have left the country (Roye, 2016).

## **Case studies on land disputes**

### ***Confiscation and Occupation of Tajik Land in Bamyan Province***

Tajiks are native residents of Bamyan as they are of the rest of the country. They mainly live in Bamyan city and its three districts of Sayghan, Kohmard and Shibar. About 100 years ago, Faiz Mohammad Katib named Bamyan as a Tajik residence (Katib, 1994: 138-139). The Tajik population in Bamyan has been under-represented in official documents and in common knowledge because of the lack of a unified census. Tajiks of Bamyan claim that they comprise 40 per cent of Bamyan province (Bamikapress, 2016a).

The civil war in the 1990s led to the weakening of the state and as a consequence the country was divided into fiefdoms. Located in the central region of Afghanistan, Bamyan was controlled by the Hizb-e-wahdat party, which was mainly a Hazara party during the civil war. The war in Bamyan resulted in the

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istered as an association in the Ministry of Justice and it expanded its activities to Kabul and Kapisa provinces. Since the time of its establishment, the association has been doing advocacy for the Pashai people's rights, political participation and unity. It aims at creating cohesion among and solidarity for Pashai people. It has attempted to connect different segments of the Pashai people and raise awareness on Pashai identity and rights (Personal interview with the head of the Pashai Youth United Association Hanifullah Shahab Pashai, 2016).

Hanifullah Shahab Pashai says that till date no civil society organization has worked for the Pashai people. He adds that the association that he represents is the first one that was established by the Pashai people for advocacy of Pashai rights. According to him the main concern of the association is the fact that there is no institutional support for Pashai language speakers. While a majority of the Laghman province's population is Pashai people they are under threat of assimilation. Governmental affairs are in Pashto and students are trained in Pashto language rather than their mother tongue and there is no department of Pashai language at the university level.

The association organized a six-day workshop for standardization of Pashai language in Lagman province for 60 teachers. On 19 May 2015, the association organized a gathering to bring cohesion and solidarity among Pashai people. The Pashai people are scattered in 10 provinces but they are under-represented in the National Unity government. The association also criticized the National Unity government for not considering the demands and needs of the Pashai people.

## **Project approach**

The project follows a holistic approach for developing the community. The project has started vocational training. It believes that in Afghanistan, adult literacy and education should teach life-skills as well as literacy skills and should help people gain access to and use new information in order to raise their income-earning potential and hence their standard of living. Involvement of the local people is very important for the project and hence it is community-based. Project leaders work together with the Shura, local elders and local authorities who provide the classrooms, select adult students from the community and encourage them to attend classes. Supervisors and teachers are from the villages in which the classes are held. Project leaders use large community meetings to share their ideas and generate inputs and suggestions relating to different aspects of the

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displacement of Tajiks and Pashtuns into neighbouring provinces and cities. As a result, the population of Tajiks in Bamyan declined sharply. According to Mahiudeen Ashu Farahmand, a Tajik civil activist, there are 3,000 internally displaced families in Kabul, 1,500 families in Balkh, 1,000 families in Baghlan and 500 families in Kunduz provinces (Farahmand, personal communication). In the post-Bonn settlement, Tajiks claim that there has been a systematic and organized omission of Tajiks from the economic, political and geographical space in Bamyan in the last 10 years. Their land has been confiscated by the provincial administration or occupied by local goons affiliated with Karim Khalili, ex-Vice President in Hamid Karzai's administration (Mitraneews, 2016). The occupied land in Bamyan city is located in Zahak, Surkh-dar, Tupchi, Petab-e Laghman, Tabaq-e Sari, Jagrakhil, Zargaran, Safi town, Pesht-e Khuja khar, Surkh Qul, Qul-e Sayied Kamaluddeen, Sang-e Chaspan, Tap-e Jalal and Bedak, Regshad.

Being victims of ethnic discrimination for a long time, on 1 May 2015 the Tajiks of Bamyan organized a conference in Kabul. The participants protested against systematic and organized discrimination of Tajiks in Bamyan. According to them, Tajiks are facing political marginalization, economic discrimination and deprivation, ethnic cleansing and the occupation of their land in Bamyan. They also raised a question regarding unbalanced development in Tajik areas. To give voice to Tajik victims and do advocacy for them, the conference established a movement called the Bamyan Tajiks Movement for Justice (Farahmand, personal communication). On 30 November 2015, the movement organized a demonstration in Kabul protesting against ethnic discrimination, marginalization and ethnic cleansing of Tajiks in Bamyan (Mastosaighani, 2015). The major points of the demonstration were:

1. The old Bamyan city (which was mainly inhabited by Tajiks) has been destroyed and the new city is built on the occupied land of Tajiks. However, Tajiks do not have any share in the 2,000 shops and stores of the new market built on their land;
2. In last few years, the local government and the Bamyan municipality have been targeting Tajiks and specifically destroying their houses and have not been allowing new construction for Tajiks under the fake policy of the cultural red and green belts. However, such policies are not applied to non-Tajiks;
3. The protesters said that those who were responsible for occupying Tajik land in different areas from Zahak to Surkhdar in Bamyan city like Tupchi, Petab-e Laghman, Tabaq-e Sari, Jagrakhil, Zargaran, Safi town,

*...Good practice case study continued ...*

programme. This on-going process helps promote communication with the community. It also facilitates the involvement of the wider community and increases ownership of the project's activities in general. Regular meetings with community leaders, elders and Shura members are effective in identifying the needs of the target group. As a result of this deep and prolonged engagement, community elders and Shura members encourage the people to provide facilities for women's literacy classes and also to participate in different project activities. Pashai community elders and local village Shuras select literacy teachers and supervisors. Literacy teachers are also selected from among community members, after they go through thorough training. Involvement of local leaders in the process of training a number of local people (men and women) every year to be literacy teachers and supervisors is another important aspect of the programme. The project focuses on building the community's ability to take responsibility for the project and sustaining it. Building the capacity of the community to be self-employed is one major aim of the project. In order to achieve this the project has initiated an animal husbandry programme that till late 2003 had distributed around 350 cows and 130 goats to vulnerable people such as war widows, orphans, disabled people and extremely poor people (Ju-Hong Yun).

## **Learning from the case study**

Despite the country's current conflict situation, the project has managed to retain its emphasis on education. It is also encouraging to note the project's focus on bringing in women and girls in the education fold. Participants learn to use written material both in their local language and in Pashto. Thus, one can conclude that the project has been trying to empower the community primarily by drawing on the most foundational aspect of life, education.

It is possible to imagine that literate individuals, both men and women will in future make use of print literature in their own language and in Pashto to access and share ideas and information. The imparting of knowledge and skills alongside education might give community members a chance at productive employment.

The programme is community-based. The project leader has good relationships with local political and religious leaders, significant sections of which take on the responsibility for CDP. This bottom-up approach seems to have played the most important role in its success, a process which needs to be a learning lesson for all other civil society organizations.

Pesht-e Khuja khar, Surkh Qul, Qul-e Sayied Kamaluddeen, Sang-e Chaspan, Tap-e Jalal and Bedak, Regshad should be put on a fair trial for justice;

4. The local administration has avoided major development projects in Tajik cities and districts. This has caused unbalanced development in Bamyan province. Hence, they proposed that Ajar Valley in Kuhmard Shall be declared a national park and a dam be constructed in Syghan district; and
5. The central government should provide just, equitable and inclusive development for all the citizens of Bamyan.

On 15 December 2015, the central government appointed a Fact Finding Commission under Obidullah Barkzai, a member of the Lower House, to investigate the complaints. The commission consisted of representatives from the Ministry of Urban Developing Affairs and Housing, Ministry of Justice, Ministry of Information and Culture, the General Attorney's Office and the Independent Directorate of Local Governance. The commission met 11,000 people, received more than 700 complaints from Tajiks and Pashtuns of Bamyan and collected more than 21 documentary clips. The commission presented its decision on 5 January 2016 to the national Shura. The findings of the commission affirmed discrimination against Tajiks and Pashtuns of Bamyan and affirmed that there had been systemic marginalization and omission of these ethnicities. Tajik and Pashtun land was not expropriated based on law but their land had been confiscated illegally under different excuses such as expansion of a green belt or a red cultural belt. In some cases, official departments of the local administration had been built on the occupied land. There were many cases of illegal occupation of Tajik land by powerful groups who were supported by the Karim Kalili party wherein they built residential towns or hotels (Bamikapress, 2016b; Farsi, 2016).

On 14 March 2016, the Tajiks of Bamyan had another demonstration and claimed that the state had not taken into consideration the reports and findings of the commission. They called on the central government to end ethnic cleansing and the annihilation policy against the Tajiks of Bamyan (Tajikanbamyān, 2016).

### ***Conflict over pastoral land between Kuchis and Hazaras***

The state traditionally favoured Kuchis through expropriation of land and other institutional support for them. This led to a series of conflicts between transhumant pastoralist Pashtun Kuchis and Hazaras in the central

provinces over pastureland and water resources. Both sides of the conflict claim ownership over the land. The Kuchis claim that the state has provided them pastoral rights in the central regions of Afghanistan because as a custom each year they follow a routine coming from the Pakistan border, crossing the central region going to the north. The root of the conflict goes back to the late-19th century when the state pursued a policy of annihilation of Hazara, Tajik and a number of Ghalzai tribes during Amir Abdu Rahman's reign. As a result of the unification and centralization of the state, the king killed, exiled or displaced those Hazaras who revolted against the state and declined to pay taxes. Their land was distributed among government agents or army officers. The king's firmans (royal decrees) granted Kuchis access to summer pastoral land in the central region of the country. During the civil war and the war of resistance in the 1990s, the Hazaras got control of these areas. After the peace settlement in 2001, the Kuchis returned to Behsud in 2002 and claimed that their right to access pastoral land had been violated by Hazara encroachments. On the other side, the Hazaras argued that the firmans were issued by a despotic king that was not acceptable now. Secondly, Kuchis who were coming for pastoralism were no longer real nomads. And lastly, as the population had grown the ecological resources were not enough for the sedentary population.

The conflict became violent as Kuchis armed themselves and came again each year thereafter to the two districts of Behsud and Daymirdad in Wardak province. The conflict has not been documented and mapped systematically as yet. There is no reliable data on the conflicts which occurred each year between both the sides. However, some data collected from different web pages (Heraviyan, 2014; Hazarapress, 2010; Milich, 2009; Ziaee, 2014) gives the following details:

- In July 2002, a conflict between armed Kuchis and sedentary Hazaras in Qulba-Namak, Behsud killed one woman;
- In July 2003, a conflict between armed Kuchis and sedentary Hazaras in Tezak, Behsud killed one man;
- In July 2004, a conflict between armed Kuchis and sedentary Hazaras in Upper Kajab, Behsud killed one man;
- In July 2005, a conflict between armed Kuchis and sedentary Hazaras in Lower Kajab, Behsud killed one man;
- In June 2007, 21 Hazaras were killed in a conflict in Bishud;
- In June 2008, 30 Kuchis and 24 Hazaras were killed in a conflict in Bishud;



- In July 2010, 70 villages were burnt, five Hazaras including children were killed and over 4,000 families were displaced in Behsud and Daimirdad (Hazara.net, 2011);
- In June 2011, a conflict occurred in Nawor district in Ghazni province which led to the deaths of some people and burning of several houses (Foschini, 2011); and
- In July 2015, an armed conflict between both the sides killed eight people from both the sides (Etilaatroz, 2015).

On 30 March 2008, people participated in a demonstration in Kabul and asked the government not to allow the Kuchis to enter their localities and kill people. Representatives of both the sides signed an agreement in Kabul in May 2011 that denounced all kinds of violence, recognized passage rights for Kuchis and affirmed the safety of sedentary people (Afghanistanalysis, 2011). In June 2015, the National Unity Government formed a 56-member commission with Sebhatullah Mujadidi as its head to explore the issues and solve them (*The Daily Afghanistan*, 2015).

## **Life and security: Violence on minorities**

Although the situation of ethnic, linguistic and religious minorities has improved after the fall of Taliban but they remain insecure in Afghanistan. Article 347 of the Penal Code of Afghanistan provides protection for minorities through implementation of sanctions such as imprisonment and compensation for those who disturb minorities' religious activities and damage or demolish any religion's worship sites such as shrines (Penal Code, 1976). The Penal Code prescribes punishment for a person who attacks—verbally, orally, physically or through any other public means such as in writing—the follower of any religion or someone performing religious rituals (Article 348).

While there has not been any large-scale detention and torture by the government, but the state has continuously failed to provide security to these communities. Some reports indicate lack of security for Christians and Baha'is. There are around 400 Baha'is in Afghanistan (USCIRF, 2009). The community went underground after the General Directorate of Fetwa and Accounts declared Baha'i faith blasphemous and its followers apostates (USCIRF, 2015). Similarly, there are also a few Christian converts who have been under pressure and cannot practice their faith publicly (USCIRF, 2012, 2015).

There is no unified and agreed data on Hindus and Sikhs. The Afghanistan Freedom House (2016) report indicates that there were 200,000 Hindus and Sikhs, comprising 40,000 families living in Afghanistan before 1992. However, currently this number has reduced to 120 families, including 40 families in Nangarhar, six in Helmand and only one family in Qandahar. Usurpation of Hindu and Sikh property by local chiefs and power brokers has made 99 per cent of Afghanistan's Hindus and Sikhs leave the country (Roye, 2016). Another report gives different statistics: Facing a reduction in their population after emigration during the civil war, there are 800 Hindu and Sikh families currently in Afghanistan (Foschini, 2013a). This comes to about 4,900 Sikhs and 1,100 Hindus (USCIRF, 2009). These figures are based on self-estimates by the groups and hence may not be reliable. The communities do have their places of worship and are allowed to practice their religion freely. There are two Sikh gurdwaras in Kabul and six Hindu temples in the country (USCIRF, 2009). However, the communities are insecure and experience discrimination (Nim-Rikh, 2014). They face difficulties in cremating and performing funeral rights for the deceased.

While at the societal level all the communities are living in peace and tolerance with each other, for instance, the Shias organize Ashura public processions every year, terrorist networks and organizations such as the Taliban have remained a primary threat to minorities. They are engaged in political killings, abductions, torture and coercion for social and religious conformity. In December 2011, Taliban targeted a Shia shrine in Kabul as a result of which 56 people were killed (USCIRF, 2012). Since 2014, 11 cases of abduction and killing of people have been reported including Shia Hazaras, Shia Balochs and Tajiks. A report by the Afghanistan Analyst Network (AAN) mentions eight cases of Hazara abductions and indicates that except in a few cases, the media and social activists' reports were incorrect and based on false assumptions. The report also says that there is no systematic targeting of Hazaras. However, the fear that this wave of violence may turn into an 'ethnic motivated targeting' is getting stronger (NPR, 2015; Suruosh, 2015).

- In July 2014, 14 Shi'ite Hazaras were massacred by Taliban (USCIRF, 2015);
- On 24 February 2015, 32 passengers were kidnapped on the Kabul-Kandahar highway. Among them, seven passengers, including a 9-year-old child, were beheaded on 8 November 2015 (BBC, 2015). While media reports stated the deliberate targeting of Hazaras, the motivation, goals

and identities of the kidnappers remained unclear. Furthermore, not all of the abductees were Hazaras. One of the passengers who was beheaded in the early days was a Tajik soldier in the Afghanistan National Army. And there was a Tajik family among the protesters who gathered in Zarnegar park in Kabul, protesting against the government's failure to respond and claiming that their son was a hostage. The kidnappers did not seem to have an ethnic motive behind this incident; rather, they demanded swapping the hostages with prisoners (Suruosh, 2015);

- On 15 March 2015, 10 Hazara passengers were kidnapped on the Jagori-Ghazni highway by the Taliban. They released all of them after one hour of interrogation. They warned the women passengers to observe proper Islamic attire. While such incidents happen across the country, the assumption that there is a case of systemic targeting of Hazaras will be hard to prove;
- On 17 March 2015, six people were kidnapped on the Herat-Farah highway. The ethnicity of the passengers and the motivation behind the abduction remained unclear in this case as well. Initially, the local media reported that all the abductees were Hazaras but later officials stated that it was army soldiers who were missing. Kidnapping and abduction of army soldiers by Taliban is also a common phenomenon. An AAN report does not verify if the case is one of Hazara targeting (Suruosh, 2015);
- On 25 March 2015, 20 passengers were abducted in Daikundi province. While it was found that the abductees were Shia Balochs instead of Hazaras, the false information increased anxiety among Hazaras;
- On 30 March 2015, five Shia Hazaras were abducted in Balkh. The kidnappers were a group of local militia who abducted the people for economic reasons and not for political or economic motives. They asked for ransom as the abductees were coal merchants;
- On 1 April 2015, 13 Shia Hazaras were abducted in Sar-e Pul. Interestingly, the kidnapper was himself a Hazara and a Taliban shadow governor of Sar-e Pul;
- On 16 April 2015, four passengers were abducted and killed in Ghazni province. While media reports, for instance, *The New York Times* stated that the abductees were beheaded the families of the abductees denied this and said that they were only shot and the bodies had not been harmed. As in the earlier case, the kidnappers demanded swapping of prisoners for the abductees. This nullifies the assumed ethnic motive behind the case;

- On 6-8 November 2015, seven Hazara passengers were beheaded by a group claiming loyalty to Islamic State. These passengers had been abducted about a month earlier in Arghandab, Zabul province. This led to a mass protest against the government demanding security and justice on 11 November 2016 (Naim, 2015);
- On 1 June 2016, the Taliban kidnapped around 200 Tajik and Uzbek passengers on a highway to the north of the country. Reports differ on the number of passengers killed by Taliban ranging from 10 to 17 people (Ians, 2016). A big rally was organized in Kabul on 18 June 2016 to condemn the failure of the government to protect its citizens; and
- On 23 July 2016, suicide bombers who claimed an affiliation with Islamic state targeted a peaceful demonstration in Kabul (a majority of the participants were Hazaras). As a result, 80 people were killed and around 300 were wounded (Stanglin, 2016). The protesters were demanding re-routing the power transmission line called TUTA through the central provinces of Afghanistan.

This list of cases shows that except for a few the goals and motives of the kidnappers were not ethnic.

## Conclusion

The international intervention and the ouster of Taliban produced a euphoric atmosphere. The people of Afghanistan in general and the minorities in particular welcomed the change and built their hopes that the human rights and status of minorities would improve. However, the minorities remained vulnerable to different aspects. It has become clear that, to a large extent, the promises of the international community and the Government of Afghanistan have remained at the level of rhetoric and have not been translated into actual and tangible outcomes when it comes to minorities' rights and conditions.

## Recommendations

- While the Constitution of Afghanistan is very democratic in terms of Fundamental Rights, it should provide support and recognition to 'group rights' as well. Lack of constitutional mechanisms for recognition and protection of group rights is one of the fundamental challenges for minorities.
- Lack of a demographic census and segregated data based on ethnic, linguistic and religious groups conceals the wide range of problems and

challenges with regard to minorities. A census is crucial for understanding the social, cultural, economic and political status of minorities and designing and drafting relevant policies and programmes. The Government of Afghanistan should conduct a national-wide census without leaving out ethnic, religious and linguistic indicators.

- The Afghanistan Independent Human Rights Commission should establish a particular section for minorities and provide regular reports on the status of minority rights in the country.
- The Government of Afghanistan should provide segregated data based on ethnic, religious and linguistic groups with regard to income, livelihood, employment, land, security threats, education and political participation and representation of citizens.
- President Ashraf Ghani should order the implementation of the 'Population Registration Act' and issuing of electronic national ID cards as per the ratified law. Issuing national ID cards which mention ethnic identity will not only help in preserving the identity of ethnic groups, but also facilitate democratic processes and governance in the country.
- Minorities are under-represented in governmental bodies and the state machinery. The Government of Afghanistan has the responsibility of ensuring proportional representation and political participation of minorities at different levels of the government.
- The rising level of violence is alarming for the security of minorities. The Government of Afghanistan has the responsibility to provide full security to ethnic, linguistic and religious minorities.

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## **Chapter 2** **Bangladesh**

# **Paving the Way to Liberation**

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The focus of this chapter is minority groups in Bangladesh – their life and security, socioeconomic conditions, political participation and culture and identity. It also discusses the three main categories of minorities - religious, ethnic and linguistic.

The chapter provides a brief demographic and other data on the small numbers of Shia Muslims, Bahais and Ahmadi Muslims in the country. The report also covers ethnic minorities who make up 1.5 per cent of the total population; they are also called indigenous people or Adivasis living in the Chittagong Hill Tracts (CHT) and various districts in the plains. The linguistic minorities in Bangladesh are mostly Urdu speaking and are often referred to as Biharis. They migrated to what was then East Pakistan during the partition of the subcontinent in 1947. About 3,00,000 Urdu-speakers live in ‘camps’ in overcrowded and cramped living conditions.<sup>1</sup> The report also discusses available data on Dalits.

Another focus of the chapter is the protection and promotion of minority rights in Bangladesh. It examines the constitutional provisions to protect and promote minority rights, particularly the provisions of equality and non-discrimination envisioned in the Fundamental Rights. It discusses the statutory provisions for protecting and promoting minority rights.

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1. As reported by Namita: Innovation in Legal Empowerment. Retrieved from: <https://namati.org/ourwork/citizenship/>

## **Background**

Bangladesh is a secular, pluralistic parliamentary democracy; its Constitution and other laws protect religious freedom and ensure equal status and equal rights to people of all religious faiths – Hindus, Buddhists, Christians and others. There is no indication that the state actively engages in persecuting people on account of their religion. However, political parties do use religiously divisive language and, on occasion, act in ways that exacerbate rather than diminish religious and communal tensions (UKHO, 2016). Though Bangladesh has ratified all major international human rights treaties and conventions and is legally bound to comply with them it does not do so in so far as the minorities are concerned.

The 2011 census report shows that Bangladesh is a country of 149.77 million people (BBS, 2015) and it is predominantly a Muslim country. Population data updated by the BBS for 2004 through the Sample Vital Registration System (SVRS), an annual attempt to collect, compile and publish demographic data to meet the inter censal data needs showed that 89.52 per cent of the country's population was Muslim with the remaining 10.48 per cent consisting of religious and ethnic minorities. Of the minorities, the Hindus were the largest group with 9.58 per cent of the population. The Buddhists were the third largest group with 0.46 per cent while Christians formed the fourth largest group with only 0.27 per cent of the population. Others would include several small factions within the Muslim population – Biharis, Ahmadis, Ismailis, Shias and Memons. (*see Table 1*) There were about 100,00 Ahmadis. (SAHR, 2011)

## **Historical context**

After the victory of the Awami League (AL) in Pakistan's elections in 1970, the Pakistani Army suppressed the aspirations of the Bengali people in East Pakistan, innumerable atrocities occurred, many women were raped and upwards of 3 million people were left dead. Tens of millions of people were forced into squalid refugee camps in India.

Soon after its birth, the political history and politics of Bangladesh had to deal with the twists and turns of majoritarian politics. Bangladesh's birth was premised on a secular and democratic ethos. The Preamble of the first Constitution of Bangladesh, which was adopted on 4 November 1972, accepted 'nationalism', 'socialism', 'democracy' and 'secularism' as state principles; Article 8 Clause 1 reiterated these. Secularism in the context of Bangladesh did not imply the absence of religion, as is often interpreted by

**Table 1. Religion in Bangladesh as population percentage as on 2004**

Religion	National	Rural	Urban
Muslim	89.52	89.15	91.12
Hindu	9.58	9.86	8.37
Buddhist	0.46	0.51	0.23
Christian	0.27	0.29	0.18
Others	0.14	0.16	0.07

Source : *Sample Vital Registration System 2004, Bangladesh Bureau of Statistics.*

its opponents. Sheikh Mujibur Rahman, the Father of the Nation, made this quite explicit when he said:

Secularism does not mean absence of religion. Hindus will observe their religion; Muslims will observe their religion; Christians will observe their religion. No one will be allowed to interfere in others' religions – the people of Bengal do not want any interference in religious matters. Religion cannot be used for political ends.<sup>2</sup>

In order to implement this, Article 12 of the Constitution of the People's Republic of Bangladesh states:

Secularism and freedom of religion

12. The principle of secularism shall be realised by the elimination of -

- a) communalism in all its forms;
- b) the granting by the State of political status in favour of any religion;
- c) the abuse of religion for political purposes;
- d) any discrimination against, or persecution of, persons practicing a particular religion.

While the Constitution did provide the basis for creating a non-communal state in the religious sphere, it is argued that it was not a non-hegemonic Constitution. Article 1 Part 1 declared Bangladesh to be a unitary state. Through Article 3 Part 1, Bengali was adopted as the state

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2. Parliamentary Debates as cited by Amena Mohsin, 'Secularism as Religious Tolerance' in Guhatakhurata, Meghna and Willem van Schendel (2013) *The Bangladesh Reader: History, Culture, Politics*. London and Durham, Duke University Press, p. 334-335.

language and Article 6 Part 1 declared that the citizens of Bangladesh were to be known as Bengalis.

Article 9 defines Bengali nationalism. According to the Constitution, this was premised on the unity and solidarity of the Bengali nation, which derived its identity from its language and culture. Clauses in the Constitution denied recognition to the varied cultural communities in Bangladesh who were culturally and linguistically non-Bengali. Bangladesh is home to around 45 ethnic communities. Bangladesh at its birth reproduced the politics of majoritarianism/domination that it sought to fight during the Pakistan period.

One may argue that these principles in the Constitution were a logical outcome of the spirit of the liberation war of Bangladesh, which was premised on Bengali nationalism. However, some others maintain that through these clauses a nation born out of genocide and a history of democratic movements failed to move forward with a vision of libertarian principles (SAHR, 2010).

Although an Awami League-led government annulled the Vested Property Act (VPA) and passed the Vested Property Return Act (VPRA) in 2001 to restore property to Hindu minorities, the government amended VPRA in the following year. This gave the government unlimited time to return the vested property to its Hindu owners and instead passed control of the property, including the right to lease it to local government employees. In 2007 and 2008, the government did not take any measures to implement VPRA (US Department of State, 2009) and failed to prepare a list of properties to be restituted. (IDMC, 2009:9) However in later years the government has taken steps to safeguard the property rights of Hindu minorities. The latest amendment was made on 10 October 2013.

In September 2015 Association of Land Reform and Development (ALRD) organised a meeting on this issue in Dhaka. Shamsul Huda, of ALRD in his keynote paper, spoke about the persecution of the minority community members as they tried to get their properties back that once were branded enemy properties under the enemy property act. He said there were thousands of cases pending before the tribunal for resolution under the Vested Property Return (Amendment) Act but the disposal rate was frustrating. Although a few people had obtained orders in their favour, the local deputy commissioners were, however, not applying the tribunal's orders, he alleged. (ALRD, 2015)

## Religious minorities

Societal abuse and discrimination based on religious affiliations, beliefs or practices continue today. Occasionally clashes between religious groups have occurred. In all cases the minority status of the victims played a role, although it should be noted that religious minorities are often at the bottom of the social hierarchy and, therefore, have the least political recourse. Hindu, Christian and Buddhist minorities experienced discrimination and sometimes violence at the hands of the Muslim majority; even Ahmadis were harassed. Fundamentalist Islamic groups have demanded that Ahmadis be officially declared kafirs (infidels) (Rahman, 2005).

In 2015, four prominent secular bloggers were killed with machetes. The four had appeared on a list of 84 ‘atheist bloggers’ drawn up by Islamic groups in 2013; the list had been widely circulated (BBC, 2016). Activists and atheist bloggers are leaving Bangladesh fearing threats to their lives (Daily Mail Online, 2015; The Daily Star, 2015; Times of India, 2015). Several bloggers and their publishers were hacked to death by Islamist militants in 2015 for promoting secularism. Ansar Al Islam, an insurgent group linked to al-Qaeda claimed responsibility and threatened further attacks. Although Sheikh Hasina promised to take action against the attacks, she also warned the bloggers against ‘hurting people’s religious sentiments’ (HRW, 2016).

Earlier, in 2011, 183 people belonging to religious minorities were victims of injuries, assaults, grabbing, attacks and rapes (*see Table 2*). The police was ineffective in upholding law and order and sometimes was slow in assisting religious minorities. This attitude promoted an atmosphere of impunity for acts of violence against minorities.

In 2013 there was a particularly brutal wave of attacks on Hindu houses, temples and businesses. (*see Table 3*) In a district-wide assault, ancient places of worship spanning centuries were vandalised. As per the various investigations conducted by the Ain o Salish Kendra (ASK) the attacks were

**Table 2. Incidents of violence against religious minorities (2011)**

Injured	Assaulted	Grabbing		Attack		Looted	Rape	Misc.	Total
		Land	House	Property	Temple Attack				
107	02	06	02	21	25	13	03	04	183

Source: SAHR (2011: 2).

systematically conducted in order to terrorize the people and their communities. Instead of stealing goods, personal belongings such as motorcycles, computers, televisions and household items were broken. Windows, walls and fences were vandalised. The attacks were triggered by the verdict of the International Crimes Tribunal sentencing Delwar Hossain Sayeedi, the Vice President of the Jamaat-e-Islami to death on 28 February 2013 for crimes committed during the 1971 Liberation War. There was one round of attacks in the spring while the second round started in the pre-election period during hartals (strikes) and blockades called by the opposition party when the government decided to hold the elections without the opposition. ASK maintains that the failure of the administration to bring the situation under control was obvious. (ASK, 2013)

There are great differences in terms of communal violence from year to year. In 2013, 278 houses were attacked, burnt or destroyed; while next year this figure went up to 761. However, in 2015 there was a significant decrease in the number of reported cases at 104.

Based on available numbers it is clear that there are serious human rights violations that need to be addressed. Local human rights organizations like ASK work hard to gather information and data that can be presented to the general public and organizations on a national and/or international level while also advocating for improvements in the human rights situation (GHRD, 2016).

In the recently concluded controversial elections in January 2014, hundreds were killed and injured in violent attacks. Before and after the elections, attackers also vandalized homes and shops owned by members of Bangladesh's Hindu and Christian communities. (HRW, 2015)

There were reports of societal abuse, intimidation, harassment and discrimination, attacks on sites of worship and communal violence on account of religious affiliations, sometimes resulting in deaths, injuries, rape, forced displacements and alleged forced conversion to Islam. However, the evidence does not support the finding that in general there is a real risk of persecution, serious harm or other breach of fundamental human rights of members of the Hindu, Buddhist, Christian and Ahmadi minorities. There is a need to assess each case on individual merit. (UKHO, 2016)

**Table 3. Incidents of violence against religious minorities (2013-15)**

Type of violent incident	2013	2014	2015
Houses attacked	278	761	104
Business attacked	208	193	N/A
Temples attacked	495*	247**	213***

Source: Global Human Rights Defence (January 2016), "A look back at the Human Rights situation in Bangladesh". Retrieved from: <http://ghrdblog.blogspot.com/2016/01/a-look-back-at-human-rights-situation.html>.

Also: \* <http://www.thedailystar.net/rights-situation-was-alarmed-in-2013-4883>.

\*\*<http://www.thedailystar.net/state-of-human-rights-alarmed-57975>.

\*\*\*<http://www.dhakatribune.com/bangladesh/2016/jan/02/bangladesh-human-rights-situation-worsened-2015>.

## Indigenous communities

Relative to the total population, Bangladesh has a fairly small Adivasi or indigenous population. According to some estimates, more than 3 million Adivasis live in several districts (Sylhet, Rajshahi, Dinajpur, Mymensingh, Rangpur, Bogra, Natore, Khulna, Tangail, Jamalpur, Sherpur, Netrokona, Sunamganj and three hill districts). About two third of the Adivasis live in the Chittagong Hill Tracts, which are made of the three hill districts – Kha-grachori, Bandarban and Rangamati.

The Adivasis are mainly Buddhists (43.7 per cent), Hindus (24.1 per cent), Christians (13.2 per cent), and with other religions constituting 19 per cent. In 1991 official estimates of the population of ethnic communities in 1991 was only 27 per cent, other estimates put the population of ethnic communities to more than 45. Dr Mohammad Rafi, faculty at BRAC University and author of *Counting the Hills: Assessing Development in Chittagong Hill Tracts* (2001) identified 73 small ethnic groups. Philip Gain editor of *Survival of the Fringe: Adivasis of Bangladesh* (2011), estimates the number of ethnic groups at around 90, who live in both the plains and in hill areas. (as quoted in SAHR, 2011)

The authorities failed to settle indigenous people's claims to land that had been seized from them during the internal armed conflict (1975-97), or claims of recently occupied land by increasing numbers of Bengali settlers. Tension between the two communities and the failure of the security forces to protect local indigenous people against attacks by Bengali settlers led to several clashes and injuries on both sides. At least 20 people were injured in a clash between indigenous people and Bengali settlers in Rangamati on



22 September 2013. Local people said security forces came to the scene but failed to stop the violence (Amnesty International, 2013:2).

Incidents of human rights violations including torture, killings and harassment of Buddhist monks, sexual violence against women and children and the dispossession of indigenous people's land by Bengali settlers and military personnel have been regularly reported in the Chittagong Hill Tracts (CHT) region. The indigenous communities in Bangladesh are the most deprived of economic, social, cultural and political rights mainly due to their ethnic status. The major problem for all minority communities is land grabbing by influential people from the mainstream population. There are no adequate policies to protect the land of indigenous people. The traditional land rights of indigenous people are ignored. Incidents of forcible land grabbing by Bengali land grabbers and eviction of indigenous people from their ancestral land were also common in 2011 (*see Table 4*).

News reports highlighted that in 2011 at least 40 people belonging to ethnic minority groups were killed, 94 were injured, 17 abducted, 18 raped and 40 families had their houses destroyed. The incidents took place in Khagrachari, Rangamati, Dinajpur and Rajshahi. Further, Bengali settlers in grabbed at least 7,118 acres of land, belonging to indigenous Jumma people in the area in 2011. Several attempts were also made by Bengali settlers to occupy Jumma land.

Religious persecution of indigenous people has been continuing, particularly in CHT. This includes destruction of a Buddhist temple with the aim of occupying the temple's land, harassment of Buddhist monks, destruction of Buddha's statues and preventing the construction and repairing of Buddhist temples.

The biggest concern is rape and other violence against indigenous women and their lack of access to justice by the victims and the absolute impunity that the perpetrators enjoy. In 2011, five indigenous women, three from CHT and two from the plains were killed after being raped while 11 indigenous women were raped. In addition, attempts were also made to rape eight indigenous women. Almost all violence against indigenous Jumma women in CHT was allegedly committed by Bengali settlers. One incident of attempted rape was allegedly committed by security personnel. Lack of access to quality education is a major factor contributing to social marginalization, poverty and dispossession of indigenous people.

**Table 4. Incidents of violence against ethnic minorities (2011)**

Killed	Injured	Abducted	Property damage	Rape	Total
40	94	17	40	18	209

Source: SAHR, 2011.

Ignoring strong demands of the indigenous people and civic groups from the mainstream population, the present government denied the constitutional recognition to the fundamental rights of indigenous people in the 15th amendment to the Constitution in 2011.

Even after 14 years after signing the CHT Accord, the peace accord has not been implemented. Except for the re-constitution of some committees and appointments to some posts, the government has not taken any effective measures for implementing the accord although it was a priority commitment of the majority party in its election manifesto. Hence, dissatisfaction and grievances have been mounting among the Jumma people and permanent Bengali residents in CHT over the years. On 13 April 2010 the High Court affirmed the validity of the CHT Peace Accord signed between the government and the erstwhile Shanti Bahini in 1997, but it declared the Chittagong Hill Tracts Regional Council Act 1998 as unconstitutional. After the judgment, the Additional Attorney General asked for a stay and for a certificate under Article 103 (2)(a) so that the government could appeal to the Appellate Division against the HC judgment. The court then issued a stay order on 15 April 2010 till the problem was resolved. There was no significant progress in this regard till December 2011.

Above all, significant discrimination has been observed in budgetary allocations between the indigenous and the mainstream Bengali people. About 2 per cent of the country's population is indigenous, but the allocation for them is below 0.5 per cent of the total budgetary allocations (SAHR 2011: 4-5).

## **Violence against female ethnic minorities**

In March 2016 the Kapaeeng Foundation, a human rights organization working for the promotion and protection of the rights of indigenous peoples in Bangladesh published a report entitled: Human Rights Report 2015 on Indigenous Peoples in Bangladesh. The report stated that 85 indigenous women and girls fell victim to sexual and physical violence in 2015. (see Table 5) Among them, 44 victims were from the CHT, while 41 were

from the plains. A total of 69 cases of violence against indigenous women and girls in Bangladesh were documented in 2015. Of the 69 cases, 38 cases were reported from and documented in the CHT, while the remaining 31 cases were from the plains. The victims were found to be in the age group between 4 to 50 years. Cases were filed with the police with regard to 46 incidents. The data shows that 78% of the perpetrators were non-indigenous, while 15% of them were indigenous, and 6% of the violators could not be identified, while the law enforcement and security personnel accounts for 1%.

Most human rights violation involving the indigenous peoples in Bangladesh were centered on land. The land grabbers used the heinous ploy to sexually and physically violate indigenous women and girls in order to terrorize the community to unsettle them, and thus create opportunities for them to occupy the lands belonged to indigenous peoples. The report stated that amongst the cases of violence committed against indigenous women and girls across the country in the recent past included not a single case of instance to prove that the victim secured justice. Rather in most cases, the perpetrator got out of bail and skipped punishment due to corruption in the justice system, which often tended to be bias towards the perpetrators. (Kapeeng Foundation, 2015).

## **Dalits and other oppressed caste groups**

In 2011, violence and discrimination of Dalits and other oppressed caste communities by dominant Hindu castes and members of influential Muslim communities increased as compared to previous years. News sources reported that there were 20 incidents during the year, including murder, rape, denying access to public places (temples, restaurants, police stations, cremation grounds, markets and social services), physical torture, land grabbing, forced conversions, attacks and looting of Dalit houses and discrimination in schools. Dalits are also discriminated in getting jobs. Though in 2012, the Office of the Prime Minister circulated a special directive for reservation of 80 per cent for the post of Sweepers/Cleaners for Dalits. But, this directive is not followed properly. Dalit communities in Bangladesh are resisting discrimination and violation of their rights and are gradually getting united across the country. Dalit groups have also established strong linkages with regional and international groups working to fight against caste and other forms of discrimination.

**Table 5. Violence against women from ethnic minorities**

Year	Number of Female Victims
2007	9
2008	4
2009	16
2010	25
2011	31
2012	75
2013	67
2014	122
2015	85

Source: *The Daily Star*, March 24, 2016. As retrieved from: <http://www.thedailystar.net/city/violence-against-ethnic-minorities-increasing-1198804>

## Gender and sexual minorities

Same-sex sexual behaviour is criminalized in Bangladeshi society. Lesbian, gay, bisexual and transgender rights' groups have reported continuing threats, particularly after homophobic public comments by Islamic leaders. In 2013, the cabinet issued a circular indicating legal recognition of a third gender, hijras, a traditional cultural identity for transgender people who, born male at birth, do not identify as being men. The third gender status came with no official definition but could ostensibly accord hijras education, health and housing rights. However, the decree did not indicate any process by which legal recognition was to be conferred to this group. In December 2014, a group of 12 hijras were selected for a government employment scheme and in early 2015 they were subjected to invasive and abusive exams as part of the hiring process. The hijras said that they were asked humiliating questions about their bodies and some reported that the physicians in charge of the exams called them 'disgusting' and then instructed hospital janitors and security guards to conduct physical exams, which included touching their genitals. Shortly after the medical exams, the hijras' names were revealed in a newspaper article that declared them impostors because they were 'really men'. The 12 were denied employment and they reported increased harassment by neighbours (HRW, 2016).

The hijra community, consisting of eunuchs, inter-sex and transgender people, is much more visible than the rest of the lesbian, gay, bisexual and transgender (LGBT) group. The hijras have enjoyed a rich tradition in South Asian culture for thousands of years. Due to cultural and religious beliefs, they are recognized as semi-sacred individuals who can bestow

fertility, prosperity and health on a newborn and his or her family. Unfortunately, this status has an insidious aspect: it dehumanizes hijras by removing all other aspects of their identity, leading to their being subjected to violence, discrimination and inequalities. They are treated as outcasts and are often targets of human rights violations. Many do not have access to a proper source of income and cannot hold mainstream jobs due to social stigma and lack of access to education (GHRD, 2014: 8).

Bangladesh's LGBTs feel insecure about their gender identity and sexual orientation for a number of reasons, including the criminalization of same-sex relations, persisting stigmatization and societal denial of their existence and the validity of such thinking. The socio-cultural and religious taboos in Bangladesh make LGBTs vulnerable to discrimination and violence. There is also lack of confidence among members of the LGBT community stemming from societal pressure, as they are forced to live with a non-existent sexual orientation and gender identity. Most LGBTs in Bangladesh are invisible. In April 2016, Xulhaz Mannan - a top gay rights activist and editor of the country's only LGBT magazine and his friend and co-worker at the magazine Tanay Mojumder were hacked to death. BBC Bengali Service editor Sabir Mustafa said that staff members of Roopbaan, a magazine and activist group for LGBTs that had not been condemned by the government and received some support from foreign embassies, had been careful in protecting their identities and had not believed that their lives were at risk. (BBC, 2016).

Odhikar, a human rights organization working for upholding the civil and political rights of the people since 1994, however, argues that the possibility of extremism affecting the country became a matter of concern as soon as the freedom of expression was curtailed, controlled and persecuted by the government. Since 2013, bloggers and foreign citizens have been attacked and even killed in Bangladesh. So far, seven bloggers and online activists and two foreigners, one teacher and the editor of a LGBT magazine, have been killed. The killings were claimed by an extremist group. (Odhikar, 2016: 5)

## **A Question of definitions and data**

There is no universally accepted definition of minorities but one that has received wide circulation was provided in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-commission on Prevention of Discrimination and Protection of Minorities:

....a group numerically inferior to the rest of the population of a State, in a non-dominant '...whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language' (OHCHR, 2010).

As this UN document the criteria for being a national of a country to be counted as a minority has been disputed, but the requirement to be non-dominant is paramount. Although the 2015 Bangladesh Constitution defines minorities in narrow numerical terms, for the purposes of this chapter the definition provided by the Rapporteur as well as the UN are used to consider the country's ethnic, linguistic and religious minorities (Hindus, Christians and Muslims) who are in a non-dominant position.

The data/information presented in the report are primarily derived from national level surveys such as the various population censuses, the National Living Standards Survey, the Demographic and Health Survey, the Labour Force Survey and the Human Development Report to get the most recent available data on the economic, human development and political status of each group (*see Table 6*).

In analysing the status of different groups, the study also takes note of the intersectional discrimination that certain groups like Hindu Dalits within the larger groupings are faced with. Likewise, the analysis also seeks to underscore some of the challenges that Bangladesh faces in accommodating the demands of the various groups in a political and social context that is marked by diversity and pluralism. The paper, however, focuses on religious minorities while analysing ethnic minorities.

The paper also draws from available secondary sources such as the Internet and published books. Newspaper reports were also scanned. Human rights' activists and members of minority communities were interviewed. The lack of disaggregated data and explicit policies made it extremely difficult to come up with policy statements. The paper therefore is largely dependent on secondary sources and the personal opinions of the interviewees. Efforts, however, were made to retain objectivity by constantly referring to numbers, statements and laws where available.

## Constitution and the Law

### Constitutional Evolution

Nationalist zeal continued in the polity of Bangladesh after the independence. The constitution of 1972 ensured equal rights to all citizens of the country. The very idea of nationalism (Bengali), socialism, secularism and democracy were the basic foundations of the constitution. The first Constitution passed on November 4, 1972, seemed to have separated two prominent institutions called politics and religion. In doing that, the leaders of the country did not allow communalism to grow. The concentrated effort to abolish:

- a) political recognition of religion by the state,
- b) exploitation of religion for political purpose and
- c) discrimination on religious ground (Article 2 of the Bangladesh Constitution) were some of the significant achievements of the new state.

The very preamble of the Constitution emphasised secularism as one of the fundamental principles of state policy. It is obvious that Islam, or for that matter, any other religion, as an individual belief system was not interfered with, but its political use and or abuse was barred. (Sammad, 1998)

The very idea of secularism, as promoted in the constitution of the country, came under review of the rulers in the course of time, as one looks at different amendments that took place. Secularism, as one of the four fundamental principles stated in Article 8 of the Constitution, was amended. The Fifth Amendment of the constitution of 1979 was particularly significant in this regard as it legitimized the introduction of martial law after 1975. Under the rule of General Zia ur Rahman, parliament passed an amendment to the constitution that radically altered the position of secularism. This important change with special reference to secularism etc. was made during the time of the military rule of General Zia ur Rahman, founder of the Bangladesh Nationalist Party (BNP). With regard to the role of Islam, it was during this martial law period that secularism was removed from the Constitution as a fundamental principle. (Shahid, 2013) Right at the beginning of the constitution, even before the preamble, the amendment added the text “In the name of Allah, the beneficent, the merciful”. And in the preamble, the amendment replaced the word “secularism” with the words “absolute faith and trust in almighty Allah”. (Bergman, 2016) Thus, in short, religious

**Table 6. Summary survey of data on minority rights**

Rights	Type	Source	Availability
Life and Security	Hate motivated (mass or single) violence	Qualitative research studies	Available for minorities
	Rape/crimes against women	-	-
	Crimes against Dalits/tribals	-	-
Socioeconomic rights	Outcomes on education, health, employment, poverty, urbanization (poor land-holdings, higher migration, etc., leading to higher pace of urbanization among religious minorities)	-	Some available for religious minorities
	Provisioning: budgets, programmes	Govt. of Bangladesh.	Some reports available for minorities
Participation	Representation in governing institutions <i>by gender and caste</i>	Parliament, assemblies, media.	Some available by religious minorities
	Electoral participation		Available by religion
	Effective participation in decision making	Parliament and assembly debates	Some available for minorities
Identity & Culture	Implementation of freedom laws	Qualitative studies, media reports, some tracking by civil society	Available for minorities
	Working of personal laws, particularly for women	Qualitative studies and reports, media reports	Available For minorities
	Implementation of safeguards for linguistic minorities		Available By state

neutrality and non-communal principles, prerequisite for any secular country, of Bangladesh constitution were abandoned through the Fifth Amendment. Military ruler Zia ur Rahman was assassinated in 1981. In 1982, another military ruler called Lieutenant General Hussain Muhammad Ershad came to power. It was only in 1988, Ershad-controlled parliament passed the Eight Amendment in an apparent attempt to declare Islam as the state-religion. Introduction of Section 2A to the constitution now stated: “The state religion of the republic is Islam, but other religions may be practiced in peace and harmony in the Republic.” (Bergman, 2013)



## **Bangladesh's constitutions and international standards**

This section examines the sources of human rights, the rights of individuals, the duties of the state and the mechanisms of protection.

### ***Life and security***

#### **Constitutional and legal provisions**

'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. Nothing in this article shall prevent the State from making special provision in favour of women and children or for the advancement of any backward section of citizen,'(Articles 28[1]& 28[4], the Constitution of the People's Republic of Bangladesh.

The Bangladesh Penal Code 1860 prescribed punishment for the following offences against women:

- kidnapping or abducting any woman with intent that she may be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse (Section 366);
- inducing any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be forced or seduced to illicit intercourse with another person (Section 366A);
- importing into Bangladesh from any country outside Bangladesh any girl under the age of twenty-one years with intent that she may be forced or seduced to illicit intercourse with another person (Section 366B);
- selling, letting to hire, buying or hiring any person under the age of (Benchmark, 30) eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution of illicit intercourse with any person or for any unlawful and immoral purpose (Section. 372 and 373); and committing rape (Section 376).

The Domestic Violence (Prevention and Protection) Act 2010 was passed for establishing equal rights for women and children and for ensuring protection of women and children from family violence.

The Prevention and Suppression of Human Trafficking Act 2012 prescribes measures to prevent trafficking of women and children. No mention is made of caste or Dalit women in the act.

The Mobile Court Act 2009 gave the executive magistrate the power to take steps by linking Section 509 of the Bangladesh Penal Code in the schedule of Mobile Court Act to resist and prevent eve teasing and sexual harassment of girls and women.

Everyone has the right to enjoy the protection of the law and to be treated in accordance with law and only in accordance with law. In particular, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law (Article 31, Constitution of Bangladesh).

### **Status of implementation of rights**

The formal justice system in Bangladesh is characteristically pro-rich, bureaucratic and hard to access. Law enforcement agencies are also not easily accessible to poor and marginalized people. For example, a 12-year-old Dalit girl was raped and murdered on 28 June 2013 in Pirojpur Sadar district. The victim's family filed a case in the local police station but the police did not take action against the accused. One of the suspects was arrested ten months after the incident; he was released on bail. No charges were filed against the accused for a year. Moreover, the victim's family is under continuous threats by the accused since the perpetrators are relatives of an influential local political leader.

Farzana and Nasir (2008) conducted a study on the Dalits in Dhaka city. In their report, they state that almost all the respondents (52 women were interviewed under the study) alleged that they had not received fair judgments in any salish (mediation) session. Mediators are generally from the dominant middle class Bengali community who, they alleged, never play an objective or neutral role. Dalits do not see the possibility of a fair judgment when the allegation is against a Bengali. This is why many Dalit victims do not complain against the wrongs done to them by dominant Bengali people. The mediators are non-Dalits and they often take bribes from the offenders to pronounce judgments in unfair ways.

Whilst there is a functioning criminal justice system, the effectiveness and conduct of the police varies. In some instances the local police and enforcement agencies have failed to effectively protect religious minorities from communal violence. Whilst legal protections for religious freedom are generally enforced, prosecutions are brought for violations of religious freedom and legal protections exist to address discrimination or persecution by

private individuals, authorities implemented some restrictive laws and did not always efficiently or effectively prosecute those who attacked religious minorities. Effective state protection is in general available for members of religious minority groups. However, decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution and past lack of effective protection may indicate that effective protection would not be available in the future for that individual in that particular locality (UKHO, 2016).

## **Threats to minorities**

There are many instances of minorities being suppressed in Bangladesh. Instances of societal discrimination, harassment, intimidation and occasional violence against religious communities persist although many government and civil society leaders claim that these acts have political or economic motivations and should not be attributed wholly to religious beliefs or affiliations (UKHO, 2016). Armed conflict and human rights violations including forced evictions and government policies discriminating against religious minorities have displaced tens of thousands of people in Bangladesh. The armed conflict in CHT in South-east Bangladesh broke out in 1973 when the central government rejected demands by indigenous groups for constitutional protection and recognition as a separate community within the new state of Bangladesh (IDMC, 2009). The relocation of 400,000 Bengali settlers from the plains to CHT also fuelled the conflict. In 2000 at least 60,000 indigenous people were estimated to have been internally displaced during the conflict, while around 60,000 fled to India. In the same year the government estimated that 500,000 indigenous people and settlers had been displaced. The conflict ended officially through a peace accord in 1997, but many of its causes have persisted: the accord has never been fully implemented and many of the displaced remain without a durable solution. Bengali settlement in CHT has continued though on a smaller scale, and indigenous people continue to be forcibly displaced from their land due to evictions by authorities, or by settlers with the knowledge or direct support of the army (IDMC, 2009).

Religious minorities outside CHT have also been displaced as a result of discrimination or communal violence (IDMC, 2009). Incidents of land grabbing, intimidation, extortion and various kinds of illegal activities, including attacks on members of religious minority communities and also on their places of worship continue. Such incidents occur because no justice

was given in similar incidents in the past and also due to the politicization of these incidents. For instance, in the early morning of 3 March 2016 unidentified criminals vandalized an effigy of Radha-Krishna by entering the Dasbari Sree Sree Hari Mandir (Hindu temple) after breaking its locks in Titarkandi village under Maltab Upazila in Chandpur district (The Daily Prothom Alo, 2016). On 11 March 2016, about 50 men led by Shourav, the son of an Awami League-nominated UP Chairman candidate Abul Kalam Azad, vandalized and set fire to electoral camps of his rival candidate Nurul Islam Jewel in Patra village in Chakundia Union under Khalijuari Upazila in Netrokona district as he was contesting as a rebel candidate of the Awami League. In retaliation, supporters of Nurul Islam Jewel, who is also the Upazila unit Awami League's Organizing Secretary, attacked Hindu homes belonging to Sotesh Sarkar, Deepak Sarkar, Debal Sarkar and Sanchalata Debi in Patravillage. The attackers also vandalized the Hindu temple, Kali Mandir (The Daily Naya Diganta, 2016; Odhikar 2016a: 14-15).

At a press conference on 22 April 2016, the Hindu-Buddha-Christian Oikya Parishad (The Hindu-Buddhist-Christian Unity Council) alleged that the human rights situation for citizens belonging to minority communities was deplorable. The organization stated that incidents of violence against minority communities had tripled in the first three months of 2016 as compared to the whole of 2015 (The Daily Manabzamin, 2016). On 14 May 2016, the body of 70-year old Buddhist monk Dhamma Wasa was recovered from a monastery in Chakpara village in Baishbari Union, under Naikkhongchori Upazila in Bandarban district. Criminals had stabbed him to death with sharp weapons (The Daily Naya Diganta, 2016). The police arrested Hlamong Chak of the Chak community and two Rohingya refugees for the murder (The Daily Jugantor, 2016). Human rights body Odhikar which condemned the incident also expressed grave concern over incidents of land grabbing, intimidation, extortion and attacks on members of religious minority communities and on their places of worship (Odhikar, 2016c: 21-22).

## **Structural Conditions That Impact Minority Rights**

The state's indifference towards the violence committed against minorities is making things worse in Bangladesh. There has been no action on newspaper reports published against incumbent ministers, members of Parliament, representatives of the people or their sidekicks; instead the victims have been harassed. Irrespective of the political party in power, there is visible inaction in all the parties on the issue of violence perpetrated against the minorities (Porishod Barta, 2001: 5).

In more than 40 electoral constituencies in Bangladesh minority voters can influence the elections. It was reported that workers of a four-party right wing alliance attacked the minorities, especially Hindus to prevent them from casting their votes in the last general elections in 2014. The general perception is that the minorities generally cast their votes in favour of a party that seems to uphold secular values.

## **Issues of security and peace among the minorities**

In the very early years of Bangladesh's independence, policymakers tried to construct a secular country. So they kept secularism as one of the four main pillars in the Constitution. However, the rulers changed the Constitution and turned its non-communal ideology into a more communal strain. As a result, the minorities became vulnerable. Although Bangladesh's Constitution gives every citizen equal treatment before the law and ensures their protection under Article 27, and the country is also party to the International Covenant on Civil and Political Rights, which ensures freedom of religion, violent assaults on religious minorities are often not investigated or prosecuted (IRIN News, 2014).

## **Socioeconomic deprivations and the question of discrimination**

### **Constitutional provisions and programmes**

Article 29 (1 and 2) of the Constitution states that 'there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic. No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for or discriminated against in respect of, any employment or office in the service of the Republic.'

While the Government of Bangladesh does not make specific reference to the situation of Dalits in its National Strategy for Accelerated Poverty Reduction (NSAPR) 2009-2011, prepared by the Planning Commission it recognizes the pattern of discrimination against occupational groups related to caste systems. The strategy indicates the need to understand the situation of these groups and to promote targeted policies aimed at improving their living conditions. It also mentions the promotion of decent employment. It admits that the government needs to develop a comprehensive policy agenda for these groups but due to lack of information and segregated data

no specific policy measures have been taken in addressing their problems. (Planning Commission, 2008)

The Bangladesh government does not actively promote any scheme or policy aimed at ensuring equality in employment in general, nor specific employment schemes and programmes for the most marginalized and excluded people. NSAPR-2009-11 talks about promoting decent employment, but there it does not mention any arrangement for alternative occupations.

Article 15(b) of the Constitution of Bangladesh states, ‘It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work.’

Article 20 states, ‘Work is a right, a duty and a matter of honour for every citizen who is capable of working and everyone shall be paid for her/ his work on the basis of the principle “from each according to her/his abilities, to each according to her/his work”. The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.’

Article 40 states, ‘Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.’

Article 15(a) says, ‘It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people with a view to securing to its citizens the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.’

Article 28(1): ‘The state shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth.’

Article 42(1):‘Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law.’

The Vested Property Act 1965 (then Enemy Property Act) made ownership of land by Hindu minorities in the country, including Dalits, more complicated. It gave the government the right to administer land formerly known as ‘enemy property’, which was confiscated from Hindus after the formation of East Pakistan (present day Bangladesh) in 1947. This act was repealed in 2001 and now the Vested Properties Return Act 2001 is in force, under which Hindus can seek the return of land confiscated from them by the government or by individuals.

Article 28 (3):‘No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institute.’

Article 17(a):‘The State shall adopt effective measures for the purpose of establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law.’

Article 17:‘The State shall adopt effective measures for the purpose of establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; developing education that is consistent with the needs of society and to create a citizenry, educated and motivated to fulfill those needs; and eliminating illiteracy within a timetable determined by law.’

## **Status of implementation of rights**

In Bangladesh there has never been any law that specifically refers to ‘caste based discrimination’ or to ‘caste segregation’ in employment. Caste affected communities in Bangladesh have been going through a serious transition in recent years as they neither have guaranteed scope for work in relation to their ‘customary’ occupations, nor are they able to access the formal labour market. On the one hand, since traditional caste-based occupations are mostly informal in nature, they do not receive the benefits of existing laws

and acts formulated with regard to formal jobs. On the other hand, they are not treated as fully 'formal' employees even when they are employed as sweepers and cleaners in city/ municipal corporations or other autonomous bodies. In most cases they do not have any collective association or union to negotiate their rights and claims. They are also not aware of their legal entitlements. Employers take advantage of Dalits' ignorance and disorganization and exploit them with low wages or no wages. The workplace environment and occupational safety related problems cause immense suffering for Dalit workers in diverse, yet unacknowledged, ways. For instance, Dalit tea garden workers are deprived of work entitlements that different laws have given them from time to time. They are subject to both direct and indirect deprivations, and continue to work in poor working and living conditions. Despite efforts on the part of human rights activists and campaigners, manual scavenging is yet to be legally stopped. Other unhealthy working conditions continue to persist despite Bangladesh being a signatory to relevant international conventions.

## **Poverty**

Generally, the dwellings of Hindu and Muslim Dalits in Bangladesh are segregated and there are instances of discrimination when trying to rent rooms or houses outside these exclusive areas. In rural areas Dalit communities live in groups in paras or colonies that are remote and secluded from mainstream communities. In urban areas Dalits usually live in so called 'colonies' which are slum-like tenancies without adequate provision of water, electricity or sanitation. In such colonies, 8 to 12 family members belonging to three generations live together in one tiny room without any regard to hygiene or sanitation issues.

Discrimination also surfaces while Dalits try to access special ponds or lakes in villages. Another acute problem that Dalits across the country face is that they live with 'food insecurity'. Both Hindu and Muslim Dalits report discrimination to different degrees from non-Dalits while sharing food/tea in the same plates/cups/utensils with them. Since these groups are seen as 'dirty', the perception also is that their touch also makes things 'dirty' and as a result, they need to wash whatever they use to make it 'pure'.

## **Education**

Minorities within a modern state are constantly subject to attempts by the state machinery to homogenize the population via language, culture and education. This not only reduces, distorts and thereby marginalizes



minority communities but it also creates the 'other', the subjugated subordinate minority. In this endeavour, culture, language and education come to play hegemonic roles.

During the Pakistan period Islamiyat or religious education was made a compulsory subject in the primary and middle stages (Classes 6 to 8). After independence the Education Ministry continued with the same policy. The Mujib government, however, set up an Education Commission in 1972, which submitted its interim report in May 1973. The commission recommended the separation of religion from education. Public opinion on the subject was sought through questionnaires. The answers showed that secular education was acceptable to about 21 per cent of the most educated section of Bangladesh, while 74.69 per cent said that religious education should be an integral part of general education. The commission's recommendations could not be implemented.

Following Mujib's assassination, education acquired an overt Islamic orientation. Islamiyat was introduced in Classes 1 to 8 as a compulsory paper for Muslim students only and in Classes 9 and 10 as an elective subject. Apart from Islamiyat, children from other religious communities were given the right to be taught their own religion. However, some of them alleged that many government-employed religious teachers for minority religious groups were neither members of the religion they taught nor qualified to teach it. The government also introduced an Imam (Muslim religious teacher) Training programme in 1979. Zia emphasized the need for religious education when he said: '... A Muslim has to live his/her personal, social, economic and international life in accordance with Islam from childhood to death' (Talukdar, 1990: 70).

The regime of H.M. Ershad (Army Chief of Staff who assumed power in a bloodless coup in 1982) furthered this process. In 1983 he wanted to introduce Arabic as a compulsory subject but failed due to opposition from students and political parties. He, however, succeeded in encouraging madrasa (Islamic school) education and put it on par with the corresponding level of general education. Today, there are an estimated 64,000 madrasas in Bangladesh, divided into two categories: The Aliya madrasas are run with government support and control. The Government of Bangladesh pays 80 per cent of the salaries of their teachers and administrators as well as a considerable portion of their development expenditure. The 2000–01 budget, for example, allocated taka 4.91 billion for salary support to

non-government madrassas. The government also allocated considerable funds for the construction of 1,741 new madrassas in the private sector.

Successive governments have encouraged the growth of madrasa education in the country. Over the last two decades, revenue expenditure per madrasa student was much more than for the students in secondary high schools. The number of madrassas in Bangladesh is increasing at a fast pace and so is the number of students. According to government published sources Bangladesh Bureau of Educational Information and Statistics (BANBEIS), during 1980-2000, the number of registered junior and high madrassas increased by 271 per cent compared to a 185 per cent growth in secondary schools. During the same period, the number of students in junior and high madrassas increased by 818 per cent compared to an only 317 per cent growth in secondary school students. Today, 30 per cent of all secondary level students are from madrassas and they are catching up fast.

These statistics do not include thousands of unregistered Qawmi madrassas all over the country.

Aliya students study for 15-16 years and are taught Arabic, religious theory and other Islamic subjects as well as English, mathematics, science and history. They prepare themselves for employment in government service, or for jobs in the private sector like any other college or university student. 'A recent survey found that 32 per cent of Bangladesh university teachers in the humanities and social sciences were graduates of Aliya madrassas.' However, the Qawmi madrassas remain outside the purview of the Bangladesh Madrasa Education Board (Ahmad). There are three basic characteristics of Qawmi madrassas:

1. They follow the dars-I Nizami system or a modified version of it,
2. They use a subject-based system rather than a grade-based system and therefore there is no clear 'time-sequence' attached to the education, and
3. Since Qawmi madrassas are privately owned, there is a tendency to depend on local charity, commercial ventures, the Bangladeshi diaspora and Muslim foundations based in the Middle East for funding.

The impact of these characteristics is critical as the students of Qawmi madrassas end up acquiring an education with a minimum level of quality and almost zero prospects in the job market.

While singling out the madrassas would be as wrong as putting the blame on unemployed Muslims for terrorism, it should be noted that education in Bangladesh (in madrassas), particularly for Muslims has become a breeding ground for Islamic militancy and fundamentalism. Students coming from all shades of education - modern secular, Aliya madrassas or Qawmi madrassas- have fallen prey to fundamentalist ideologies and some are involved in violent activities, possibly with some difference in the number and degree of participation. But that 'Islamic' militancy in Bangladesh is informed by a precise, if not distorted, understanding of Islam remains apparent from the targets of bomb attacks. These targets include religious shrines, public gatherings mainly for entertainment and non-Sunni Ahmadis. One cannot also rule out the Wahabi connection in reproducing militancy in Bangladesh. One report indicates that some of the Islamic militant groups aided by Indian, Pakistani and Afghan Muslims, also received funds from the Middle East including Saudi Arabia, to carry out their activities. This provides a direct linkage between the Wahabization of Bangladesh and the concurrent reproduction of intolerance.

Higher educational institutions do not have separate departments catering to the religions of minority communities but in the University of Dhaka subjects like Islamic Studies & History of Islam are taught.

The other area of bias in education is the curriculum. For instance, the Department of World Religions in Dhaka University has a course on History of Islam whereas the histories of other religions are not included. Similarly, if we see the number of students and teachers of religious minorities in the top universities in Bangladesh, the scenario is quite pitiable (*see Table 7*).

Recently Education Minister Nurul Islam Nahid said that the government would formulate the National Education Policy (NEP) based on the Qudrat-e-Khuda Education Commission's report of 1974 so that a secular and science-based education system can be introduced; the report of the Qudrat-e-Khuda Commission will be slightly modified to make the policy appropriate for the country's existing education system. In view of an increase in religio-centred militancy and the allegations that these institutions are associated with it the government constituted a committee to recommend reforms in their curricula so as to make it job-oriented and also to monitor their activities. [SAHR, 2010: Page 26, paragraph 1] The Qudrat-e-Khuda Education Commission was formed in 1972 and was headed by leading educationist and scientist Dr Qudrat-e-Khuda. The commission

**Table 7. Number of non-Muslim teachers and students in higher studies**

University	Non-Muslim Students	Total students	Non-Muslim Teachers	Total Teachers
Dhaka University	2,498	50,713	76 (Arts faculty total-45, Science faculty-8, Law faculty-1, Business faculty-110, Social science faculty-5, Bio-science faculty-9)	1,245 (Arts faculty total-326, Science faculty-161, Law faculty-37, Business faculty-174, Social science faculty-269, Bio-science faculty-278)
Jahangirnagar University	722 (Hindu-673, Buddhist- 32 Christian-17)	-	28 (Hindu-26, Christian -2)  (Arts & Humanities-4, Mathematics & Physical Science-16, Social Science-5, Biological Science-3)	472
Bangladesh University of Engineering and Technology (BUET)	-	-	34	429

submitted its report to the then Sheikh Mujib government in May 1974. The commission suggested some major changes in the primary, secondary and higher secondary education levels.

There has been only one Hindu Vice Chancellor in the history of Bangladesh.<sup>3</sup> Apart from the Vice Chancellor, the government also appoints the Pro-Vice Chancellor of a university. Not a single Hindu has been appointed to this position although there are many distinguished Hindu academics. However, the present AL government has appointed Professor Pran Gopal, a member of the Hindu community, as a Vice Chancellor of Bangabandhu Sheikh Mujib Medical University (BSSMU). There are allegations of

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3. Based on interviews of medical college students. These interviews were done over a number of years, beginning in early 2000 till 2007 as part of the author's research on politics. Students alleged that they were asked odd questions about their religion in viva boards. Authorities however refuted the allegations and suggested that there were channels to complain but the students felt that the teachers were very powerful and there was no point in complaining as they do not expect any justice.

discrimination in awarding scholarships and enrolments against Hindus in medical institutions. In a survey carried out in December 2008 among 1,400 members of the Hindu community on discrimination in academic institutions on account of their religious identities, 37.2 per cent answered in the affirmative while 33.8 per cent said that at times they had felt discrimination. (SAHR, 2010: page 26)

## **Employment**

It has been observed earlier that a system of silent discrimination is prevalent in the service sector. A major reason for this is the lack of inter-community trust, which again is not only a consequence of historical factors but also of the twists and turns of state politics. A survey carried out among 1,447 members of the Hindu community in December 2008 found that 75 per cent of the participants were not confident about undertaking large investments in the country; 48.6 per cent responded that they faced problems in their businesses because of their minority status. More alarmingly, 45.2 per cent said that because of their religious identity they faced problems in procuring loans for business purposes on a regular basis and 31.2 per cent said that they faced this problem occasionally.

Insecurity among religious minorities prevents them from undertaking investment ventures. Investments are confined to the majority community. This hinders upward economic mobility of religious minorities; consequently, they remain marginalized and dependent. Difficulties in getting loans just on the basis of one's religious identity makes mockery of the concept of democracy and the principle of equality enshrined in the Constitution (SAHR, 2010: page 27).

## **Right to Land and Property**

The Home Ministry issued a circular to banks during the Bangladesh Nationalist Party (BNP) regime in the early 1990s cautioning them against providing loans to Hindus on the ground that they might leave the country and settle in India after acquiring the loans. The Hindu community has been denied the right to property, which is a fundamental right guaranteed in the Constitution. This is the most significant source of their discrimination and insecurity in Bangladesh. Pakistan had formulated some specific laws that marginalized the Hindus in a systemic way and was a major source of their insecurity. Ironically these laws were later inherited and retained by Bangladesh. Consequently, the Hindu community in Bangladesh feels economically and politically marginalized.

## Profile of a vulnerable minority: Tea estate workers

One of the few industries that Bangladesh as a country can be proud of is her tea industry. The Bangladesh tea industry contributes 2 per cent to the world's tea production and accounts for around 3 per cent of the world's tea exports (Sabur et al., 2000). A significant section of about 4 lakh people live on the plantations in Bangladesh. This sector accounts for nearly 3.3 per cent of the total industrial employment in the country. In 2012, Bangladesh recorded its highest production of tea at 63.85 million kilograms. But the pathetic conditions of the workers in the Bangladesh tea industry continue to be a point of discussion among civil society, tea workers' unions and academicians.

### Historical background

Tea, as a cash crop and subsequently as an industry, became part of today's Bangladesh during the time of the colonial government. Work on a tea plantation was arduous and needed manual labour. However, a majority of the colonial Bengal's labour force was engaged in agriculture. To meet the new demand of tea plantations the colonial British government deployed indentured immigrants. Tea plantation workers were brought primarily from the backward and tribal areas of central India and the states of Bengal, Bihar, Odisha and Madhya Pradesh. The current workforce in the tea plantation industry in Bangladesh is the fourth generation of those tribal and Dalit immigrants. Unfortunately, the workers on these tea estates continue to be treated much like slaves. *Dhaka Tribune* (2014) observed the following:

These people are basically trapped into the social stigma which they inherited from their ancestors and living an inhumane life which is no less than an animal. Even their basic necessities are not properly ensured although they are living within the territory of Bangladesh. Very sadly, these poor people lack their basic rights.

The social discrimination between the officers and managers on the one hand and the workers on the other appears to be suggestive of

... contd. ...

A separate act was passed to vest property with the government under the Enemy Property Act. Known as the Vested Property Act (VPA), this is the main cause of economic marginalization of the Hindu community. It has its origins in a number of laws and by-laws promulgated by Pakistani authorities. These originated in the East Bengal (Emergency) Requisition of Property Act (Act XIII of 1948). After independence in 1947 the then provincial government was faced with an abrupt and acute problem of accommodation for the numerous government offices and public servants. Under these circumstances the act was passed for a period of three years and gave the government the power to acquire either on a temporary or a permanent basis any property that it considered needful for the administration of the state (Barkat and Shafiqzaman, 1997; Nahar, 1994).

Hindu members of the East Bengal Assembly opposed the bill on the grounds that it would make the properties of the Hindu community more prone to acquisition. Their apprehensions turned out to be true. The proceedings of the East Bengal Assembly of 1951 show, that the VPA was widely used against religious minorities.

VPA has been one of the major sources of economic insecurity for Hindus. Due to the joint ownership property concept of the Hindus many of them have been dispossessed of their property; the Hindus regarded it as a 'Black' law, which not only marginalized them economically, but also turned them into second-class citizens. It was considered a major cause of their migration. The estimated size of such migration during 1964-91 was 5.3 million, or 538 persons each day with as high as 703 persons per day during 1964-71.

It has been alleged that VPA discouraged the minority community from acquiring new land and it was also compelled to sell off property at cheap prices. The procedure of declaring minority-owned land as enemy or abandoned property was also carried out through fraudulent practices. Government documents also substantiate these allegations. According to one estimate one million acres of land belonging to the minority community out of a total arable land of 21 million was transferred from minority owners to dominant sections of society. A study has estimated the violations of Hindu property rights due to the Vested Property Act as:

- Approximately a million Hindu households (40 per cent) were deprived of over 1.64 million acres of landed property, which is 53 per cent of the

*...Profile of a vulnerable minority continued ...*

the larger question of power and rights. Francis Rolt, a British writing in 1991, commented ‘the tea gardens are managed as an extreme hierarchy: the managers live like gods, distant, unapproachable, and incomprehensible. Some even begin to believe that they are gods, that they can do exactly what they like.’ In another vivid description, British human rights activist Dan Jones observed in 1986 that the ‘Managers have anything up to a dozen laborers as their personal, domestic servants. They are made to tie the managers shoe lace, to remind them that they are under managerial control and that they are bound to do whatever they are asked’ (The Daily Star, 2009).

There are a little more than 163 tea estates in Bangladesh. Interestingly, because of its geographical position, the north-eastern region of the country is home to a majority of the tea estates. Tea plantations in Bangladesh are concentrated in the hilly zones that include places like Sylhet, Maulovibazar, Habiganj, Brahmanbaria and Chitragong. Like other third world countries, the tea estates in Bangladesh are owned by a host of both foreign and local companies. All the 163 tea estates are managed by different companies including Sterling Companies, the National Tea Company, Bangladesh Tea Board, Bangladeshi Private Limited Companies, Bangladeshi Proprietors, James Finlay, Duncan Brothers, Deundi Tea Company and the New Sylhet Tea Estate. While four Sterling companies own 27 estates (a little more than 20 per cent of the gardens), Bangladeshi companies and individual entrepreneurs own the rest of the tea gardens.

It is unfortunate that tea plantation workers have a life of hard labour and most of the time their labour does not bring them a life of satisfaction and comfort. Illiterate and unaware of their rights, the workers suffer for generations. Poor housing conditions, abysmally low wages, strikingly long working hours and social discrimination deprive them of many basic human needs and rights (Newage, 2014). A recent study shows that the average monthly income of a worker in the tea industry in Sylhet was around 1,340 takas (Ahmad et al., 2015). This amount is not sufficient for a worker’s family to live a decent life in contemporary Bangladesh. Another report shows that it was only in 2008 that the wage was increased to 69 takas from 30 takas. After that in 2014, tea garden workers in Sylhet district called

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land owned by Hindu households. This included 81.7 per cent agricultural land, 10 per cent homestead land, 1.74 per cent garden land, 2.4 per cent ponds, 0.68 per cent fallow land and the rest was 3.4 per cent.

- About 60 per cent of the total incidents of dispossession and 75 per cent of the total land lost took place between 1965 and 1971. The intensity of dispossession increased after the military takeover in 1975.
- In 56 per cent of the affected families, at least one of the successors had either died or migrated.
- None of those who had appropriated property at that time belonged to the poorer class.
- Approximately 44 per cent of the persons who had appropriated property of the minority community belonged to the Muslim League, 20 per cent to BNP, 17 per cent to the AL, 5 per cent to the Jatiyo Party and 1 per cent to JeI. In 1995, 72 and 11 per cent of those who appropriated Hindu property belonged to BNP and AL respectively; while in 1997 an equal number (44 per cent each) from AL and right wing parties were involved in appropriating Hindu property.

In this respect the collusion of interests (though otherwise totally absent on core national issues) between the political parties – and more specifically the two major ones – is remarkable.

ASK's 2007 Human Rights report states that in 2006 Muslim individuals seized 54 Hindu-owned land pockets and there were 43 attacks on Hindu temples by Muslims. VPA's implicit presumption that Hindus do not really belong in Bangladesh contributes to the perception that Hindu-owned property can be seized with impunity. By using this act, interest groups from the political party in power and others continue to confiscate properties belonging to the minority Hindu community, and often do so with the complicity of the authorities and influential persons. VPA represents a major source of insecurity for Hindus and is a source of violation of their human rights.

In a move to resolve the issue of land loss, in 2008 the government drafted a new law 'Vested Property Examination and Resolution Amendment Bill'. Subsequently, an amendment was made to it in 2013. Since most vesting is with the active collusion of the Upazila and other land offices, the officials concerned need proper orientation to deal with the issue.

*...Profile of a vulnerable minority continued ...*

for a four-month strike demanding a hike in minimum wages which government agencies and private players (owners of the tea gardens), did not agree to. Instead, the authorities and the management showed complete apathy towards the workers. In the absence of any government support or intervention to help increase the minimum wages it is surprising that the owners wanted increased productivity from the labour. Thus, 45-year-old tea worker Fazr Ali lamented: 'How can the owners and management increase production without improve the lives of the workers?' Dissatisfaction over the issue of wages was extensive in the labour lines in tea producing districts in Bangladesh. On another occasion, 43-year-old Annoda Baraik of Kalagool tea garden commented: 'How can we survive with a daily wage of Taka 69 at a time of inflation?'

The struggle, led by different tea workers' unions, has come under tremendous state repression. Workers and officials of the Burjan Tea Estates referred to 20 such cases which were filed against protesting leaders of Sylhet's Bangladesh Trade Union Sangha in an attempt to launch a blatant assault on the movement (Newage, 2014).

## **Ray of hope**

However, in the middle of these depressing stories, there are reasons to be hopeful. The continuous struggle of the workers had paid off, as the daily wages of the tea estate workers were increased in 2015 from taka 69 to taka 85. Although far from adequate to maintain a decent life, but the increase is a positive development. Now several thousand tea workers in Maulovibazar are engaged in another movement to demand the realization of increased payments (The Daily Star, 2016).

Illiteracy and poverty seem to go hand in hand in the labour lines on tea estates. The workers are illiterate and this has been the case for generations. One of the reasons for this is the lack of well-maintained schools in the area. Further, the impoverished conditions of the workers make life for their children even more difficult. As a consequence, workers' children start earning early. In the end, it is seen that the children of tea plantation workers become the same as their parents. Any state sponsored effort to promote vocational

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## Effective participation

### Status of implementation of rights

#### **Public Representation of Minorities**

For the purpose of this chapter the public domain is inclusive not only of the legislature but also the government administrative sector. These are domains of major exclusions and inclusions. It is important to note that policy guidelines may not be reflective of the actual situation. It is well-known that policies are often couched in the most equitable terms; what is critical is examining the system and the politics of the system to see if these provide the space for the stated policies to be translated into practice.

The Bangladesh Constitution provides equal rights to all citizens irrespective of religion, sex, caste or place of birth. But the system itself allows for inequities to creep in. For instance, the institution of majoritarian democracy does not leave much voice for the religious minorities in the national Parliament, the emblem of people's power and representation. It is understandable that within the present parameters of the Bangladesh electoral system and the state of polarized politics, in the absence of any affirmative action there is hardly any scope for a meaningful representation of the minorities in Parliament. The Parliament is a 300-member body. To ensure women's representation in Parliament the 1972 Constitution reserved 15 seats for ten years to be nominated by elected members of Parliament. In the second Parliament in 1979 the reserved seats for women was increased from 15 to 30. This provision expired in 1991. Later the number of reserved seats for women was increased to 45 (*see Table 8*).

Among the women nominated members in 1973 there was only one woman from the minorities nominated by AL; in 1986 one minority woman member was nominated by the Jatiyo Party; in 1991 the BNP nominated one minority woman; in 1996 AL nominated two minority women while the BNP nominated one; in 2008 AL nominated one minority woman. These numbers are dismal even within the nominated category, which itself is a minority category and the provision is there as affirmative action. Security and equality of minority communities does not depend only on the majority community's goodwill and safeguards ensured in the Constitution. Adequate representation of minority communities with their voices being effectively heard in the highest law making body of the country is one of the critical paths for confidence building among religious communities.

*...Profile of a vulnerable minority continued ...*

training for the children of labour lines is unknown. In the absence of any such facility, the children grow up knowing only one trade which is related to tea gardens and includes skills like weeding, cleaning, plucking, pruning and processing in a tea factory.

Ahmad et al.'s (2015) study on tea estate workers shows that most of the respondents were illiterate. Commenting on the lack of educational facilities, one respondent said: 'We are here for working and not for education, the authority was against educating us.' However, there is lack of educational facilities but not the complete absence of educational institutions. In fact, small sections of the people living in the labour lines have recently shown an interest in sending their children to nearby schools, the study indicates. But their educational status is abysmally low as most of the people do not study beyond class five and dropout rates continue to be a problem that the state and civil society are yet to address.

As a tea worker a Bangladeshi citizen is ideally free to live anywhere in the country. But it is unfortunate that many of the tea workers are yet to come out of the tea gardens. Invisible social and economic chains tie them with the tea gardens/industry. Lack of any other skills might be a cause for their captive conditions within the tea industry. They face great difficulties in exploring livelihood options outside tea gardens. They also have limited scope to integrate with the people of the majority/other communities.

### **Poor housing**

The wretched housing conditions in the labour line are a serious problem; they are also a source of many diseases among the workers. A study by Mahfuzul Haque (2013) found that the workers lived in dilapidated conditions: 'Houses are without repair for months. Big holes in the sun grass roof made their lives miserable during the monsoon.' It is the responsibility of a garden's authorities to provide housing for the workers in the labour line. However, many permanent workers do not have housing. In some cases, they live under the same roof with domestic cattle. While describing the living conditions in labour lines, one of the workers said: 'We live in place worse

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**Table 8. Elected Religious Minority Representatives in Parliament**

Year of election	Total Members in the Parliament	Minority members	Remarks
1 <sup>st</sup> Parliament, 1973	300 +15	12 (3.8 per cent)	
2 <sup>nd</sup> Parliament, 1979	300 +30	8 (2.48 per cent)	
3 <sup>rd</sup> Parliament, 1986	300 +30	7 (2.18 per cent)	
4 <sup>th</sup> Parliament, 1988	300 +30	4 (1.28 per cent)	
5 <sup>th</sup> Parliament, 1991	300 +30	11 (3.38 per cent)	
6 <sup>th</sup> Parliament, 1996 (15 <sup>th</sup> February)	300 +30		In this election no major political party except the Bangladesh Nationalist Party participated
7 <sup>th</sup> Parliament, 1996	300 +30	14 (4.28 per cent)	
8 <sup>th</sup> Parliament, 2001	300	8 (2.67 per cent)	
9 <sup>th</sup> Parliament, 2008	300+45	14 (4.67 per cent)	All (Hindus) were elected from the AL

Source: [http://www.ecs.gov.bd/english/elec\\_par.php](http://www.ecs.gov.bd/english/elec_par.php).

Minority representation in the various cabinets also echoes this. Here 1991 is taken as the baseline as Bangladesh has been holding parliamentary elections on a regular basis since then. In the 1991 cabinet formed by BNP, out of a 48-member cabinet only one member was from the minority community. In 1996 the AL regime had three minority members out of a cabinet of 51; in 2001 BNP had two minority members in a cabinet of 63. The 2009 AL cabinet of 35 members had three members from minority communities.

In the government service sector the situation is equally bad. Allegedly silent discrimination prevails there. Lock-offs start at the entry levels. Minorities complain that after passing civil service written examinations they are often dropped from consideration once their religious identity becomes known. The 24<sup>th</sup> Bangladesh Civil Service (BCS) Examination, 2005 is a good instance of this. BCS examinations are the entry point for individuals seeking government jobs. This is the executive body of the state. Selection boards for government services often lack minority representation. It has been alleged that non-Muslim candidates face uncomfortable questions and rude behaviour from board members of the Public Service Commission (PSC) in the viva voce. It has also been alleged that candidates who belong to the 'H Group' (Hindus) often hear remarks that they will ultimately settle in India so there was no point in selecting them. These remarks question their

...Profile of a vulnerable minority continued ...

than that of the officers' pets (at the estates). Many of us have only a thin jute mattress to sleep on' (Rasheeka, 2009). The tea workers do not have even basic sanitation facilities in their houses. A larger section of them go to the field for defecation.

## **No medical facilities**

Tea plantation workers living on the margins of the social and economic hierarchy also do not receive proper medical treatment. No proper medical facilities exist in most of the gardens. In some gardens there are only paramedics. Women workers, who constitute around half the workforce are the worst affected. They enjoy maternity leave but the clinics lack proper facilities for deliveries. There are no scientific and modern delivery systems in many of the tea gardens. The workers also suffer from endemic dysentery, diarrhoea and hookworms, diseases caused by polluted water. Tuberculosis, leprosy and malaria are also common among tea plantation workers. Many newspaper articles have pointed out the issue of alcoholism, particularly among men. A locally brewed drink known as *haria* is often consumed by both adult and young workers, who are oblivious of its adverse effects on their health.

Hand pumps are the most common source of water supply in tea gardens. Generally, on average there is one hand pump for four to five families (Ahmad et al., 2013), which is a much higher ratio compared to the norms followed by the water supply programmes of the Government of Bangladesh. Further, the tea gardens mostly have shallow hand pumps. A study by Ahmad et al. (2015) showed that the tea workers were not aware of the need of using safe water. In another study, Haque (2013) saw a few tube wells some of which had been out of order for months. In such a situation, the workers were compelled to fetch water from the nearby *chhara* (canals), which is a source of water-borne diseases like dysentery, diarrhoea and worms.

A section of the scholars also report on the poor implementation of the Labour Act 2006, which contains special provisions for tea estate workers. Thus, lack of initiatives by the government and tea garden authorities for dealing with basic social issues related to decent

... contd. ...

personal integrity and sense of patriotism. More importantly they demonstrate the identity and form that the state is acquiring. According to a recent study the number of non-Muslim appointments (Hindus, Buddhists and Christians) in different public services was about 3,197 (10.45 per cent including 5 per cent tribal quota) (SAHR, 2010: page 17).

In the 27th BCS in 2008, out of the general cadre of 940, 68 individuals from religious minorities were selected (65 Hindus and three Buddhists); and in the health cadre out of 1,477, 90 members from religious communities were selected (81 Hindus, three Christians and six Buddhists) (see Table 9).

Other allegations include not giving assignments considered to be sensitive from a security point of view to those from minority communities. In the Foreign Service, there were only two members from the minority community who are now stationed in the Dhaka Headquarters. In the Bangladesh Army, there are a few non-Muslim commissioned officers, three of whom are of the rank of Major Generals: two Hindus and one Chakma. There are two to three Brigadier Generals in the Army Medical Corps and Army Education Corps. The Jatiyo Rakkhi Bahini, a para-military force formed by AL in the early 1970s and later disbanded after 1975 had a substantial number of soldiers from the Hindu community. They were later merged with the different units of the Bangladesh Army. It may be mentioned that the passing out oaths taken by the officers and soldiers are read out according to the religious scriptures of the individual concerned. In the absence of disaggregated data and extreme sensitivity of the issue it was not possible to collect information about their location and size within the armed forces.

In the public sector, one notable exception is the government-owned Bangladesh Bank, which employed approximately 10 per cent non-Muslims

**Table 9. Representation of religious minorities in the 27<sup>th</sup> Bangladesh Civil Services Examinations**

	General cadre	Health cadre
Hindu candidates	6.91%	5.48%
Buddhist candidates	0.32%	0.41%
Christian candidates	-	0.20%
Candidates from religious minorities	7.23%	6.09%

*...Profile of a vulnerable minority continued ...*

health facilities on tea estates, minimum educational opportunities and poor liveable housing conditions, have meant that millions of tea estate workers continue to suffer. Philip Gain, the Director of Society for Environment and Human Development (SEHD), commented:

The key questions to ponder: How longer will the tea communities stay confined to the labour lines? Will they continue to live as people without choice and entitlement to a land they have tilled for four generations? The employers probably want the status quo maintained for a steady supply of cheap labourers. But the tea communities, little more conscious now than before, want justice done to them. They want strategic services from the State and NGOs in the areas of education, nutrition and health, food security, water and sanitation, etc. They also want to see their languages, culture, and social identity protected (The Daily Star, 2009).

What is even more alarming is that the Bangladesh government, in its run-up to a typical post-colonial developmental agenda, is planning to set up a special economic zone (SEZ) on the rice farm of Habiganj tea estates. This land is important for the workers of the tea estate. One of the workers reported (*The Daily Star*, 2015): 'Our wage is so low that the food we get from the land helps us survive.' Ramesh Rajbanshi continued: 'If it is taken from us, we have nothing.' As a result of the proposed SEZ, about 16,000 tea workers on three tea estates in Habiganj face an uncertain future. December 2015 saw some spontaneous movement among the workers demanding the rolling back of the SEZ. The workers protested by chanting slogans like '*Amar Mati Amar Ma, Kerey Nitey Dibona*' (My land, my mother, we shall not let them snatch it away) (*The Daily Star*, 2015). Habiganj district authorities have already taken over about 512 acres in the Chandpur tea garden, thus delivering another blow to the workers. Thus, instead of saving the lives and security of tea garden workers, the state is promoting development that entails large-scale violence with displacement of the most deprived communities as its natural outcome.



in its upper ranks. Employees are not required to disclose their religion, but this can generally be determined by a person's name (SAHR, 2010: pages 15-18).

## **Electoral procedure and election-centred violence**

The electoral system which was supposed to pave the way for a representative system where individuals irrespective of their ethnic or religious identities could exercise their rights as active citizens has ironically turned into a source of persecution of religious minorities. Democracy, a much laudable ideal and principle has in effect turned into an instrument of oppression of the minorities. Based on the principle of majority rule, politics has turned into a game of numbers. Individuals and communities instead of being viewed as human beings are looked upon as 'vote banks' by political parties. Violence is inflicted upon them by political parties and their supporters in a bid to either 'win' over the 'vote banks' or stop them from exercising their voting rights through coercion and violence.

It has been argued that political behaviour and community size are highly significant in election results. In a first-past-the post British style parliamentary system, 30-35 per cent of the votes are enough to win a seat in a multi-cornered contest and 40 per cent votes can easily translate into 50-60 per cent legislative seats. Minorities constitute a little more than 11 per cent of the electorate in Bangladesh. In other words, they constitute more than 20 per cent of the electorate in 50 of the 300 parliamentary constituencies in the country. Moreover, in 197 constituencies minorities constitute 10-50 per cent of the electorate and in another six more than 50 per cent.

According to conventional wisdom the majority community does not vote as a bloc, but the minority does. This voting behaviour makes minorities an important factor in determining election results in nearly 20 per cent of the parliamentary constituencies. Purely in an electoral sense, the political system in Bangladesh gravitates towards the minorities to a certain extent. Therefore, its demographic composition is important. The higher the number of minorities in a constituency the greater will be the stake of political parties in the minority constituency.

The minorities, especially Hindus, became victims of majoritarian violence during the October 2001 parliamentary elections. The reasons for this violence were not limited to communal factors; there were also other related factors like political and structural. The Hindus are regarded as AL's

vote bank so they were targeted by BNP supporters and its alliance partners. In some instances, AL supporters had also attacked them thinking that the local Hindus did not vote for them as was expected of them. In some instances, terrorists took advantage of the situation and indulged in extortion and looting of property.

The violence started 15 days prior to the elections on 1 October and continued till about 27 October, which had an impact on Durga Puja, the most important religious festival of the Hindu community in Bengal. From a scanning of ten dailies (ProthomAlo, Jonokontho, Jugantor, Sangbad, Banglabazar, Inqilab, Dinkal, TheDaily Star, Ittefaq and BhorerKagoj) it can be observed that between 15 September to 27 October, 2001, about 330 reports of violence against the Hindu community were reported in these newspapers. These included cases of rape, killings, physical torture, plunder, damage to property, bomb throwing, arson and extortion.

After the 8th Parliamentary elections, AI reported in December 2001: 'Hindus in Bangladesh have tended to vote for the Awami League. They have therefore been the target of a political backlash by supporters of parties opposing the Awami League.' An Amnesty report added: 'Human rights organizations in Bangladesh believe over 100 women have been subjected to rape. Reports persistently allege that the perpetrators have been mainly members of the BNP and its coalition partner Jamaat-e-Islami.'

The intimidation of minorities, which had started before the elections became worse afterwards. The ASK petition of 2001 stated that 'since announcement of election schedule for the eighth parliament, religious minorities in the country had come under various threats, attacks and persecution. Their properties were looted and women and children were raped. Excepting a disciplinary action against a police superintendent in Bhola, and few arrests of alleged attackers in some places, the government so far took no measures to ensure safety of religious minorities.' (*see Table 10*)

Hindus were affected in 57 districts. The highest number of incidents was in Barisal (26), in Bagerhat (21 incidents), Bhola (17 incidents), Rajshahi (13) and Faridpur (12). The division-wise occurrence of violence is however a little different with the highest taking place in the Dhaka division (*see Table 11*).

**Table 10. Incidents of violence against minorities in 2001**

	Assault	Threat	Physical torture	Looting	Breaking/Torching	Extortion	Explosions	Other	Total
15-30 Sept	21	52	24	11	19	11	4	22	164
1-15 Oct	38	42	41	37	54	21	3	10	246
16-27 Oct	32	16	29	39	57	0	2	13	188
<b>Total</b>	<b>91</b>	<b>110</b>	<b>94</b>	<b>87</b>	<b>130</b>	<b>32</b>	<b>9</b>	<b>45</b>	<b>598</b>

**Table 11. Incidents of violence against minorities in 2001**

Division	15-30 Sept	1-15 Oct	16-27 Oct	Total
Dhaka	20	34	29	83
Chittagong	18	17	11	46
Rajshahi	9	19	36	64
Khulna	20	26	21	67
Barisal	13	32	18	63
Sylhet	0	3	4	7
<b>Total</b>	<b>80</b>	<b>131</b>	<b>119</b>	<b>330</b>

## Representation of minorities in public employment

In Bangladesh ‘affirmative action’ is not totally new and the debates and controversies that are prevalent at the national level with regard to the ‘quota system’ need to be linked with the condition of Dalit communities undergoing caste-based discrimination.

In Bangladesh, the ‘quota system’ in civil services has been in force from 1972, but only in recent times has the system come under some scrutiny. The popular discourse that the country is ‘homogenous’ in its ethnic composition and that Bengali Muslims form an overwhelming majority of the people has played a role in shaping the policies in relation to the ‘quota system’. Most importantly, the system has never been subject to serious academic or policy debates. Instead, it has been seen as an ‘administrative’ issue that might require some technical refinement. An informed review of the system could bring certain issues like how the real ‘backward’, ‘non-advanced’ or

**Good practice case study:**

## **The Bangladesh and excluded rights movement**

Like in many other countries in South Asia, Dalits continue to experience discrimination. The country is home to approximately 5.5 million Dalits who are socially known as ‘untouchables’. Extreme poverty, social exclusion and lack of adequate representation in different decision making bodies are some of the problems that the Dalits continue to face. Mainstream political parties have never taken up the issue of inhuman social practices that Dalits suffer from in the country. One also does not come across many laws and social safety nets on the part of the state to protect the rights of the Dalit community. It is unfortunate that there was a dearth of even civil society efforts to safeguard Dalit interests till the beginning of the 21st century.

### **The beginnings**

In 2002 the Dalit movement in its current form came into existence. The Bangladesh Dalit Human Rights (BDHR) organization was established in 2002 to engage with Dalit issues. A handful of organizations working with issues of the Dalit population also came up in the country at the beginning of the 21st century. But all these organizations were isolated and excluded. To bridge the gap between these organizations and to understand the Dalit situation in the country, in 2006 BDHR submitted a detailed report on the conditions of the Dalit population across the country to the United Nations Sub-Commission on the Promotion and Protection of Human Rights. This was, without much doubt, one of the early attempts by civil society organizations to study the issues of Dalit people in Bangladesh. In connection with this, a consultative meeting detailing the overall situation of Dalits in Bangladesh was held in October 2006. The meeting was organized by BDHR in collaboration with Nago-rik Uddyog and the International Dalit Solidarity Network (IDSN). The meeting was marked by the presence of different activists working among Dalit groups and prominent human rights activists. The meeting gave the participants and activists a platform that had hitherto been absent to exchange their views on the possibility of forming

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‘systematically excluded’ communities could be included through meaningful reform of the system to the surface. By means of such a review, Dalit communities will be able to make their claim to affirmative action that they also fundamentally deserve to ensure their representation in decision making.

Until now, the ‘quota system’ in the country has basically revolved around two categories of people – ‘freedom fighters’ and ‘women’. Arguments and controversies have also focused on these two groups of beneficiaries. However, the question as to how the quota system can be used more dynamically to support different ‘minority’, ‘marginal’ and ‘disadvantaged’ groups has never been systematically analysed by policymakers or civil society stakeholders. In 1985, and then in 1997, the quota system was revised and attained the shape that currently exists. (See Table 12)

## Identity and culture

### Legal and Constitutional Position

#### *State of Urdu speakers*

There were no expectations that the socioeconomic status of Biharis would drastically change after they were issued national identity cards and they became voters. Camp dwellers still face discrimination and have difficulties in getting passports, public service employment and trade licenses. Their

**Table 12. Incidents of violence against minorities in 2001**

Sl	Type of Quotas	Class I & Class II posts (%)	Class III & Class IV posts (%)
1.	Merit (outside district quota)	45	00
2.	Physically handicapped/ mentally retarded (outside district quota)	00	10
3.	Freedom Fighters or if freedom fighters are not available then shaheed freedom fighter's children	30	30
4.	Women	10	15
5.	Tribal people	05	05
6.	Ansars/ VDP members	00	10
7.	Remaining (for general candidates of the district)	10	30

Source: Yasmin, 2010: page 21.

*...Good practice case study continued ...*

a national level network and launching a nation-wide movement to end the atrocities on Dalits. Finally, on 22 April 2008, at a national consultation organized by BDHR and Nagorik Uddyog, the national movement called the Bangladesh and Excluded Rights Movement (BDERM) was formed. (BDERM, 2011: 6).

BDERM is not merely a civil society organization, it exists as a movement of the Dalit population at the national level that attempts to combine and collate the work of different civil society organizations working on Dalit rights in Bangladesh. BDERM describes itself as ‘a National Platform, which launched campaign in 2008 against caste based discrimination through mobilizing Dalit community and rights activists’ (BDERM and NU, 2016: 85). The organic linkage between different civil society organizations and BDERM is the key factor in its success.

BDERM is associated with 34 civil society groups (BDERM and NU, 2016: 5). As a national level movement, BDERM is engaged in awareness raising, mobilization, capacity building and advocacy. BDERM works in approximately 50 districts in the country. Relentless work among the Dalit community across the country has also brought the organization international recognition as the movement is now a member of the International Dalit Solidarity Network (IDSN) and the Asian Dalit Rights Forum (ADRF) (BDERM and NU, 2016: 86).

BDERM’s objective is to lead a national campaign and initiate a movement from the grassroots to national and international levels to help secure Dalit rights. In a broad sense, the goal of the movement is to build ‘an equal society by eliminating all forms of discrimination against Dalit and Excluded Community on the basis of equality, dignity, prosperity and security’. BDERM is committed to achieving its goal through organizing different Dalit organizations and individuals. BDERM’s objectives are:

1. To build awareness among Dalit and Excluded community people on socio-economic, cultural, education and political rights.
2. To build public awareness against discrimination based on work and descent.

*... contd. ...*

camps are always under threat of eviction. The government has continuously violated their fundamental rights. The Urdu-speaking Bihari community does not yet have state recognition as a linguistic minority in Bangladesh.

Serious obstacles remain for those who want to access additional identity documents or related services. Many Biharis are unaware of courts judgment or details of the rights that they are entitled to. Those who want to use their national identity cards to access other documents and services – applying for a passport, seeking a trade license – are often not familiar with the administrative processes or requirements. Or worse, they may feel intimidated in government offices where they have to apply for such services; a challenge especially stark for women, who want birth certificates for their children but tend not to stray outside their camps into the city. Consequently, many camp dwellers do not even attempt to approach the government.

Camp dwellers who have sought government services have encountered problems such as corruption, discriminatory requirements, and in some cases, even denial of requests for documents due to their identity or camp address. Government records are critical for camp dwellers if they have to enjoy their rights as citizens when it comes to education, employment and the opportunity to travel abroad for education or work. The realization of these rights can ultimately help overcome poverty.

Many passport applications have been rejected because of lack of a residential address; a ‘camp address’ is considered an improper residential address. Governmental officials also say that they have written instructions not to issue passports to Biharis. However, even after obtaining an official document from the Home Ministry indicating that Biharis were entitled to get passports, some applicants still failed to have their passport applications approved. (Hussain, 2016)

## **Freedom of religion**

### ***Restrictions on freedom of religion***

The Office of the United Nations High Commissioner for Human Rights’ (OHCHR), in its preliminary findings of a country report by Special Rapporteur on Freedom of Religion or Beliefs Heiner Bielefeldt on 9 September 2015, stated that:

One particularly atrocious crime is the abduction of people, mostly girls, with the purpose of forcing them to convert to another religion, while

*...Good practice case study continued ...*

3. To make the policy makers sensitive and responsible both government and non-government level to the rights of Dalit and Excluded community people and take initiative.
4. To ensure access of Dalit and Excluded to development process and basic service provision.
5. To establish network harmony and communication in regional and international level.
6. To strengthening capacity of Dalit run organizations and play a catalytic role for internal communication among Dalit groups.

As a social movement and a strong platform for ensuring Dalit rights in the country, the movement has grown bigger since its inception. One of its important achievements is recognizing and bringing to the surface Dalit issues in the country. This seems to have led the state to come out of denial mode. At an international level, BDERM's continuous engagement has also helped bring the issue to the attention of different agencies including UN bodies and the World Bank. In its 2011 report, the movement noted: 'There is now tentative recognition from the government, donors, media, civil society and academics that there are Dalits and excluded communities living in Bangladesh who face discrimination and poverty' (BDERM, 2011: 13).

## **The campaign and movement**

From its inception, BDERM has taken up Dalit issues across the country. On the one hand, BDERM undertook both reactive and proactive popular campaigns perhaps in an attempt to bring up the issue of discrimination against Dalits among civil society groups and society. Thus, for instance, different strategies like 'human chains - where people stand by the side of the road with festoons and photographs - have been a vital tool to raise visibility and gain media coverage' (BDERM, 2011: 13). Human chains are a common form of protest for the movement. On international days, BDERM organizes human chains to demand specific issues including inclusion of minorities in the larger stream of society and ending atrocities against Dalits. 'Events, rallies, human chains and awareness raising events have been held across the country to mark International Human

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at the same time forcing them into an unwanted marriage, potentially even ‘marrying’ them with their abductor. In addition to other elements of a brutal violation of human dignity, these crimes amount to rape or similar cruel abuses. Such incidents linger long in the memory of the affect families and communities instilling in them yet another dimension of fear that they will in the long run lose out in the country. (OHCHR, 2015)

In evidence presented to the Sub-committee on International Human Rights of the Canadian Parliament on 24 February 2015, Mr Kirit Sinha Roy (President, Bangladesh Hindu Buddhist Christian Unity Council) stated:

Finally, I would like to inform you about the unique problem of abduction and rape, leading to forced conversions and forced marriages. Minority women and girls are the most vulnerable of all because they enjoy greater freedom of movement. Sexual assault and rape are still considered very shameful in South Asia among all communities, and victims get little comfort by going to the police. The police are corrupt and untrustworthy and likely to mistreat the victim.

Abductions of women and underage teens often end in forced conversions and marriages. There are no specific laws banning forced marriages.

Abductions are usually not taken seriously by the local police. There are often notices in the vernacular press saying, ‘I AB of XY and daughter of CD have converted from Hinduism to Islam. My new name is EF. I am now the wife of GH.’ This is a sure sign that this is a case of forced conversion and marriage. Unfortunately, there are no statistics about forced conversions and marriages’ (Parliament of Canada, 2015)

The OHCHR report of 9 September 2015 continues:

Religious conversions are generally rare and, if occurring, mostly take place in the context of interreligious marriages. However, conversions have also occurred outside interreligious marriages, in particular from Buddhism to Christianity or from various religions to Islam. Occasionally Muslims have also converted to Christianity or Baha’ism. Within the indigenous people of the Mro, who traditionally practise Buddhists, some tens of thousands turned to a newly founded religion named ‘Krama’.

*...Good Practice Casestudy continued ...*

Rights Day, World Dignity Day, International Women's Day, Day for the Elimination of All Forms of Racial Discrimination, National Victory Day and International Mother Language Day. For example on 5th December 2009 human chains and rallies were held in 11 districts. Leaflets and posters were distributed, events received national and local media coverage and highlighted caste based discrimination to new audiences. In Dhaka around 200 people from different Dalit colonies attended also gave speeches and held a human chain in front of the national museum.' (BDERM, 2011: 13)

Immediately after it came into existence, BDERM called for a human chain to protest against the sexual harassment of a Dalit girl in July 2009. The larger demand was ensuring women's security in the workplace. This mode of campaigning against discrimination also might have strengthened the self-confidence of the Dalit population as it gives them a basis to register their protest before the world.

BDERM also stands strong in protecting minority and Dalit rights and security in the country. It has also strengthened its capacity to respond to atrocities and discrimination against minority and Dalit rights. In many districts BDERM has succeeded in getting law enforcing agencies and the administration to take action against atrocities like murder, rape and kidnapping of Dalit community members. Thus, for instance, BDERM registered its protest against the murder of Tulshi Kumar Das. To protest the murder, BDERM organized a human chain on 4 August 2015 in front of the National Press Club, Dhaka. Tulshi Kumar Das was allegedly beaten to death inside a factory for 'stealing a bicycle' (Daily Janakantha, 2015).

BDERM also undertakes advocacy with policymakers and government institutions to reform the existing laws/policies to protect the socially excluded Dalit minorities in the country. To improve the lives of Dalits and to end historical atrocities against them, BDERM along with different rights groups have put pressure on the government to make legislative changes. A demand to draft the proposed anti-discriminatory law has been a major concern for human rights activists and BDERM. In an interview, Dr Shah Alam, a member of the Law Commission of Bangladesh, recognized the demand as he

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Those having converted to another religion – including sometimes even their offspring after generations – typically face social ostracism in their social environment based on the ascription that the conversion had allegedly not been genuine and instead been motivated by the expectation of material benefits or other non-religious incentives. Some converts actually had to go into hiding or have concealed their newly adopted faith for fear of social stigmatization.

UCA News, an Asian Catholic News Service, reported on 5 February 2015:

On November 9 last year [2014], the pastors were arrested while holding a secret mass conversion. ‘They attempted to convert a group of 40 Muslim villagers secretly and it made other villagers angry,’ said Mahfuzur Rahman, officer in-charge at Banbhasa police station in Lalmonirhat district. Police say unless there is violence over conversions there is nothing to worry about. [...] Sayedul Islam, imam of a local mosque, said area Muslims have no problem with conversion as it is almost always temporary. ‘We have seen for years that most Muslims convert back to Islam soon after. Those who don’t come back we declare them ‘outcast’ from society, but their number is very few,’ he said.

There are instances of forced conversion of religious minorities to Islam, mainly of Hindus but also of Christians and others. For example, the USSD IRF (2014) report noted:

Local inhabitants reported that in May a group of Muslim men in Lalmonirhat abducted, forcibly converted, illegally married, and raped a 12-year-old Hindu girl. A Hindu community leader stated police refused to investigate the incident and pressured the victim’s family to drop the case. He stated another girl was abducted from her village in a similar manner in April. A journalist said the girl was being held by her abductors in Dhaka, but police refused to intervene (US Department of State, 2014).

### ***Family/Personal laws***

Family laws have separate provisions for Muslims, Hindus and Christians. Family laws concerning marriage, divorce and adoption differ depending on the religious beliefs of the people involved. Muslim and Hindu family laws are codified in the legal system (US Department of State, 2014).

*...Good practice case study continued ...*

commented: ‘We have been researching on the law for the past two years and we launched it in January through a seminar. The law will be an umbrella law which will address not just discrimination faced by Dalits, which is discrimination due to profession and identity, but also other forms of discrimination including religion, race, gender, physical disabilities.’ The Chief Executive of Nagorik Uddyog, Zakir Hossain welcomed the effort and added: ‘Even if it is an umbrella law, it will still be a great development for the Dalit population’ (Al Jazeera, 2014).

There is no denying that as a consequence of its relentless struggle, an anti-discrimination law was drafted by the Law Commission in 2014 to address the issue of widespread discrimination of the Dalit community in the social sphere. Organizations like the National Human Rights Commission (NHRC), the Manusher Jonno Foundation (MJF), Nagorik Uddyog, Bangladesh Dalit and Excluded Rights Movement (BDERM) and Research and Development Collective (RDC) were associated with this drafting process (The Daily Star, 2015). As part of a larger level advocacy to reform the policy landscape, Nagorik Uddyog and BDERM have organized meetings with parliamentarians. One such meeting was held on 12 October 2015 at the Parliament Members’ Club of the National Assembly in Bangladesh. The overall objective of the meeting was to campaign for a space for policy reforms to end and eliminate caste based discrimination in the country.

The problem of housing for the Dalit population in the country has also been highlighted through BDERM’s continuous persistence at different levels. BDERM has engaged in on-going lobbying with the Dhaka municipal authorities for improved housing, water and sanitation for Dalits, especially scavengers, living in the city.

It is interesting to note that in the process to reform policy through advocacy with policymakers and different ministries, BDERM has undertaken different studies to make the point of exclusion of and atrocities against Dalits across the country. BDERM organized a series of seminars and conferences in an attempt to create pressure on the government to adopt/reform specific policies/laws.

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OHCHR, in its preliminary findings of a country visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on Freedom of Religion or Beliefs on 9 September 2015, further noted that:

Whereas most aspects of the law in Bangladesh are secular, personal status issues – such as marriage, family life, divorce, custody of children, maintenance, inheritance etc. – remain governed by religious laws. Depending on the religious backgrounds of the concerned individuals, provisions of Islamic law, Hindu law or Canon law etc. apply. The Buddhists do not have their own personal status law in Bangladesh, but fall under the Hindu law. Projects supported by the Government to design a specific personal status law for the Buddhist community so far seem to have failed.

The Baha'is reported that they apply their own family laws, which are recognized by the Government (OHCHR, 2015).

Human Rights Watch (HRW), in its 2012 report noted:

Since its independence in 1971, the bulk of Bangladesh's laws are applicable to all citizens without discrimination based on sex or religious belief, with one major anomaly: its personal laws. Some reforms, especially laws against domestic violence and acid attacks, have addressed family issues and apply across the religious spectrum. But personal laws on marriage, separation, and divorce, some dating to the 19th century, have remained largely frozen in time. [...]

All three sets of personal laws [Muslims, Hindus, and Christians] discriminate against women with respect to marriage, divorce, separation, and maintenance, as explained below. They also fail to recognize marital property and its division on an equal basis after divorce or upon separation.

A report by the Immigration and Refugee Board of Canada, published on 9 October 2013, noted:

The Director of Research Initiatives Bangladesh noted that Hindu personal laws do not grant women a right to inheritance, so Manipuri women 'will face problems in having a good resource base independently'. Other sources corroborate that Hindu personal laws in Bangladesh discriminate against women, and many women who separate face poverty due to a lack of legal recourse. [...]

*...Good practice case study continued ...*

The seminars and meetings were marked by the presence of different activists, academics and politicians. Broadly the following topics were the points of discussion in the seminars/meetings: situation of Dalit human rights, problems of Dalit housing, draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent, the situation and needs of tea workers (almost all the tea workers are Dalits and minorities in Bangladesh), general discussion on the Dalit movement in South Asia and the lessons to be learned for Bangladesh (BDERM, 2011: 14). Reports of different meetings held by BDERM can be found on their website (see <http://www.bderm.org/reports>).

The movement has not been restricted to organizing conferences and seminars to detail the conditions of the Dalit population in the country though. A more meticulous task of research was undertaken to come up with a detailed report focusing on different Dalit issues. BDERM has published a Research Report on Dalit Scavengers in Dhaka City. The report presents the health and safety conditions of Dalits engaged in scavenging in Dhaka. Detailed in-depth interviews suggest that most of the scavengers were suffering from various infectious diseases. The study concluded that lack of medical facilities for the scavengers made the situation worse for them (see <http://www.bderm.org/node/40> for details).

BDERM as a movement has gained strength from its effective organic linkage with different organizations working in different parts of the country on Dalit issues. There is no denying the fact that effective participation at the grassroots level continues to be a key in BDERM's success. BDERM follows a bottoms-up approach to ensure the rights of Dalits. It is a national platform for promoting their rights. BDERM is spread over almost every district in Bangladesh. Currently it has 52 district committees in 52 of the 64 districts in Bangladesh. The working committees in the districts collaborate with the national working committee to chart out detailed plans.

BDERM sustains its work as a movement. It is an on-going movement to ensure the inclusion of Dalits in mainstream society.

The Professor at BRAC University said, ‘Hindu Manipuri women are triple minorities - religion, ethnicity and gender all make them incredibly vulnerable to violence, abuse and exploitation’. She expressed certainty that ‘accessing housing, employment or services from the police will be enormously, triply difficult for a Hindu Manipuri woman.’ (Canada, 2013)

The laws cater to the requirements of religious observance by the minorities. For example, the USSD IRF 2014 report (published in 2015), noted that while:

Religious studies are compulsory and part of the curriculum in all government schools. Students attend classes in which their own religious beliefs are taught. Schools with few students from minority religious groups are generally allowed to make arrangements with local churches or temples to hold religious studies classes outside of school hours [and] the jail code makes allowances for the observance of religious festivals by prisoners, including access to extra food for feast days or permission for religious fasting (US State Department, 2014).

### ***Interfaith marriages***

OHCHR, in its September 2015 report, further notes that:

[...] Even though the structure is to a certain degree pluralistic in acknowledgment of diverse religious-normative traditions, the system does not easily, if at all, accommodate certain constellations of inter-religious partnership. Moreover, some people – for instance, converts, agnostics, atheists and others – may face even greater difficulties to fit into the limited options provided by a religion-based structure of personal status laws.

An Australia Refugee Review Tribunal (2008), discussed the situation in general terms as:

There is no legal barrier to inter-religious marriages, and such marriages are reportedly becoming more common in the larger cities of Bangladesh. However, couples in inter-religious marriages still experience problems, ranging from family pressure to physical attacks. The sources suggest that the more extreme instances of violence occur in rural areas. Inter-religious marriages are reportedly recognised under the Special Marriages Act of 1872. Information indicates that a non-Muslim woman wishing to marry a Muslim man is required to convert to Islam.

However, if she refused to convert to Islam, and the family accepted this decision, the marriage may be reportedly solemnised under the Special Marriages Act. [...]. If a Muslim boy marries a Christian or Jewish girl conversion is essential. If they are not converted, neither the family members, nor the society nor even the civil court accept this marriage. As a result the couples concerned face immeasurable harassment and there are certain cases where they are kidnapped and killed.

The OHCHR report of 9 September 2015 noted that:

Interreligious marriages, although slowly becoming more popular in urban areas, so far have been very rare in Bangladesh. The striking paucity of interreligious marriages in a country in which people of different religious orientations have always lived side by side is a surprising phenomenon. I would assume that difficulties arising from the existing structure of personal status laws are a main factor explaining that situation. While some interreligious constellations can be accommodated within the existing system, in accordance with the rules of the concerned religious communities, others cannot. For instance, a Muslim woman cannot legally marry a non-Muslim man.’

The Chittagong University Journal of Law (2008), in an article titled, ‘Inter-religious Marriage in Bangladesh: An Analysis of the Existing Legal Framework’ noted that: ‘Although IRM [inter-religious marriage] is accepted in some social stratum in Bangladesh, it will not be correct to say that it is widely accepted in Bangladeshi society as a whole [...] If the IRM parties are not economically independent, their social lives may be particularly precarious. This social unacceptance has its roots again in the religious disapproval of such marriages.’

### ***Implementation of the 1997 Peace Accord***

The CHT Accord signed in 1997 has completed 18 years without making any real progress in commissioning an effective and functioning local self-governance system that ensures land and other rights for the indigenous people in CHT. The central issues of the CHT Accord include the preservation of tribal inhabited characters of CHT; transfer of all subjects and functions, as envisaged to be under the jurisdiction of the three Hill District Councils to be supervised by the CHT Regional Council at the top and their enforcement thereof; holding elections to these councils; resolution of land disputes after inserting necessary amendments to the CHT Land Dispute Resolution Commission Act 2001 in line with the CHT Accord; rehabilitation of in-



ternally displaced persons and India returnee refugees to their respective homesteads with restitution of their land to their rightful ownership; dismantling all temporary military camps including ‘Operation Uttoran’; cancellation of land leases given to non-residents; appointment of permanent residents to all services available in the CHT on a priority basis; effecting necessary amendments to the CHT Regulation 1900, Bangladesh Police Act and all other relevant laws in accordance with the spirit of the accord and; rehabilitation of Bengali settlers outside CHT with due honour and dignity. However, all these remain unimplemented (Kapaeeng, 2015: 181).

Despite the government’s explicit assurances, nationally and at various international forums, including at UNHRC and at the UN Permanent Forum on Indigenous Issues (UNPFII), implementation of these provisions remains frozen till date. The government claims that 48 out of the 72 provisions of the accord have been implemented. But PCJSS and some civil society and professional organizations in CHT claim that only 25 of the provisions had been implemented till the filing of this report. However, what cannot be denied is that the core components of the accord like the authority to deal with the administration and management of land, forest, police (local), and law and order has not been devolved to the Hill District Councils. Furthermore the rehabilitation of India returnee refugees and internally displaced persons through the CHT Task Force, the de-militarization through dismantling of all temporary security or military camps, the cessation of ‘Operation Uttoran’ (or Operation Uplift), a de facto military rule in the CHT, and the resolution of land disputes by the CHT Land Dispute Resolution Commission are yet to be implemented. As these provisions have not been implemented along with the non-implementation of the agreed on amendments to the CHT Land Dispute Resolution Commission, the ‘Tribal Area Status’ of the CHT region is getting eroded severely and fast. Civil Aviation and Tourism Minister and member of the Parliamentary Caucus on Indigenous Affairs, Mr Rashed Khan Menon addressing a High Level Policy Dialogue on the Status of the Implementation of the CHT Accord also admitted that the characteristics of the CHT are diminishing and this is something which should not be overlooked (The Daily Star, 2015).

## **Recommendations**

- All intimidation and harassment of indigenous people should be stopped.
- All those responsible for attacks on and intimidation of indigenous people should be prosecuted.

- The majority party should take measures as per its electoral pledge of implementing the CHT Accord within a declared time-frame for a road map and providing a forum for solving land disputes of indigenous people in CHT and plain land.
- Stop the systematic and forcible displacement of minorities from their ancestral land.
- Establish a separate land commission for indigenous people in the plains for restoration of their dispossessed land.
- Allocate adequate budget for indigenous people and ensure their full and effective participation in major decision-making processes in all development programmes.
- The NHRC should investigate human rights violations against indigenous people.
- Bangladesh and its donors must ensure that Urdu speakers are not discriminated against particularly when the government issues new identity documents, in obtaining passports or their access to education.

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## Chapter 3 India

# Is the Idea Unraveling?

*Sajjad Hassan and Naaz Khair\**

The Indian Constitution makes no attempt to define or comprehensively list the groups to be regarded as minorities. The term ‘minorities’ occurs in only two articles (29, 30), which explicitly mention minorities based on language, religion and culture. ‘Backward’ castes (Scheduled Castes and Tribes) are not minorities within the meaning of Article 30, although they are included in the non-discrimination provisions of Article 29. The focus of our report to this chapter is religious minorities, who together make up over 19 per cent of the country’s population. According to the official National Commission for Minorities - presumably using the numerical minority yardstick – these are Muslims, Christians, Sikhs, Buddhists and Parsis, with Jains being added to the group recently. Communities such as those of Jews have not been official designated as such, showing a significant anomaly in the system of official categorization.<sup>1</sup> There are also many inter-sectionalities so that not only are some religious minorities also linguistic minorities, but also ethnic and those making up ‘indigenous peoples’, and Dalits. Women and girls among the minorities bear a large burden of the disadvantages experienced by minorities as a whole (*see Table 1*).

This chapter reports on the conditions of minorities by individual rights as defined by the United Nations. In Section 2 we catalogue legal rights for minorities as enshrined in the Constitution. Section 3 examines the provision of life and security while Section 4 deals with socioeconomic rights.

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1. Tribes have been denied their specific religious identity – animist, among others - since the 1951 Census by enrolling them as Hindus (if they had not converted to Christianity or Islam).



Section 5 examines effective participation and Section 6 discusses identity and culture. The attempt is to build a baseline on precepts and practices of minority rights in India. Section 7 provides a snapshot of the on-going debates, which have somewhat accelerated in recent years, seeking to refashion majority-minority relations in the country; it also discusses secularism with implications for minority rights. The chapter concludes with a set of recommendations for action.

## **The Constitutional framework**

Minority rights (and provisions impinging on pluralism) in the Indian Constitution which are laid out in considerable detail can be grouped into two broad categories:

- i. Common domain: rights that all citizens of India, including religious minorities, are guaranteed.

Some of these are 'Fundamental Rights' (in Part III of the Constitution):

- Equality before law (Article 14)
- Prohibition of discrimination on grounds of religion, ethnicity or gender (Article 15, 1/2)
- Right of citizens to equal opportunities in employment and appointment to public offices; and prohibition of discrimination (Article 16[1], [2])
- Freedom of conscience and to practice and propagate it (Article 25[1])
- Right of religious denominations to establish institutions for religious and charitable purposes (Article 26)
- Prohibition to pay any taxes for promotion of any religion (Article 27)
- Freedom as to attendance at religious instruction or worship in educational institutions wholly maintained, recognized or aided by state (Article 28)

Others figure as Directive Principles (Part IV) providing a vision for change:

- Eliminate inequalities (Article 38[2])

**Table 1. Religious minorities in India**

	Muslims	Christians	Sikhs	Parsis	Buddhists	Jains
Population	172,245,158	27,819,588	20,833,116	-	8,442,972	4,451,753
As percentage of total population	14.23	2.30	1.72	n/a	0.70	0.37

Source: Census (2011).

- Promote educational and economic interests of weaker sections (Article 46)

There are also Fundamental Duties (in Part IVA, Article 51[A]), providing dos and don'ts for citizens:

- duty to promote harmony
- duty to value diversity

ii. Separate domain: special rights that minorities (religious and linguistic) enjoy:

Some are Fundamental Rights:

- Right of any minority group to 'conserve' its 'distinct language, script or culture' (Article 29[1])
- Restriction on denial of admission to state maintained/aided educational institutions, 'on religion, race, caste, language' (Article 29[2])
- Right of all religious/linguistic minorities to establish and administer educational institutions of their choice (Article 30[1])
- Freedom of minority-managed educational institutions from discrimination in receiving aid from the state (Article 30[2])

There are also some special provisions:

- Special provision relating to the language spoken by a section of the population of any state (Article 347)
- Provision for facilities for instruction in mother tongue at the primary stage (Article 350A)
- Provision for a special officer for linguistic minorities and his duties (Article 350B)

This is clearly an impressive and elaborate regime of minority rights, protection and promotion. In this chapter we examine how these laws measure up on the touchstone of minority rights and how the laws themselves have held up in practice.

## Life and security

### **Constitutional provisions and their implementation:**

The Constitution of India guarantees life and liberty to all citizens (Article 21) and ensures equality before the law and equal protection by the law (Article 14). There are also the Indian Penal Code (1860) and the Criminal Procedure Code (1973), among others, which guarantee life and security and the rule of law for all citizens – for religious minorities as they do for other citizens. Yet data on violations of the right to life demonstrate that minority communities face particular challenges. This section catalogues the ways in which rights of religious minorities are denied through both the omissions (inability to provide security and guarantee of life) as well as commissions (state itself taking life and liberty away) of the state. It also examines, albeit in a summary fashion, how the state, the principal duty bearer, seeks to protect (or deny) right to life and legal justice including any reforms in provision of security and freedoms, including for minorities and how successful those attempts have been.

### ***Status of ‘right to life’ for minorities***

A key challenge in reporting on violence against minorities is absence of official data on violence, disaggregated by religious groups. The National Crimes Records Bureau (NCRB), the principal official source of data on crimes and violence in the country, and whose annual reports provide a large amount of useful data, do not report those on data disaggregated by religious groups (except for one particular category - prison population). Some of NCRB's data is also not very useful for our enterprise of capturing crimes and violence against minorities. For example, the scope of NCRB's communal violence dataset is limited – reporting only incidents of clashes and deaths and, not other violations, such as hate speeches. In the absence of much official data useful for our purpose, we have had to cast our net wide, to garner and collate data to be able to report denials of right to life and violence specifically against minority groups in the country. International human rights networks, principally Human Rights Watch and Amnesty International produce regular reports on human rights violations, many against minority communities. Other India and South Asia

based human rights agencies such as the Asian Centre for Human Rights too report violations using a combination of official and non-official data sources and studies. There are also media reports and those by NGOs and grassroots community networks working on minority rights/human rights. These sources are variously used.

### ***Omissions by the state***

According to NCRB (2015) there were 1,227 communal incidents in the country in 2014. According to the same report, in 2013, there were 823 communal incidents involving the killing of 133 persons and injury of 2269 persons. Communal here means concerning clashes between religious groups or individuals. An overwhelming number of victims of the violence and more broadly the insecurity were religious minorities – Muslims and Christians and also Sikhs. The situation has taken a turn for the worse since the current Bharatiya Janata Party (BJP) government came to power in May 2014. A recent civil society report on violence against minorities noted:

The results are visible (in) the *saffronisation*<sup>2</sup> of governance at the Centre to the implementation of the Sangh's<sup>3</sup> agenda of coercion and isolation of religious minority groups, to infiltration of administrative structures, police and education. The incitement to violence and coercion is one facet of it (Dayal and Hashmi, 2015: 7).

Incidents of hate speeches have been common. Dayal and Hashmi (2015: 8) note:

A central government Minister, Sadhvi Niranjana Jyoti describes those who do not worship Ram (the Hindu god) as '*haramzade*' or bastards. A Shiv Sena MP force-feeds a Muslim canteen functionary during his roza fast. Another, Sanjay Raut, calls for the disenfranchisement of Muslims.

Hate speeches such as these have created a fertile ground for violence against religious minorities. Based on media-based tracking the report also notes that, in the one year since the BJP government came to power in May 2014, there have been at least 43 deaths in over 600 cases of violence,

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2. Meaning greater hold of hardline Hindu ideology and institutions. Saffron is the colour traditionally associated with Hinduism.
  3. Short for Rashtriya Swayamsevak Sangh (Nationalist Volunteer Corps) – RSS, the umbrella organization for hardline Hindu organizations.

194 targeting Christians and the rest Muslims (Dayal and Hashmi, 2015: 8). The US International Religious Freedom report (US State Department, 2014: 1), noted, ‘the local NGO, Act Now for Harmony and Democracy reported more than 800 religiously- motivated attacks from May through to the end of the year.’ These figures do not include the 108 killed in Assam in attacks on Muslims by armed tribal political groups in early 2015. Given that official records are not easily available and the police does not register many crimes, or victims are often coerced into reaching a compromise with the perpetrators, these figures are likely to be much higher. Many of the incidents of violence were directed against Muslim individuals and their places of worship. Uttar Pradesh, Maharashtra, Gujarat and Assam are among the states where Muslims were targeted (Dayal and Hashmi, 2015: 8).

Christians too have suffered. Desecration and destruction of churches, assault on pastors, illegal police detention of church workers and denial of constitutional rights of freedom of faith, aggravated coercion and terror in campaigns of *ghar wapsi* and love jihad.<sup>4</sup> In Chhattisgarh, villages passed orders banning the entry of priests of faiths other than Hinduism (Dayal and Hashmi, 2015: 8).

According to a report by the Evangelical Foundation of India (EFI), violence against Christians picked up in independent India in the early 1990s reaching its peak in 2008-09 with more than 1,000 incidents of violence and hate crimes being reported. Chhattisgarh, Madhya Pradesh, Uttar Pradesh and Telengana had the highest incidents of anti-Christian violence. An analysis of the violence reveals that 54 per cent were threats, intimidation and coercion often with the police looking on. Physical violence constituted a quarter (24 per cent) and violence against Christian women was 11 per cent (Evangelical Fellowship of India and Alliance Defending Freedom India, 2015:7).

Sometimes specific laws facilitate violence against minorities, especially by non-state vigilante groups acting in connivance with a biased police and law enforcement.

All states, barring a few (West Bengal, Kerala and select North Eastern states) have laws banning cow slaughter and its transportation (for

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4. *Ghar wapsi* (literally ‘homecoming’), name given to forced conversion of non-Hindus to Hinduism by Hindu hard line groups. Love jihad – claims by Hindu groups to Muslim boys luring Hindu girls as jihad by another means.

example, Uttar Pradesh has the Prevention of Cow Slaughter Act 1955 and Bihar the Preservation and Improvement of Animals Act 1955) with varying attribution of crime and associated penalties (the Uttar Pradesh law completely bans slaughter of cows, bullock and ox, and provides for a 7-year jail term while the Bihar law permits killing of bulls and bullocks older than 15 years and provides for a maximum of a 6-month jail term). These laws have been enforced in varying degrees. But the presence of the laws provides a ready tool for a communalized police force to target mostly poor Muslim transporter workers, resulting in arrests and incarceration of many for long periods of time without even the prospect of bail. Recently, with Hindu groups gaining ascendancy and law enforcement increasingly coming under their influence, vigilante gau raksha samitis (cow protection committees) have sprung up all over the country which do not shy away from using physical violence, including public lynching of mostly poor Muslim cattle transport workers in acts of cow protection (see, for example, Firstpost, 2016; India Today, 2016).

Similarly, several states (Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh and Rajasthan) have passed freedom of religion legislations aimed essentially at preventing people from converting to Christianity and Islam (conversion to Hinduism, or to other 'indigenous' faiths is not considered conversion by Indian law). And states that do not have anti-conversion laws resort to provisions in the Indian Penal Code (IPC) to target minorities. Section 153, prohibiting 'promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, and doing acts prejudicial to maintenance of harmony' and Section 295A, prohibiting 'deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs', are used often by law enforcement to target missionaries and religious groups engaged in conversions. These together also provide the backdrop (and rationalization) for much of the violence against Christian missionaries by vigilante Hindu groups in tribal areas in the country (see Osuri, 2013a for a historical analysis).

### **Mass violence**

A specific form of violence against minorities in India is what is described as 'communal riots', that in reality is mass violence against minorities, some bordering on a pogrom with violent elements of the majority community targeting minority groups often with police support (or tacit connivance). India has had a long history of these (see *Table 2*), the most recent major incident being in Muzaffarnagar in Uttar Pradesh in September 2013

(52 persons killed) and in Assam in May 2014 when on a single day 46 persons, 28 of them young children, were murdered in Baksa district.

‘Communal riots’ result in large-scale deaths, grievous injuries and widespread sexual violence; loss of property and significant displacement of populations; and have a long-term impact on survivors’ livelihoods and access to education and other services. Muzaffarnagar is a good example of losses in recent years.

In September 2013, as parliamentary elections were approaching, large-scale communal violence engulfed Muzaffarnagar and Shamli districts in western Uttar Pradesh. A BBC report described the violence as ‘the worst in India in a decade.’ By the time the violence had abated later that month, 52 persons had died, over 60 had been grievously injured and scores of houses had been destroyed in fires across 14 villages in the two districts. This was the official count—many instances of death, injury, rape and destruction of property remain uncounted to this day. The violence overwhelmingly targeted Muslims, especially from poorer backgrounds. Additionally, the violence affected another 74 villages in the region as Muslim families there, especially where they were in a minority, fled fearing violence resulting in one of the largest violence-induced displacements in India in recent years. Estimates vary, but a figure of 50,000 at its peak, has been widely accepted (Hassan, 2016:189).

Post-violence justice and rehabilitation too seem beyond a victim’s reach. A recent report examining large episodes of mass communal violence (in Delhi, 1984; Bhagalpur, 1989; and Gujarat, 2002), reveals how survivors were systematically denied justice. The failures began from stage one, in which a survivor came in contact with the state through the flawed writings of first information reports (FIRs) in cases in which they were recorded to poor investigation resulting in a large number of cases being summarily closed with no evidence of the complainant being given a chance to represent against the closure as required by law. These were followed by a poor show on arrests of the accused and poorer outcomes on prosecution. This also included an acute weakness of efforts by the prosecution to contest bail applications. Rates of acquittal were significantly high, suggesting either a passive trial court or one that was complicit in subverting justice. Chopra and Jha (2014: 334) contend, ‘...the scale of these failures, (and) the fact that they are repeated across different episodes demonstrates that these failures are systematic rather than occasional aberrations.’ According to Hassan (2015: 509), accountability of public officials ‘comes forth as a

**Table 2. Major incidents of communal violence in post-independence India**

Year	Location	Deaths	Prime victim
1964	Rourkela (Odisha), Jamshedpur, Kolkata	2,000	Muslim
1967	Hatia, Bihar	180	Muslim
1969	Ahmadabad, Gujarat	512	Muslim
1979	Jamshedpur, Bihar	120	Muslim
1980	Moradabad, Uttar Pradesh	2000	Muslim
1983	Nellie, Assam	1800	Muslim
1984	Bhiwandi, Maharashtra	146	Muslim
1984	Delhi	2733	Sikh
1985	Ahmedabad, Gujarat	300	Muslim
1987	Hashimpura, Meerut, Uttar Pradesh	42	Muslim
1989-90	Bhagalpur, Bihar	896	Muslim
1990	Various, incl. Gujarat, Delhi, Patna, Hyderabad	1000	Muslim
1992-93	Surat (Gujarat), Bhopal, Mumbai	1300	Muslim
2002	Various places in Gujarat	2000	Muslim
2008	Kandamahal, Odisha	39	Christian

*Source: Tabulated by the author from Rajeshwari (2004).*

particularly weak point. Gaps in the law and procedural barriers to prosecution make it easier for complicit officials and politicians to escape.’

### ***Commissions by the state***

It is not only in acts of omission that the state fails its citizens from minority communities, the state has also undermined citizens’ fundamental rights of life and liberty by its actions. According to a recent human rights report (Asian Centre for Human Rights, 2015:3), ‘the right to life is perhaps the most violated right in India.’ The report also notes how in the last 10 years, from 2004 to 2014 according to official records the right to life of at least 130,407 persons (or 1,086 persons per month) was violated either by state agencies or was caused by the failure of state agencies. A large percentage of these were victims of custodial and ‘encounter deaths’, deaths in police firing, deaths of civilians in violence affected regions and deaths in communal violence. An overwhelming majority of these victims belonged to minority communities – mostly Muslims and Christians - besides Dalits and tribal groups.



Indian security forces have long applied unlawful methods against members of groups deemed as security threats, especially in 'conflict zones'. These include parties to conflict in North East India, the state of Jammu and Kashmir and Maoist (Naxalite) rebels in much of the central and eastern parts of the country. In Kashmir's case (Muslim majority), according to a state government report, between 1990 and 2011, 43,000 persons were killed – of these 21,232 were said to be 'militants' and 13,226 'civilians'. These represent only a part of the violations in the state. Activists estimate that up to half of all human rights violations by security force personnel in the state may have gone unreported in the 1990s and early 2000s. Torture, deaths in custody, extra judicial executions and enforced disappearances have been common (Amnesty International, 2015: 8). They continue to be so. Recent civil society reports throw some fresh light on the happenings in Kashmir. Research into unknown, unmarked and mass graves documented over 8,000 enforced and involuntary disappearances and more than 70,000 deaths, including through extra judicial or 'fake encounter' executions,<sup>5</sup> and custodial brutality between 1989 and 2009 (Chatterji et al., 2009:10). Another recent report on forced 'disappearances' in Kashmir documents the extra judicial killings of 1,080 persons and enforced disappearances of 172 persons and numerous cases of torture and sexual violence (IPTK and APDP, 2015).

The North Eastern part suffers similar violations of right to life. Human Rights Alert, an Imphal-based human rights group, documented 17 cases in which security forces allegedly extra-judicially executed civilians in 2006; in 2007, 12 cases were documented by the group; and as of July 2008, at least 23 such cases had been listed (Human Rights Watch, 2008:6). Overall, state action in conflict zones needs to be seen in the context of the brutal counter-insurgency campaigns fought by Indian forces in the region that have left a long trail of human rights violations – minorities, Christians particularly, suffering much although there were non-Christian victims too – particularly Manipur's ethnic minorities.<sup>6</sup> It could be claimed that atrocities are not designed to target minorities. However, the fact that minority concentrated regions in the country – Kashmir, the North Eastern states and Punjab, are

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5. 'Encounter killing': Killing of civilians alleged to be involved in armed confrontation with state forces. 'Fake encounter killing': Extra-judicial killing of civilians, often while they are in the custody of state forces, recorded by officials as resulting from an armed confrontation with state forces instigated by the recently deceased, see Human Rights Watch (2009).
  6. One of the first detailed accounts of this is provided by Luithui and Haksar (1984), documenting human rights violations in Nagaland and Naga areas of Manipur through the 1950s and 1960s that peaked in the 1980s.

or have all been sites of large-scale and systematic violation of the right to life speaks volumes for the failure of the Indian state to provide security to its minorities.

Like those suffering mass violence, the victims of human rights abuses in conflict zones have been unable to secure justice. Amnesty International (2013: 8) reports: ‘there is a pattern of impunity, including unlawful government orders to the police not to register complaints of human rights violations against the security forces.’ The Asian Centre for Human Rights report echoes this claim, noting that the root causes of violations of right to life in India include impunity at all levels and across the spectrum and the dispensability of victims because of their caste, creed, ethnic origin, economic status, gender or simply geographical location, that is, residing in areas notified as ‘disturbed areas’ under the Armed Forces Special Powers Act (AFSPA) of 1958 (Asian Centre for Human Rights, 2015: 5).

The Armed Forces (Special Powers) Act 1958 and the Armed Forces (J&K) Special Powers Act 1990 have been in force since 1958 in parts of North East India and since 1990 in Jammu and Kashmir. The Amnesty report notes, ‘The laws provide sweeping powers to soldiers, including the power to shoot to kill in certain situations and to arrest people without warrants. They also provide virtual immunity from prosecution by requiring prior permission from the central government before security personnel can be prosecuted. This permission is almost never given,’ going on to conclude that the law has facilitated grave human rights violations, including extra judicial executions, enforced disappearances, rape and torture and other ill treatment. (Amnesty International 2013:1). Attempts to challenge AFSPA by human rights activists, UN bodies, as well as by the government set up committees (Justice Verma Committee, notably) have been met with weak responses from authorities, and little apparent commitment to tackling impunity. And in a landmark judgment recently, the Supreme Court ruled that the protection provided to armed forces under AFSPA is not ‘absolute’, propping up hopes of civil rights activists in their fight for greater state accountability (*The Indian Express*, 2016).

‘Conflict zones’ are not the only sufferers. Over the past decades, and especially in the context of the ‘war on terror’, police and security forces have been armed with various emergency powers – mostly on preventive detention. Whilst they differ in details, most, like the one the recent Gujarat Control of Terrorism and Organized Crime Bill (GCTOC), sought to legislate, have provisions that undermine due process - detention without

charge for extended periods; making confessions to police admissible in courts of law; and immunity of police and security forces from prosecution. (SAHRDC, 2015: 12-14). Evidence is surfacing about the extensive abuse of anti-terror laws in targeting minorities, tribals, deprived sections as well as political activists.

Commenting on India's principal anti-terror law, the Unlawful Activities Prevention Act (UAPA), Manisha Sethi (2014: 7) notes that it provides 'a ready recipe for witch-hunting and targeting of people, groups, and communities, seen as inimical to "national interest", that is itself defined according to the political, ethnic or communal prejudices of the Executive.' Putting things in context, Human Rights Watch states that 'the security forces in India, the world's largest democracy, have time and again responded to horrific attacks (such as bomb blasts) by committing numerous, serious human rights violations in their quest to identify and prosecute suspected perpetrators. These abuses are both unlawful under Indian and international law and counterproductive in the fight against terrorism' (Human Rights Watch, 2011:3).

Indeed, the discourse on terrorism has, as Sethi (2014: 7) notes, allowed and justified the 'usual suspects', namely Muslim youth, to be detained, arrested and incarcerated on charges of terrorism. This has the most severe effect on victims as they suffer harrowing experiences for varying lengths of time: illegal detention and torture (physical and psychological), incarceration and trial. The losses are deeper. As a report by the Jamia Teachers' Solidarity Association (JTSA), a victim support group (2012: 8) notes, 'businesses were destroyed; family members were broken, having suffered the humiliation and trauma of being associated with "terrorists"; children had to abandon their studies and the normality of everyday life, while parents passed away in grief and despair.'

A good indicator of how the criminal justice system works for minorities is the representation of different religious groups in the prison population in the country.<sup>7</sup> Muslims and Christians find disproportionate representation among detainees, under-trial prisoners and convicts (*see Table 3*).

State-level data shows that states like Tamil Nadu in particular have very high proportion of 'detenues' from minority groups and Gujarat, Tamil

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7. The fact that data on this is available on an annual basis, disaggregated by states and religious groups is of course the other reason why this can be used as a good indicator.

Nadu and Uttar Pradesh have very high numbers of minority ‘under-trial’ prisoners (NCRB, 2014:106, 103). This reveals, among other things, the bias against these communities in the criminal justice system. The case of Maharashtra is telling (*see Table 4*).

Providing context to these figures is a recent study of prisoners in Maharashtra’s jails, where Muslims were very over-represented. Most victims were male; had poor education; and belonged to lower income groups. Only 31 per cent were convicts while the rest were all under-trials. Seventy-five per cent had been arrested for the first time; 52 per cent had had their bail applications rejected (most of them did not even know the reason for rejection); 25 per cent had no lawyers to fight for them; and 61 per cent had no contact with NGOs (Raghavan and Nair, 2011: iv-v).

A study of Naxalite under-trials in Jharkhand found a large number of fake cases under CLA Act, UAPA and that the anti-state sections of the Indian Penal Code (IPC) had been foisted upon the victims mostly Christian Adivasis, besides Dalits and other backward classes (Puthumattathil et al., 2015). The study ‘exposes the deliberate misuse of criminal justice procedures to repress alleged Naxalite under-trial detainees inside Jharkhand’s jails’ - many from Christian backgrounds. Torture in custody; inhibiting pre-trial and trial proceedings; serial foisting of cases and re-arrests; fake cases; prejudiced denial of bail; and under-trial detentions were common. The study revealed a very high incidence of acquittals indicating gross misuse of the criminal justice system (Puthumattathil et al., 2015: 3-4).

## **The failures of reforms**

In this section we examine the outlook for improvements. The key instrument of police reforms in India is the 2006 Supreme Court directive to central and state governments for making changes in the evocative words of a Commonwealth Human Rights Initiative (CHRI) report, so as to move them from being a ‘force’ to ‘service’ (Commonwealth Human Rights Initiative, 2012). The directives cover a range of reforms including (i) establishing state security commissions for policy and oversight of police functioning and to lessen undue interference; (ii) fixed tenure for director generals of police and other key security functionaries; (iii) setting up police establishment boards in states and the National Security Commission at the centre for managing personnel matters professionally; (iv) separation of investigation and law and order functions; and (v) setting up independent police complaints authorities at the state and district levels.

According to the CHRI (2012:30) report, state governments' compliance with the 2006 directives, including adopting the model police bill, 'is slow and rife with dilution.' At places, adoption of recommendations is slow, elsewhere while structures have been put in place the spirit of reforms has been defeated – a case in point is the independent police complaints authority (PCA), as a grievance redressal mechanism which was imagined to encourage greater public responsiveness. Whilst states have set up PCAs, in most cases they are hardly 'independent' with serving police officers made to head these bodies and with no mechanism for public representatives. Other efforts at reforms encouraging accountability and strengthening the rule of law including compliance with human rights provisions are also going slow. The rule of law is in danger of being further diluted as the government is stalling efforts for adopting the revised Prevention of Torture Bill, drafted by a Parliamentary Select Committee (2010) whilst the central government has pushed through stringent amendments to the UAPA Act 2012.

Finally, the world over a representative police/security force has been seen to minimize both poor treatment of minorities by police forces and also in enhancing trust in the police among the wider citizenry. It was for this reason that the Sachar Committee (looking into the socioeconomic conditions of Muslims) proposed efforts for greater recruitment of Muslims in police/security forces and posting more Muslim officers in areas with large Muslim populations (Government of India, 2006). This was also adopted as a policy decision of the government (under the 15 Point Programme) to make the police force more representative. But as reports show there are not enough officers to post in all Muslim majority areas and there is also poor recruitment of police personnel from minority backgrounds, particularly Muslims by state governments. Official data shows that Muslim representation in police forces actually decreased from 8.39 per cent in 2001 to 6.52 per cent in 2011 (*see Table 5*).

Whilst laws on equality and non-discrimination abound, what is missing are measures to counter discrimination/biased treatment against particular groups, especially when the perception of discrimination is widespread. This is a central weakness of Indian minority rights. There are also specific gaps such as the absence of a clear anti-torture legislation, something that the Indian state has managed to stonewall for long, despite a strong push by UN agencies and international as well as local civil society groups. Another weakness of the rule of law in India which affects minorities is the impunity that state actors enjoy in law and the complete absence of effective accountability mechanisms.

**Table 3. Prison data, India (2014)** (All figures in per cent)

	Hindu	Muslim	Christian	Other
Population (2011)	78.35	14.20	02.40	-
Detenues	62.71	20.32	15.60	1.35
Under-trials	69.73	21.05	03.90	05.30
Convicts	72.49	16.38	03.93	07.18

Source: Tabulated by the author from Prison Statistics India (NCRB 2015).

*Detenue: Any person detained in prison on the orders of competent authority under the relevant preventive detention law.*

*Under-trial: Any person kept in prison (judicial custody) while the charges against him/her are being tried.*

*Convict: A prisoner undergoing a sentence.*

**Table 4. Prison data, Maharashtra (2014)** (All figures in per cent)

	Hindu	Muslim	Others
Population (2011)	79.82	11.54	-
Detenues	43.75	34.34	21.87
Under-trials	60.29	26.39	13.38
Convicts	68.57	22.45	08.90

Source: Tabulated by the author from Prison Statistics India (NCRB 2015).

*Detenue: Any person detained in prison on the orders of competent authority under the relevant preventive detention law.*

*Under-trial: Any person kept in prison (judicial custody) while the charges against him/her are being tried.*

*Convict: A prisoner undergoing a sentence.*

**Table 5. Police forces and group representation** (All figures in per cent)

	2001	2011		
	Population share	Representation in police forces	Population share	Representation in police forces
SC	16.2	13.39	16.6	13.67
ST	8.2	8.05	8.6	10
Muslims	13.4	8.39	14.2	6.52
Others	62.2	70.14	61.37	69.78

Source: Tabulated by the author from NCRB reports (2001 to 2015).

## **Socioeconomic rights and non-discrimination**

### **Constitutional provisions and programmes**

The Constitution of India guarantees equality before law (Article 14); right to equal opportunity in employment and appointment to public office and prohibits discrimination, including on religious grounds (Article 15, 1/2, Article 16 [1], [2]). The Constitution also enjoins upon the state to eliminate inequalities (Article 38[2]).

#### ***Status of implementation of rights***

While assessing how these rights have been provided, we will first look at outcomes for religious minorities in terms of key indicators of development and/or backwardness: poverty, employment/unemployment, access to land and assets, nutrition/health and education among others. This will help us understand how equality works for minorities at the impact level. We will then try to see how the Indian government provides for minorities – the programmes and schemes put in place to close the gap – examining how they work, and what space there is for better impact.

#### ***Poverty***

Poverty indices in different religious groups (what percentage of the population of the group lives below the official poverty line) show variations for rural and urban areas. Poverty lines for the two are different.<sup>8</sup> *Table 6* shows that the incidence of poverty in rural areas was the highest amongst Buddhists; it was also high among Zoroastrians/Parsis and others including Muslims. In urban areas, it was the highest among Muslims by a wide margin as compared to the next group of Buddhists. Overall, Hindus, the dominant group in the country, do much better than the minorities – at least some of them – on poverty incidences.

Another way to look at the poverty trend is to see the share of religion in the overall population of the poor (*see Table 7*). All minority groups did poorly on this count, with a higher share among the poor than their population would warrant. However, the figure that stands out is the very high and disproportionate share of Muslims among the poor in urban areas. This is a running theme in our study of poverty trends in the country.

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8. Urban poverty line= Rs 47 per day. Rural poverty line = Rs 32 a day.

**Table 6. Poverty incidences across religious communities (based on NSSO Consumption Expenditure (2004-05))**

Religious group	Rural	Urban
Buddhists	40.59	28.62
Christians	16.21	12.47
Hindus	28.90	23.35
Jains	2.59	2.57
Muslims	29.26	41.38
Others	36.02	22.91
Sikhs	5.00	6.08
Zoroastrians	35.42	10.74
<b>Total</b>	<b>28.29</b>	<b>25.62</b>

Source: Thorat (2013:16).

**Table 7. Share of religious poor (in all-India poor)**

Religious Communities	Rural		Urban	
	Population (2001 Census)	Poor (NSSO, 2004-05)	Population (2001 Census)	Poor (NSSO, 2004-05)
Buddhists	0.77	0.89	0.66	1.07
Christians	1.14	2.81	2.14	2.86
Hindus	85.52	79.99	82.33	75.60
Jains	0.01	1.10	0.14	1.12
Muslims	11.78	12.93	11.96	17.26
Others	0.43	0.09	0.81	0.22
Sikhs	0.34	2.12	1.90	1.79
Zoroastrians	0.01	0.07	NA	NA

Source: Thorat (2013:16).

Other indicators of poverty show similar trends. Mean per capita consumption expenditure (MPCE), another measure of economic well-being, was low for Muslims and Buddhists. Buddhists had the lowest MPCE in rural areas at Rs 506.26 (against the national average of Rs 558.71) with the Muslims not far above; in urban areas, Muslims did significantly worse than other groups at Rs 776.50 (against the national average of Rs 1,052.36) (Thorat, 2013: 19). Much of the problem stems from poor access of minorities such as Muslims and Buddhists to productive livelihood oppor-



tunities. The relative deprivation of Muslims and Buddhists was evident in their ownership of assets as well – the access index of asset ownership across social groups was the lowest for SCs, while across religious communities it was the lowest among Muslims in 2002–03. (Government of India, 2011: 6) (*see Table 8*).

The workforce participation rate (WPR) measures population from groups participating in the national workforce in different categories. Among the major religious groups, WPR (based on Employment/Unemployment Survey, NSSO 61st round, 2004-05), was the highest among Zoroastrians in urban areas and among Buddhists in rural areas. That for Hindus, Christians and Sikhs was comparable, ranging between 34 and 37 per cent in urban areas, but was lower for Muslims at close to 32 per cent in both urban and rural areas (Thorat, 2013: 24). As the Arjun Sengupta report on workers in the unorganized sector shows, most Muslims in the workforce were in the unorganized sector (Government of India, 2007a). Organized sector participation, again based on the NSSO 61st round survey (both in the public and private sectors) was the lowest for Muslims among all religious groups. According to Sachar Committee, Muslims represented only 4.9 per cent of all employees (in central and state governments) (Government of India, 2006: 165).

The picture that then emerges is of minority groups doing worse than the majority community and also vast differences within minority groups themselves, with Muslims and (neo) Buddhists (officially categorized mostly as SCs) worse off as compared to the others. The Sachar Committee tasked with examining deprivation among the country's Muslims found that Muslims in Uttar Pradesh, Bihar, Assam and West Bengal constituted the poorest sections of India's population along with SCs and STs. These were also states where most Muslims lived. Other reports like the India Human Development Report (India-HDR, 2011) show similar trends (Government of India, 2011:4). Significantly high urban poverty among Muslims was also reported by India-HDR, using NSS 2007-08 data at 23 per cent as compared to 13 per cent for Hindus as a whole.

Notably, it is Dalits who make up the bulk of the poor within each religious group. This applies as much to Hindus, Sikhs and Buddhists, as it does to Muslims and Christians. *Table 9* confirms that poverty trends for religious groups as a whole are also reflected in poverty trends for Dalits among them.

**Table 8. Distribution of expenditure classes by social identity**

Economic status	ST/SC	All OBCs (except Muslims)	All Muslims (except STs/SCs)	Others (without SCs/STs, OBCs, Muslims)
Extremely poor	32.4	20.3	27.4	8.5
Marginal and vulnerable	55.4	59.6	57.1	46.3
Poor and vulnerable (PV)	87.8	79.9	84.5	54.8
Middle and high income (MHI)	12.2	20.1	15.5	45.2
All (PV+MHI)	100	100	100	100
All (millions)	302	391	138	258

Source: Government of India (2007a:8); based on NSS 61st round (2004-05).

**Table 9: Poverty levels of Dalits among religious groups**

	Rural	Urban
Buddhists	45.9	28.9
Christians	30.1	32.3
Hindus	37.7	40.9
Muslims	39.6	46.8
Sikhs	7.6	24.8
All Dalits	36.8	39.8

Source: Deshpande (2008:28, 29), based on NSSO (2004-05).

And yet traditionally Dalit communities among Muslims and Christians – the poorest of the poor as data shows - are not categorized as SCs. The law barring this is contained in Article 341 (3) of the Constitution that bars non-Hindus (interpreted in Indian jurisprudence as those following ‘non-indigenous’ faiths – Islam, Christianity, Judaism) - from being conferred Scheduled Caste status, thus depriving them of a range of affirmative action policies and priority coverage under anti-poverty schemes. This failure of the state provides one of the clearest cases of discrimination in law against sections of religious minorities.

### **Health and nutrition**

We now look at the health and nutritional status of marginalized sections, particularly children and women, across religious groups. When it comes to children’s health we take two measures – nutritional status and level of immunization. Pregnant women’s health uses the place of delivery as the

measure. Data confirms that while it is true that overall health indicators (outcome – IMR, U5MR, MMR) are improving, and over time these indicators for marginalized groups like SCs/STs and Muslims are converging with the national average (Government of India, 2011: 8), process indicators such as the immunization rate, institutional deliveries and contraception prevalence rates are less robust, especially when it comes to excluded groups including particular minorities. In input indicators (public investment in health, health facilities and human resources, sanitation, safe drinking water and the like), according to NHFS III data (2005-06) there are the most problems for Muslims and others like them. STs and Muslims had the highest total fertility rate (TFR), only one-third of Muslim and SC women had institutional deliveries, only around 50 per cent of Muslim, SC and ST women received three or more antenatal ANC (I) visits (Government of India, 2011: 10).

*Table 10* provides a snapshot of child immunization status across religious groups. It is clear that access of Muslims to essential services that potentially impact health well-being was limited with poor rates particularly for BCG and DPT.

Similarly, the per cent distribution of live births by place of delivery and percentage delivered in a health facility (*see Table 11*) is a good measure of access (and awareness) among communities about health facilities and good health practices. Here too, the Muslims did badly, with only 33 per cent live births in a health facility as compared to 39 per cent for Hindus and much higher figures for other groups (NFHS III 2005-06 data).

Finally, malnutrition is an indicator of chronic hunger, which is critically linked to people's health status. As we know, India fares badly on this count. The incidence of children suffering from anaemia and stunting and female malnutrition were above the national average among Muslims, particularly in Uttar Pradesh and Bihar and other states with a high concentration of Muslims. And while female malnutrition nationally has been reducing over time, it is increasing for Muslims (data between 1998–99 and 2005–06). (Government of India 2011: 8). *Table 12* shows the status of child malnutrition across religious groups providing data on the percentage of children under-5 years, classified as malnourished according to two anthropometric indices of nutritional status: height-for-age and weight-for-age. Minority groups, particularly Muslims and Buddhists, do particularly poorly across the two measures.

**Table 10. Child immunization across religions**

Religious Groups	BCG	DPT			Polio1				Measles	All basic vaccinations	No vaccinations	Percentage with a vaccination card seen
		1	2	3	0	1	2	3				
Hindus	79.6	77.5	67.9	56.4	48.6	93.9	89.9	78.7	60.0	44.4	4.4	37.4
Muslims	69.7	66.9	58.3	47.8	45.0	90.3	84.5	76.6	49.6	36.3	7.3	36.4
Christians	82.1	81.6	76.3	65.1	52.9	90.0	87.3	77.6	68.0	56.3	9.4	44.0
Sikhs	90.4	88.6	86.2	76.9	65.5	91.0	89.1	81.1	80.2	67.3	6.6	46.0
Buddhists	98.5	94.1	75.6	58.0	81.3	95.2	87.3	74.1	96.0	50.9	0.7	39.1
Others	69.3	75.3	53.8	42.3	20.7	91.9	84.3	79.5	41.4	27.2	7.9	25.8

Source: Thorat (2013:39), based on NFHS III.

## **Education**

Poverty and education have a well-established correlation. To find out the relative performance of religious groups on this count we take three measures – literacy rate, school attendance and education level. As is clear (see *Table 13*) there were wide variations across religious groups on these counts. On the one hand, Jains and Christians had the highest literacy rates, much higher than Hindus as a whole, while on the other, Sikhs, Buddhists and Muslims figured at the bottom.

The variances in school attendance were similar (*Table 14*) with just over 42 per cent Muslim boys and 37.52 per cent girls in the 6-14 years age group according to NSSO 2004-05 survey attending school. Jains and Christians led here too and were much better than the majority Hindus.

According to Census 2001, Muslims were the least literate among all religious communities. The NSSO 2007-08 survey, education round, further confirmed a high proportion of Muslims as illiterate. This proportion was at par with that of SCs/STs and higher than that for OBCs. Muslim women (47.3 per cent) were amongst the most illiterate sections of society, comparable to SC/ST (53.2) women. A substantial proportion of Muslims—18 per cent male and 15.4 per cent female - had attained only primary education. Meanwhile at higher, upper primary and above levels, the proportion of Muslim children was significantly lower than that among all other groups including SCs. Most seriously, the incidence of ‘out-of-school’ children (of all social groups) was the highest among Muslims (Fazal, 2013: 6).

The main concern with education among Muslims remains low retention rates leading to dropouts and poor transition as children progress through the school system. According to a government fact-finding report, using data from 2011-12 Muslim children constituted 16.6 per cent of the total national enrolment in Grade I, but this declined to 8.4 per cent at Grade VIII (Government of India, 2013:11), leading the report to conclude, ‘...transition to upper primary stage is one of the major bottlenecks in the education of Muslim children’ (Government of India 2013:14). *Table 15* confirms this. The other concern is around girls’ education, with only a minuscule proportion of Muslims girls having completed secondary and graduate education (Government of India, 2013: 5).

According to HDR (2011), the incidence of out-of-school children was associated with poverty. Financial constraints turned out to be the main

**Table 11. Place of delivery**

	Public sector	NGO	Private	Own home	Parents	Other	In a health facility
Hindus	18.4	0.5	20.3	50.9	9.3	0.4	39.1
Muslims	15.4	0.3	17.3	56.7	9.6	0.5	33.0
Christians	23.6	0.9	28.9	42.0	3.8	0.7	53.4
Sikhs	15.1	1.2	42.0	32.3	9.2	0.1	58.3
Buddhists	37.2	0.2	21.3	23.4	17.2	0.6	58.8
Jains	30.9	2.6	59.6	4.1	2.8	0	93.1

Source: Thorat (2013:33), based on NFHS III.

**Table 12. Child nutrition levels across religions**

Religious group	Height-for-age-status		Weight-for-age-status	
	Percentage below -3 SD Chronically malnourished	Percentage Below-2 SD1 Severely malnourished	Percentage below-3SD Chronically malnourished	Percentage below-2 SD1 Severely malnourished
Hindus	23.4	48.0	16.1	43.2
Muslims	26.2	50.3	15.6	41.8
Christians	17.9	39.0	8.7	29.7
Sikhs	13.4	29.8	7.8	22.0
Buddhists	23.2	56.1	14.7	39.2
Jains	5.9	31.2	6.6	24.0
Others	34.0	58.5	35.4	62.7

Source: Thorat, (2013: 41), based on NFHS III (2005-06).

**Table 13. Literacy rates**

Religious groups	Person	Male	Female
Hindus	54.92	64.22	44.92
Muslims	48.05	54.99	40.63
Christians	69.45	72.76	66.17
Sikhs	60.56	65.03	55.56
Buddhists	62.16	71.05	52.83
Jains	84.09	86.67	81.35
Others	38.57	49.78	27.27
All Religions	54.51	63.24	45.15

Source: Thorat, (2013:3-4), based on Census of India (2001).

barrier to continuation of education forcing children into child labour. This was higher among Muslims (3 per cent) as compared to the national average (2.4 per cent) in 2007-08. Involvement of Muslims in traditional occupations (weaving carpets and working with glass, locks and brassware, among others) which due to old technology attract child labour, has been a factor here. Overall, the literacy problem among Muslims is the worst in Uttar Pradesh, Bihar and West Bengal (Government of India, 2011: 229).

### **Providing for minorities: The limited policy space**

Provisions for equality (Article 14, and Article 16 [1] [2]) and non-discrimination (Article 15[1] [2]) in the Constitution have failed to prevent the socio-economic marginalization of sections of minorities. As data demonstrates, rural Buddhists, urban Muslims and sections of Sikhs and Christians form a bulk of these marginalized groups. Besides provisions for equality, the Constitution also makes it the state's duty to eliminate inequalities (Article 38 [2]) and promote educational and economic interests of weaker sections (Article 46). More concretely, the law authorizes the state to make special provisions for the economic advancement of backward classes (Article 15 [4]) and to make reservations in appointments for backward sections (Article 16 [4]). These have been used to fruitful ends to support groups designated as Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Castes (OBCs) to overcome poverty and marginalization. Yet, successive governments as well as courts in India have, despite evidence, refused to extend these affirmative action provisions of the Constitution to religious minorities. As discussed earlier, Dalit Muslims and Christians from the SC category have been excluded thus depriving them of the extensive and elaborate regime of compensation. There is also discrimination in how the state treats different religions when it comes to addressing poverty and deprivation of some of its poorest citizens. Article 341 (3) of the Constitution bars non-Hindus from being counted among SCs, claiming that the caste system exists only among Hindus (and other 'indigenous' religions – Sikhism, Buddhism and Jainism– being officially counted as Hindus).

The Prime Minister's High Level Committee on Social, Economic and Educational Status of Muslim Communities in India, (otherwise known as the Sachar Committee) broke new ground in public discourse on deprivation of the Muslim community in the country. By collating and analysing considerable empirical evidence, perhaps for the first time in independent India and, using official data sources, the report shifted the public debate on the conditions of Muslims from one based on perceptions and rheto-

**Table 14. School attendance (6-14 years)**

Religious Communities	Males	Females
Jains	54.68	57.20
Christians	52.22	47.14
Buddhists	49.82	46.43
Sikhs	47.83	44.34
Hindus	46.76	39.74
Others	43.10	39.30
Muslims	42.27	37.52
Zoroastrians	41.55	34.31

Source: Thorat, (2013:7-8) based on NSSO, 61st round, 2004-05.

**Table 15. School attendance (6-14 years)**

	Illiterate	Literate without formal education	Literate but below primary	Primary	Middle	Secondary and above	Graduate & above
Hindus	26.66	36.75	18.91	9.23	4.81	0.52	3.12
Muslims	30.12	43.19	16.34	6.13	2.49	0.24	1.49
Christians	15.26	36.26	25.08	11.85	5.72	2.28	3.54
Sikhs	27.10	35.43	14.48	13.54	6.19	0.74	2.51
Jains	11.63	25.72	20.58	24.07	8.53	0.34	9.13
Buddhists	16.60	38.07	24.19	11.73	6.33	0.25	2.82
Zoroastrians	17.28	27.57	0	27.57	0	0	27.57

Source: Thorat, (2013:13), based on NSSO (2004-05).

ric (that denied Muslim deprivation) to one that was evidence-based thus establishing Muslims as a legitimate subject of public policy (Government of India, 2006:2). The Sachar Committee report led the government to declare a package of measures for all religious minorities - not just Muslims – containing affirmative action policies; special development initiatives; enhanced access to credit and education opportunities; social inclusion measures; and efforts for better minority sensitization of government functionaries (Government of India, 2009).

An assessment of the working of schemes for minorities, four years after the policy announcement, revealed serious drawbacks (Centre for Equity Studies, 2011). These included poor design of schemes and their poor re-sourcing resulting in their being little more than symbolic gestures, if even



that; and a weak institutional environment that prevented robust implementation including weak and ad-hoc structures and processes and poor capacities of implementing agencies, combined with a pervasive inability on the part of frontline state actors to connect purposefully with minority communities (Centre for Equity Studies, 2011:40). The findings of the study include:

- i. Minorities made up 19 per cent of the country's population (Census 2001). Budgetary allocations for schemes meant specifically for the minorities was just above 5 per cent of the total plan allocation in FY 2010-11. The Ministry of Minority Affairs' outlay for FY 2010-11 was Rs 2,600 crore, a small sum given its status as a nodal ministry. Per capita plan allocation for minorities in 2010-11 was Rs 797 (against Rs 1,521 for STs and Rs 1,228 for SCs).
- ii. Government departments had not been able to spend even the limited funds for minorities. Utilizations under the multi-sectoral development programme (MSDP) was a serious concern. Poor spending was a result of poor design of programmes and weak institutional mechanisms.
- iii. Coverage of 'minority schemes' was narrow focusing mainly on basic services (local infrastructure and housing) and scholarship schemes. Provisions for creating livelihoods and boosting education attainments – both serious concerns for minorities – were only token in nature.
- iv. The flagship programme for minorities – The 15-Point Programme – sought to earmark a minimum 15 per cent of outlays and physical targets of select universal programmes for better reach. This had not worked. Although akin to a sub-plan for minorities, the 15-Point programme had very limited detailing and enforcement of systems for planning and reporting financial and physical performance on minorities' access to universal programmes on education (Sarva Siksha Abhiyan), health and nutrition (ICDS, NRHM) and urban services (JNNURM). And only a few central ministries had actually allocated the minimum 15 per cent of their outlays.
- v. The other 'minority' scheme, MSDP too had little budgetary provisions and a very blunt area-development mandate and approach to be of much help in lifting minorities out of poverty. Institutional weaknesses further dampened impact. These included poor capacities of implementing agencies; poor monitoring of projects; and absence of participatory planning and implementation.
- vi. The Ministry of Minority Affairs, the central agency charged with pro-

**Profile of a vulnerable minority:**

## **Caste among religious minorities in India**

This profile discusses the issue of intersectionality of caste and religion. One of the important purposes of the profile is to break the common and clichéd stereotype of identifying caste as a category that exists in Hinduism. In contrast to this popular understanding, we bring stories of a minority caste (Dalit) within the ambit of religious minorities in India. It is interesting to note that the most excluded Dalit community as a category exists within the fold of four religious minorities – Muslims, Christians, Buddhists and Sikhs. Hence, it would be appropriate to take a historical detour to understand the historical origin of caste outside the purview of Hinduism.

Tracing the origin of caste system within the Muslim community Yoginder Sikand said:

Most Indian Muslims are descendants of ‘untouchable and ‘low’ caste converts, with only a small minority tracing their origins to Arab, Iranian and Central Asian settlers and invaders... Indian Muslim society is characterised by numerous caste-like features, consisting of several caste-like groups (jatis). Muslims who claim foreign descent claim a superior status for themselves as ashraf or ‘noble’. Descendants of indigenous converts are, on the other hand, commonly referred to contemptuously as ajlaf or ‘base’ or ‘lowly’. As among the Hindus, the various jatis among the ajlaf Muslims maintain a strong sense of jati identity (Countercurrents, 2013).

Sikand goes on to add that the wider Dalit identity, a result of the Dalit movement, ‘does not seek to deny individual jati identities. Rather, it takes them into account but seeks to subsume them within the wider collective Dalit identity, based on a common history of suffering as well as common racial origins as indigenous people. This seems to have been a crucial factor in the emergence of a specific ‘Dalit Muslim’ identity (<http://www.countercurrents.org/dalit-sikander200903.htm>).

... contd. ...

viding leadership to minority programmes, lacked the institutional and political authority to ensure compliance by all state actors for minority focused objectives. Overall, it seems to have made little effort to push the minority development agenda with governments and agencies through capacity building and sensitization or in minority communities themselves through outreach. States and districts suffered similar, or worse, institutional weaknesses. Minority welfare departments and district offices had very poor capacity and very limited mandate and traction with other departments.

A recent analysis confirms this assessment. The first official evaluation of the working of programmes set up on the recommendation of the Sachar report (Post-Sachar Evaluation Committee, 2014, popularly called Kundu Committee) concluded that not a great deal had changed since the start of programme. The findings of the Kundu report include (Government of India, 2014a:152-153):

- i. Schemes under the PM's 15-Point programme and MSDP were area development schemes, with little targeted focus on minority communities. A good example is Jawaharlal Nehru Urban Renewal Mission (JN-NURM) where large investments, purportedly as part of the 15-Point Programme mostly on urban infrastructure had little resonance for minorities. Barring the odd exception, such as scholarship schemes, there was little attempt to specifically target minority communities through clear operational plans and beneficiary lists.
- ii. Connected to this is the problem of sound data. Except a very rapid baseline survey of the MCDs, 'there has not been any systematic assessment of the development deficits in MCDs and determination of the target under different schemes'. There seemed to be no clear plan and roadmap, with targets and allocations fluctuating year on year. And non-availability of disaggregated data by religious groups locally for several schemes constrained the assessment of the effectiveness of the schemes for different communities.
- iii. There was also lack of institutional mechanisms and implementation staff at the state, district and block levels. Further, whatsoever staff existed in many states, a large proportion lacked motivation. It was not surprising then that the impact of the programmes for minorities remained the least, leaving them disillusioned with government promises. Also, no effective evaluation of any programme was done and social audits had not been conducted. In fact political promises and

*... Profile of a vulnerable minority continued ....*

Commenting on the origin of the caste system in the everyday practices of the Muslim community, the National Commission for Minorities report, prepared by Satish Deshpande, noted:

Day-to-day relationships between different individuals in any local Muslim community are determined by their membership of the caste-analogue rather than by the broad categories of ashraf and ajlaf. In any local area or community the Muslim population is divided into a number of social groups which are analogous to castes among Hindus. These caste-analogues are ... characterised by endogamy, hereditary membership ... particular occupation and is usually associated with a more or less distinct ritual status in a hierarchical system (Deshpande, 2008: 14).

Compared to Muslims, there is much less ambiguity about caste practices among Indian Christians. Deshpande's study brings out the fact that a substantial portion (50 to 75 per cent) of the Christian community is made of former Hindu untouchable castes (Deshpande, 2008: 14-15). During colonial times Christianity held out several promises, especially to the then untouchable Hindu society. Education by the missionaries and a promise for social justice, hitherto unknown among the Hindu Dalits, must have played an important role in the mass conversions from Hinduism to Christianity (Barua, 2015: 95. Also see another interesting book on the same theme which makes the same point, Frykenberg, 2003).

However, it is not only the lower caste that converted to Christianity. Significant sections of the upper caste population, especially in the southern state of Kerala, too converted. Deshpande writes that the 'old Christians are known as Syrian Christians whereas Harijan converts are known as Putu Christians (Neo-Christians), Chermar Christians, Pulaya Christians etc.' (Deshpande, 2008:16)

Caste as a social and institutional category is also present in a significant way among the Buddhists community in India. Maharashtra is home to the largest population of Indian Buddhists. Under the political influence of Babasaheb Bhimrao Ambedkar, a larger section of the erstwhile Hindu Dalit population denounced their religious

*... contd. ...*

rhetoric for minority development stood in contrast to the effective benefits to minorities from the schemes.

- iv. Plans and financial allocations were modest in relation to the deprivation of the minorities, especially Muslims, and for some of the schemes this meagre amount had not been fully utilized showing lack of zeal and coordination among officials and agencies.

## **Effective participation**

The right to effective participation sees to it that minorities have a right to participate in decisions at national and local levels that affect their lives. There are various ways in which this outcome is sought to be actualized, including through effective representation of minorities in governing institutions and effective political participation. Effective political participation is a key ingredient in enabling minority voices to be heard.

### **Constitutional provisions**

Constitutional provisions with regard to rights of all citizens to effective participation include:

- Part 15 of the Constitution, governing the right to vote and the right to contest elections.
- Article 14 and Article 15 (1) provide that these ‘political’ rights are available without discrimination to all citizens.
- Article 324 provides for an independent Election Commission.
- Article 16 provides equality of opportunity in matters of public employment.
- Article 19 (1) C gives to all citizens the right to form associations or unions.

### ***Political representation of minorities***

The key national governing institution is the Parliament. A look at the representation<sup>9</sup> in the Lok Sabha (the lower and the directly elected House of Parliament) reveals some stark facts (*see Figure 1*).

Representation of minorities in the Lok Sabha is poor. The largest demographic minority in India, Muslims, comprised 14.2 cent of the

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9. Defined as the difference between a minority group’s proportion in a country’s legislature and its proportion in that population. A negative score implies under-representation.

*... Profile of a vulnerable minority continued ...*

identity and converted to Buddhism to escape the most horrific level of oppression that was present during colonial times.<sup>1</sup> The tradition of Hindu Dalits converting to Buddhism continues even today. Thus, for instance, in 2006 more than 70 people from village Kumarriguda, 40 miles outside Hyderabad, gave up Hindu religion. D. Anjaneyulu, a local Dalit politician, who was apparently stopped by local Brahmins from raising the Indian flag because of his caste, commented that 'we want to be equal to upper castes. Being a Dalit in Hindu society means this is not possible. Being Buddhist means we will be separate but equal' (<http://www.theguardian.com/world/2006/oct/13/religion.india>).

The prevalence of caste in colonial times was widespread across the country. The North Western Province was no exception. The rejection of the caste system by Guru Nanak, the first the Sikh gurus, was categorical. The teachings of Sikh gurus and subsequently the Granth Sahib, the holy book of the Sikhs, appeared to have given the out-castes a welcome feeling of honour. Though the Hindu varna order was altered, it did not guarantee the end of caste distinctions (<http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=F31AD339E2272A88CAE6DCCBEBF14007?-doi=10.1.1.614.4430&rep=rep1&type=pdf>).

Dalits who constitute as much as 29 per cent of the total population of contemporary Punjab, which comes close to the number of Jat Sikhs, is another major community heavily concentrated (over 80 per cent ) in the villages. The Dalit category among Sikhs is made up of mazhabis or the scavenger caste of chuharas and ramdasis (also called ravidasis) or the caste of leather workers, the chamars (Fazal, 2015).

The SCs in Punjab are divided into different communities with their own distinct social identities and experiences of economic development. According to the official list Punjab has 37 SCs. However, a large majority of them can be clubbed into two or three clusters. The first cluster of mazhabi Sikhs and the balmikis/bhangis constitute 41.9 per cent (30.75 and 11.15 per cent respectively) of the total SC population in the state. The second cluster is made up of ad dharmis

*... contd. ...*

**Figure 1. Representation of minorities in the 16th Lok Sabha 2014**



Source: Livemint, 2016.

population (2011 Census) but they make up only 4.24 per cent of the current Lok Sabha (elected in 2014). That is a representation score of (-) 9.16 percentage points. Smaller minority groups find better representation. Sikhs have a representation score of 0.3 percentage points, while Christians, Buddhists and Jains each have a score of (-)1 percentage point or less. Given that there is no system to compensate minority groups for poor representation in elected bodies (such as through ‘proportional representation’ or through reserved seats, as is the case for SCs and STs), it would be fair to conclude that the current Lok Sabha does not truly reflect the social make-up of the country and does not allow for minority voices to be heard.

The Lok Sabha currently has only 23 Muslim Members of Parliament (MPs), all elected from seven states with concentrations of Muslims. However, Uttar Pradesh, the state with the highest Muslim population, sent no Muslim MP. It is equally remarkable that not a single MP of the 282 from the ruling Bharatiya Janata Party (BJP) in the current Lok Sabha, is a Muslim. A key issue of course was the fielding of candidates. Out of the 428 members that the BJP fielded in the elections, it gave tickets only to seven Muslims. In the circumstance, all lost. *Table 16* gives Muslim representatives by political parties in the current Lok Sabha.

Twenty-six other parties, including the ruling BJP (with 282 MPs in the House), have no representation of Muslims in the Lok Sabha.

Even in the 15th Lok Sabha (2009) it was the same case. National parties (Congress, BJP, CPI (M) and BSP) together sent 17 Muslim MPs, regional parties contributed eight MPs and so-called Muslim parties another four; there was also an independent member, taking the total to 30 Muslim MPs in a House of 545. Notably, it was regional parties, rather than the national ones, that fielded more Muslim candidates (293 and 116 respectively) (Jaffrelot et al., 2009). Clearly there are no incentives for

*... Profile of a vulnerable minority continued ...*

(15.74 per cent) and chamar/ravidasi/ramdasi Sikhs (25.85 per cent) who together constitute another 41.59 per cent. The remaining 33 caste groups constitute only 16.51 per cent of the total SC population in Punjab.

## **Statistical data and a few facts**

We now try to understand the present day condition of the Dalits living outside the purview of Hinduism. Drawing on NSSO data, the Deshpande report estimated the number of Dalit Muslims and Dalit Christians across the country. There were only about 8 lakh Dalit Muslims (5 lakh in rural and 3 lakh in urban India). Dalit Christians were about 23.5 lakh (almost 15 lakh in rural India and a little less than 9 lakh in urban India). The same report suggests a population of 56.8 lakh Dalit Sikhs in the country. Out of a total estimated 71.3 lakh Dalit Buddhists, 29.7 lakh live in urban India, while 41.6 lakh live in rural areas (Deshpande, 2008: 25). Some of the findings of the report which gives details of the socioeconomic status of Dalits belonging to different religious minorities are mentioned here to give an idea about their plight/miserable conditions:

1. 'With respect to proportions of population in poverty or affluence, Dalit Muslims are unquestionably the worst off among all Dalits, in both the rural and specially the urban sector, being completely absent in the affluent group ... Dalit Christians may be said to moderately better off than other Dalits except Dalit Sikhs, who are even better off.'
2. 'The picture with respect to average levels of consumption measured by percentiles of MPCE confirms that, with the exception of rural Dalit Sikhs who are slightly better off all along the economic spectrum except at the very top, all other Dalits are basically the same in economic terms ... Also strongly emphasised is the serious poverty among urban Muslims.'
3. 'With respect to comparisons of educational levels, Dalit Muslims are the worst off in rural India in terms of illiteracy, but are closely matched by Hindu Dalits in both rural and urban India. Dalit Christians are slightly better off in rural, and significantly better

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**Table 16. Muslim MPs (16thLok Sabha)**

Party	INC	TNC	PDP	Muslim-led parties*	CPI-M	NCP	LJP	RJD	AIADMK	Total
Total MPs	44	34	3	6	9	6	6	4	37	
Muslim MPs	4	4	3	5	2	2	1	1	1	23

Source: Tabulated from the Election Commission of India's website.

Note: \*: AIDUF, IUML and AIMIM.

political parties to field minority candidates in elections as a means to greater minority representation and participation.

A look at some of the historical data, however, reveals that it is not only in recent times that Parliament has shown such skewed representation; instead this has always been the case. *Table 17* shows Muslim representation in the Lok Sabha since independence. Although the current Lok Sabha may be particularly unrepresentative, Muslim representation has always been sub-par.

State assemblies provide similar stories of poor representation of minorities, especially Muslims.

### ***Drivers of poor political representation***

The Sachar Committee report, looking into the socioeconomic backwardness of Muslims, cited two mechanisms at play when it comes to the dismal representation of minorities, particularly Muslims (Government of India, 2006: 25):

- Non-inclusion of Muslims in voter lists resulting in their not being able to vote.
- Notification of reserved constituencies: Muslim concentrated assembly constituencies being declared as 'reserved' constituencies where only SC candidates can contest elections, resulting in Muslims being unable to contest on those seats.

An analysis of the data relating to reserved constituencies for SC candidates in three states - Uttar Pradesh, Bihar and West Bengal- shows that constituencies declared reserved for SCs were by and large those where Muslims were in greater numbers, often more than 50 per cent of the popu-

*... Profile of a vulnerable minority continued .....*

off in urban India. At the other end of the educational spectrum, there are no major differences across Dalits in rural India (except Buddhists, who seem to have comparatively high proportions with graduate or higher degrees)' (Deshpande, 2008: 63-64)

Let us go beyond the numbers to understand the experiences of Dalits from different religious minority groups to come up with anecdotal evidence to show their discrimination and suffering. For instance, although Christianity does not encourage discrimination Dalit Christians continue to be discriminated against and marginalized even by upper caste and non-Dalit members of the same religion. Writing about the relationship between Dalit and non-Dalit Christians in Kerala in the 1970s, the Deshpande report quoted a case study:

During the course of the field work, it was found that only Syrian Christians were referred to as 'Christians', and Pulaya Christians were referred to as 'Pulayas' by all, including the Pulaya Christians themselves. The Pulaya Christians addressed the Syrian Christians by honorific titles such as Tampuran (Lord), Panikke (Master), whereas Syrian Christians added the suffix 'Pulaya' while addressing a Pulaya Christian ... It was found that the Syrian and Pulaya members of the same Church conduct religious rituals separately in separate buildings (Deshpande, 2008: 16).

On another occasion, in Trichi (Tamil Nadu), a wall was built across the Catholic cemetery. Dalit Christians, converted from the formerly 'untouchable' Hindu caste, were allocated space for burial on one side of the wall while upper caste converts were buried on the other side. Fr Yesumariyan, a Jesuit, practising lawyer and a Dalit-Christian activist, says: 'In Tamil Nadu, over 70% of Catholics are Dalit converts. But only four out of 18 bishops are from the Dalit-Christian community' (<http://www.bbc.com/news/world-south-asia-11229170>).

While commenting on the nature and cause of discrimination of Dalit Christians by the non-Christian population (mostly the Hindu population), a separate report on the Christian community noted that the 'Christian Dalits are treated even worse than Hindu, Sikh or Buddhist Dalits. In the first place, in the eyes of the Indians,

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**Table 17. Muslim MPs since the first Lok Sabha (1952)**

Year	Number of Muslim MPs	per cent of the house
1952	11	2
1957	19	4
1962	20	4
1967	25	5
1971	28	6
1977	34	7
1980	49	10
1984	42	8
1989	27	6
1991	25	5
1996	29	6
1998	28	6
1999	31	6
2004	34	7
2009	30	6
2014	23	4.2

*Source: Tabulated by the author from the Election Commission of India's website.*

lation and higher than the proportion of SCs, whereas many constituencies with large SC concentrations remained 'un-reserved'. Reserving Muslim concentrated constituencies is seen as discriminatory, reducing the chances for Muslims to stand and be elected to state assemblies and Parliament (Government of India, 2006:25, footnote 7). Further, since Dalit Muslims and Dalit Christians are officially not recognized as Scheduled Castes, Dalit Muslims cannot contest in the constituencies reserved for Scheduled Castes, thus denying them that right too.

Apart from these reasons, it is clearly poor incentives for political parties to field Muslim candidates that sustain poor Muslim representation in Parliament and state assemblies. The case of majoritarian parties such as the BJP is self-explanatory. But, as data shows, even so-called secular parties like the Indian National Congress (INC), Samajwadi Party (SP), Bahujan Samajwadi Party (BSP), Rashtriya Janata Dal (RJD) and Trinamool Congress (TNC) shy away from nominating Muslim candidates. So in the 16th Lok Sabha elections in 2014, while among BJP's 428 candidates, only seven were Muslim, Congress' case was not exemplary either. Of the 462

... Profile of a vulnerable minority continued ...

Christian Dalits made the “mistake” of embracing the Christian faith, in addition to their “crime” of being born in an untouchable caste. The consequence of this is that Christian Dalits are in fact twice discriminated: as Dalits and as Christians’ (<http://www.indianet.nl/pdf/christiandalits.pdf>).

Thus, even a change in religion for a majority of the untouchables might not have brought them good lives with honour. The stories of many Christian Dalits echo the same agony and marginalization. Caste hostilities and violence against Dalit Christians is a periodical phenomenon. In one instance, more than 100 Dalit Catholic families were forced to spend a night in the fields to hide from a rampaging mob of upper caste Catholics. The role of the administration and police was negative. Naveen Kumar, whose father was attacked in the riot, recalled that the upper caste Catholic people destroyed houses, attacked women and children. They did not even spare cattle and dogs (*The Hindustan Times*, 2015).

The condition of mazhabi Sikhs continues to be the worst. Even in their religion, the Dalits are marginalized to a great extent by gurdwara authorities. For instance, Dhotian village in Tarn Taran district, made headlines in August 2012 for conversion of 40 Sikhs to Christianity. A rumor spread that Dalit Sikhs had converted to Christianity on the grounds of the treatment meted out to the ‘Low Caste’ Sikhs by the gurdwara management. The most prominent place of worship in the village, Gurdwara Raja Ram, does not allow mazhabis to enter its premises. The nihang in the gurdwara explained that the rehat-maryada of the place obligates the followers to comply with a few adherences (Singh, 2012). He justified the prohibition on the entry of mazhabis as they were considered to dress shabbily and were even into drinking, which prompted the administration to decide that they would not perform the langar seva, though the other services were open to all. Kiranjot Kaur, a Shiromani Gurdwara Prabandhak Committee (SGPC) member and former secretary acknowledged the existence of caste-based gurdwaras in the state. Kaur admitted that the influence of caste had been removed from the gurdwaras after the Singh Sabha movement in the early 20th century ([www.thehindu.com/news/national/probe-castebased-segregation-in-gurdwaras-panel-tells-punjab-dgp/article5422572.ece](http://www.thehindu.com/news/national/probe-castebased-segregation-in-gurdwaras-panel-tells-punjab-dgp/article5422572.ece)).

... contd. ...

seats it contested, it fielded only 27 Muslims (5 per cent). With few Muslims put forward by centrist parties too, it is no wonder that Muslim representation in elected bodies remains poor.

There could be various reasons for poor incentives. A key one is what academics have described as ‘Hindu backlash’ (Hasan, 2004). As Abdul Bari Siddiqui, the senior-most Muslim politician in the ruling Mahagathbandhan alliance in the 2015 Bihar elections (that returned a record number of Muslims to the state assembly – 10 per cent of the total, but still lower than the state Muslim population ratio of 16 per cent) noted (*The Times of India*, 2015c): ‘Had more Muslim candidates been given tickets, BJP would have blamed us for creating a Pakistan in Bihar.’

### ***Share of minorities in public employment***

As with representation in elected bodies representation in public employment is also most problematic for Muslims.

According to data collected by the Sachar Committee, Muslims represented only 4.9 per cent of all employees in central and state governments in 2005. Their representation in central public sector undertakings (PSUs) at 3.3 per cent was only slightly bettered by state PSUs at 10.8 per cent (Government of India, 2006: 165). Overall, and across states, public sector employment data for Muslims showed better representation at the lower rungs (poor at the higher managerial levels) and in university jobs, especially non-teaching and in clerical positions in the postal department and railways. Only Andhra Pradesh had close to the population share’s representation in jobs (Government of India, 2006: 170). In the case of senior management positions, the Sachar Committee report found the representation to be even lower – 3 per cent in the Indian Administrative Service, 1.8 per cent in the Indian Foreign Service and 4 per cent in the Indian Police Service (Government of India, 2006: 165).

The case of other minority communities - Christians and Buddhists in particular - is somewhat more nuanced. Almost a third of India’s Christians belong to the Scheduled Tribe (ST) category, eligible for ‘reservations’ in jobs and educational institutions. Despite being a small portion (8 million) of the total (84 million) ST population, ST Christians command a large share of reserved (ST) seats in both central and state services. This is attributed to greater education levels particularly among Christians from the North Eastern states, who mostly happen to be STs and greater demand for public

... Profile of a vulnerable minority continued ...

Dalit Sikhs did not receive equal treatment in the gurdwaras of upper caste Sikhs. 'Mazhabis were forbidden to enter the Golden Temple for worship; their offering of karah prasad was not accepted and the Sikhs denied them access to public well and other utilities' (Singh 1993:146-147,156-57 cited in Puri 2003:2697). Thus, the mazhabi Sikhs have been discriminated against as they are not allowed to use the wells or enter gurdwaras; they are exploited as labourers.

As mentioned earlier, Dalit Buddhists embraced Buddhism; they were moved by the political and spiritual influence of the tradition of a rich Dalit movement in the country. But breaking away from the caste system became impossible for all of them, as they were primarily seen as Dalits by the upper caste Hindu society. Prashita, a 14-year-old Dalit Buddhist girl in an interview commented on the stark reality of discrimination: 'In India, people don't usually ask your name; they ask you, "What is your surname?" and their intention is to know what caste you belong to ... Conversion does not actually change you. Though you are converted, you need to struggle very hard. In Buddhism there is no caste system; we are all free, we are all equal, but we have to put that in our mind first, and only then can we tell society, convince them about this.' Nothing can capture more brilliantly the realization of discrimination of Dalit Buddhists in contemporary society (Srinivasan, 2011).

In the book *Dalit Literature* we find some stories about Dalit Buddhists' conditions. In particular it gives a vivid description of the Mahar community and how it is denied social justice.

The Deshpande report shows the condition of Dalit Muslims as most pathetic among all Dalit groups. To give an idea of the nature of their impoverishment, we discuss the case of Muslims of Mahawat caste. In villages in Barabanki district, there are a group of people living in extremely low socioeconomic conditions, identifying themselves as Muslims of the 'Mahawat' caste. They are mainly engaged in making hand-made decorative plastic flowers and other items and selling them in nearby areas. According to existing literature, Mahawats are a sub-category of the Muslim 'Nat' caste (the other sub-castes being Aman, Goleri, Rari, Siarmarua and Turkata) who

... contd. ...

sector jobs among them (Centre for Policy Studies, 2011). But that leaves out the large proportion of non-ST Christians from the ambit of any affirmative policy action. This is particularly relevant for Dalit Christians who are excluded from coverage under the SC category. In the absence of disaggregated data for Christian representation in public sector employment, it is difficult to say what the extent of the under-representation is, but suffice it to say that a majority of the Christians face exclusion of representation in public sector employment.

As for Buddhists, almost 90 per cent are included in the SC category and another 7.4 per cent find place within the ST fold (Deshpande, 2008). Between the two, most Buddhists are able to access a range of affirmative action opportunities – reservations for elected seats and in jobs and educational institutions.

Explaining the poor representation of Muslims in public sector employment, the Sachar Committee report noted a general perception among Muslims of being discriminated against in procedures (such as unhelpful eligibility criteria), practices (unrepresentative selection boards) and a general sense of discrimination in selection processes which led to the absence of those in positions of authority raising their voice. This, the report noted, meant lack of any concerted focus at best and prejudice at worst, leading to denial to Muslims of their rightful share of services even in Grade IV positions where high qualifications are not required (Government of India, 2006: 20-21). As for higher positions where there are high eligibility criteria and laid down procedures, based on data provided by the Union Public Service Commission, the Sachar Committee report proposed that the biggest challenge was that not enough Muslim youth applied indicating a possible sense of alienation of Muslim youth from the Indian mainstream (Government of India, 2006: 165-166).

Poor representation of minorities continues to endure. Part of the government's efforts, as a result of the post-Sachar Committee package of measures, was to make greater efforts to recruit members from minority communities. State governments and central government departments as well as large agencies – paramilitary forces and PSUs – were encouraged to make especial efforts, including to report representation periodically. The Amitabh Kundu Committee, looking into the impact of the measures concluded that they had only had a modest impact. *Table 18* reports the percentage of total minority recruitments in government departments and PSUs as a share of total recruitments between 2006-07 and 2011-12. In

*... Profile: Profile: Caste among religious minorities in India continued ...*

are seen across northern India but are concentrated in Varanasi, Allahabad, Barabanki and Jaunpur districts (Samiuddin and Khanam, 2008).

The word 'Nat' comes from the word nata or dancer, and identifies a group of vagrant acrobats and showmen 'especially those who make it their business to do feats on the tight-rope or with poles, and those who train and exhibit snakes' (Russell and Lal, 1916).

Mahawats live together in colonies as Muslims and Hindus have separated them from others of their religion. Although neither Muslims nor Hindus accept them as their own, Mahawats consider themselves Muslims. They make plastic flowers and take them to cities to sell, and some of them also sell medicinal plants. They leave the old people in the village and the younger ones routinely migrate. They do not have any land of their own, and mostly live on common land in the village in pitiable conditions. There have been many cases of local strongmen forcefully occupying such land.

Inclusion of some of these groups within the Scheduled Caste category continues to be a debatable issue in the country. It is true that the neo-Buddhist population has been identified as a SC and this gives them recognition at least in terms of availing some of the limited facilities available. But it is unfortunate that till date the Muslim and Christian Dalits are fighting for recognition by the state to avail of different facilities offered by the government.

**Table 18: : Minorities in public sector employment**  
 (Figures in per cent)

	2006-07	07-08	08-09	09-10	10-11	11-12
Minorities recruited	6.93	8.23	-	7.28	10.18	6.24

*Source: Tabulated from the Government of India (2014a).*

some cases, as with police and security forces, the situation seems to have worsened, decreasing from 8.39 per cent in 2001 to 6.52 per cent in 2011 (Government of India, 2014a:123).



## **Minority representation in the non-public sphere**

### ***Private sector employment***

Mirroring the poor minority representation in elected bodies and public employment there is also poor minority representation in corporate sector employment and poor presence in developmental civil society. A recent study reported that representation of Muslims in BSE 500 companies was merely 2.67 per cent. Of the 2,324 directors and top executives in BSE 500 companies, only 62 were Muslims. Among BSE 100 companies, only 27 of the total 587 were Muslims. (*The Times of India*, 2015a). In private enterprises, Muslims constituted 8.16 per cent of the total employees (Khanam, 2013:139).

### ***Minority civil society engagement***

A vibrant civil society is understood to facilitate greater outreach, awareness creation, service provisioning and overall engagement among citizens. Whilst civil society, in the true sense of the word, is understood as a non-communal space, its strength (including number of actors and organizations, types and capacity) among community groups, especially those that are marginalized, is a good indicator of the ability of the community to engage and organize, demand and obtain rights and entitlements. In that sense, civil society's strength is an aspect of effective participation.

Data on civil society, disaggregated by minority groups, is difficult to come by. Here are some pointers:

The Home Ministry publishes data on foreign contributions (under FCRA regulations). According to data for 2008-09 and 2010-11, there were 4,700 Christian, 250 Muslim, 100 Buddhist and 14 Sikh NGOs, receiving foreign funds (*The Times of India*, 2012). These groups varied significantly on the extent of funding that they received. Whilst it is not to claim that it is only foreign funding that NGOs rely on to undertake their activities, FCRA and its dynamics provide a good barometer of the contestations between the state on the one hand and minority organizations on the other. In the recent past, especially the last few years during the tenure of the current BJP regime, regulations controlling foreign donations for groups belonging to minority communities as well as those working for the rights of minority groups, have increasingly been made stringent. These have made the space for civil society activism around human and minority rights difficult.

Through an order issued in June 2014 the central government banned over 30 NGOs working for the welfare of minorities from receiving foreign aid. A number of these were either Christian or Muslim-led (*The Times of India*, 2015d). A prominent human rights NGO, Sabrang Trust, has been targeted by the government for its proactive role in fighting for victims of mass violence. The trust, led by social activist Teesta Setalvad is one of the leading voices against violence and injustices against minorities, fighting many cases relating to the pogrom against Muslims in Gujarat (2002). Sabrang Trust as well as another leading human rights group, the Lawyers Collective, have recently had their FCRA registrations revoked thus banning them from receiving foreign funding. This happened even as the government was silent on the funds being received by NGOs affiliated to the Hindu right wing Rashtriya Swayamsevak Sangh (RSS) (*The Diplomat*, 2015) blamed by many authoritative sources for engineering hatred and violence against minorities (Awaaz – South Asia Watch, 2004; Jaffrelot, 2007).

Against the proactive policy of restricting foreign funding to minority NGOs, there is little that the government itself provides for supporting groups led by minorities or those working for minority rights. The only exception here is the scheme for leadership development of minority women, called *nai roshni*. Firstly, the scheme is too small in scope to cover the extent of the problem of minority disempowerment. It is also too new to have had an impact. Anecdotal evidence points to the need for greater awareness about the scheme and its procedures and better implementation by agencies for any meaningful impact on those for whom it is meant.

The outcome is a civil society sector that is very restricted, particularly so for Muslim-led NGOs. A recent study of civil society organizations came up with a list of only 39 Muslim community led organizations (CLOs)<sup>10</sup> (of these 15 were led by Muslim women) across nine states, in which at least three states have large Muslim populations (Centre for Social Equity and Inclusion, 2014). Another study covering eight states with large Muslim populations came up with a sample of 372 NGOs working for Muslims and reflecting some variety in sectors and approaches (Naqvi, 2015). In any case, most NGOs working on minority issues lack capacity, infrastructure and required information.

Backward sections among Muslims (*pasmanda*, including Dalit and Backward Castes) suffer further disadvantage at the hands of self-styled

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10. Presumably, these exclude faith-based organizations or those set up for religious purposes.

*ashraf* (or '*forward*') leaders in faith-based community organizations like madrassas and personal law boards, representative institutions (Parliament and state assemblies) and government departments, ministries and institutions that claim to work for Muslims (minority affairs, waqf boards, Urdu academies and 'minority' universities) (*Table 19*).

### ***Poor participation of minorities***

Representation and participation of minorities in governing institutions in India is poor. There are various factors here, including low education attainment and a leadership vacuum among Muslims on the one hand and post-partition backlash on the community and the setting in of majoritarian politics, hardening communal polarization and social exclusion on the other. Observers, however, note a key right that has always been missing for minorities in India, and which has implications for poor participation as 'political' (Robinson, 2012: 9-10). So whilst all citizens, including minority members, were guaranteed equality and non-discrimination to vote, to stand for public office and to access public employment and education, the provisions of the Constitution for special measures for economic advancement of backward sections (Article 15[4]) and for reservations in appointments for backward sections (Article 16 [4]) were understood as excluding religious minorities from their ambit.

Religious minorities were left out of political rights (specifically, reservations for seats in elected bodies and in public employment), in the final draft of the Constitution (1950) and given only cultural rights even though until then they were in the reckoning for this expanded package of rights along with SCs and STs. The 1948 draft of the Constitution carried both political and cultural rights for all the three disadvantaged communities – SCs, STs and religious minorities. It turned out that in the final version of the Constitution, only SCs and STs were bestowed political rights, including reservations for elected seats to Parliament and state assemblies and in public employment and education (Bajpai, 2002:4; Robinson, 2012:9).

Given the dispersed nature of the Muslim population in India (barring the Kashmir valley) and elections based on the first-past-the-post system (encouraging winner take all outcomes) not to mention the other pathologies that Indian minorities are increasingly subject to (rise of majoritarian politics, communal polarization and Hindu backlash), it is difficult to imagine Muslims ever finding fair representation in elected bodies and public

Good practice case study:

## The Bharatiya Muslim Mahila Andolan

As the largest minority, Muslims (approximately 14.8 per cent of the total population) face the worst conditions of human existence across the country. Different studies and at least three special commissions set up by the central government point out the stark inequalities in terms of every human development index including issues like jobs, life and security, economic status, miserable rate of participation in the decision making process and access to basic life support mechanisms. It is of no surprise that amidst their wretched conditions of existence, it is the women within the community who have suffered the most historically for different economic-socio-political factors. Thus, one should not have any doubt in identifying them as 'doubly colonized', which is perhaps a clichéd term but which is very effective in capturing the plight of Muslim women in the country. In developmental projects for the Muslim population, most of the time the case of women has not been properly unfolded with all its complexities because of which it does not receive proper attention. It is in this backdrop that this case study discusses the experience of Bharatiya Muslim Mahila Andolan (BMMA), popularly known as Andolan, which came into play in January 2007 at a national meeting in Delhi. It was in the post-Gujarat genocide case that some of the present day women leaders and main exponents of the Andolan, hitherto unknown, assembled in different rehabilitation camps in the state to assist riot victims. From their experiences, they realized that the state was in complete denial mode as to what had happened to the minorities. Most interestingly they also observed that it was the women among the minority community who had to undergo a strain of a completely different kind as they were the most vulnerable in a riot like this, partly due to their social position in a society like ours. The leaders, from their own work experience among the Muslim community in general and riot victims in Gujarat in particular, realized that Muslim women suffered from multiple marginalizations owing to poverty, lack of education, inequalities and lack of opportunities. The issue of marginalization and injustice was compounded by the fact that it was a minority community which was deeply influenced by conservative, religious and patriarchal forces on the one hand and which existed in extreme poverty on the other. Moreover, rising communalism and fundamentalism had resulted in

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**Table 19: Pasmanda Muslim representation**

Name of the Institution	Total members	Upper Caste (Ashraf)	Backward Caste (Pasmanda)
Executive Committee of All India Muslim Personal Law Board (AIMPLB)	39	36	3
Office Bearers of AIMPLB	11	10	1
Executive Committee of All India Milli Council	48	44	4

Source: Anwar (2000:112).

employment. It is remarkable then that the makers of the Constitution did not consider compensatory mechanisms for the country’s sizeable minorities such as reservations as with SCs and STs, or that other system for political inclusiveness – ‘proportionate representation’ - used quite successfully in many multi-ethnic polities.<sup>11</sup>

Another opportunity for providing religious minorities some degree of political rights was again missed when the presidential order was passed in 1950 formalizing reservations in legislatures and public employment for SCs. Only those belonging to the Hindu faith were considered fit to be included under the SC category. Christians and Muslims from Dalit backgrounds or those Dalits who had converted to these faiths were left out. The justification provided for this exclusion was that Islam and Christianity were egalitarian faiths, thus a Dalit person who converted to these faiths stopped suffering disabilities that Hindu SCs did. There is enough evidence available, including that collected by official agencies, notably the National Commission for Minorities, to hint at Dalit Muslims and Christians too suffering similar disabilities as Hindu Dalits (Deshpande, 2008). The 1950 order was amended in 1956 to include Dalit Sikhs and in 1990 to include Dalit Buddhists within the meaning of SCs, the egalitarian ethos of the two religions notwithstanding (Robinson, 2012:13). Despite strong public movements, Muslim and Christian Dalits continue to be kept out of the SC category thus denying them political rights provided to the rest of SCs.

11. Nepal’s 2007 Interim Constitution is the latest example of great use of this tool in combination with greater decentralization to share power with territorial minorities and reservations for ethnic and religious ones.

*... Good practice case study continued ....*

insecurity and sense of alienation especially in the women members of the community. This realization, coming out of the working experience among the riot victims in Gujarat, triggered off the possibility of forming an informal group within the women exponents of the current day Andolan. In this context it is interesting to note that the leaders of the Andolan also had to undertake journeys of diverse nature in their personal lives to establish themselves. However, formed as an informal group, they started meeting on a periodical basis from the end of 2004 with the intention of working among the women members of the largest minority community in India. In the initial years, the leaders of the Andolan realized the necessity of involving more Muslim women working in different places on the issue of women in the minority community. Thus, the convergence of interests and objectives made it possible to form a sisterhood, which in the course of their work translated into a dedicated group called BMMA. Finally in 2007 the Bharatiya Muslim Mahila Andolan (Indian Muslim Women's Movement) was formed. The membership of the organization has crossed 70,000. The areas of its operations have extended in different states including Gujarat, Maharashtra, Rajasthan, Madhya Pradesh, Karnataka, Tamil Nadu, Odisha, West Bengal, Bihar and Jharkhand.

### **Organizational format, objectives and area of activity**

A democratic organization, which aims to promote citizenship rights for all, especially Muslim women across the country, BMMA is led by Muslim women themselves. The very name 'Andolan' seems to suggest that its leaders wanted to retain the character of a movement. BMMA is not a formal registered organization; however, it believes in democratic decision-making through discussions and deliberations. The National Council comprises of the founder members and state convenors. Some of the state leaders are active in different civil rights movements and many of them are associated with NGOs. The decision-making body at the national level meets three to four times a year and decides on the programmatic and other agenda. The National Working Committee, consisting of seven senior members is responsible for running the organization on an everyday basis. Apart from this, the Andolan has an informal advisory group of eminent activists, academics and civil society leaders; their experiences are usually drawn on in devising a mechanism to work among the target group. An identical structure also exists at the state level which is accountable for running the affairs of the Andolan on a day-to-day basis in different states.

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## Identity and culture

### Constitutional position

Cultural rights of minorities under the Constitution include mainly right to freedom of religion (Articles 25 and 26); freedom against religious instruction or worship in educational institutions (Article 28); right to preserve one's distinct language, script or culture (Article 29); and special educational rights for linguistic and religious minorities (Article 30).

In terms of how the state relates to different faiths, in 1979 the Preamble to the Constitution was amended to include 'secular', signifying a desire to accord equal status to all religions and remain equidistant from all. This forms the core of the plural character of the Indian state as evidenced from the Constitution. Sections of religious minorities also happen to be linguistic minorities. Constitutional provisions with regard to linguistic minorities include Article 347 (special provisions relating to language spoken by a section of the population, Article 350 (citizens' right to submission of representation in any language used in the union or in the state), Article 350A (instruction in mother tongue at the primary stage) and Article 350B (appointment of linguistic commissioners to safeguard the rights of linguistic minorities). Finally, certain sections of the Indian Penal Code (IPC) have bearings on the preservation of social harmony among different faith, linguistic (and other) groups. The government has claimed its purported social goal of maintaining harmony in diversity – what is called 'unity in diversity'.

### ***'Indigenous' versus 'non-indigenous' religions***

The first issue relates to the definition and status of 'Hindu' under the Constitution. This has implications for how minority religions such as Islam, Christianity and Zoroastrianism are considered 'non-indigenous' as well as so-called indigenous ones - Sikhism, Buddhism and Jainism - are treated in law and its interpretations, vis-a-vis the majority Hindus, with wide ranging implications for the rights of citizens identifying with those minority religions. The non-indigenous tag for Islam, Christianity and Zoroastrianism means that many minority rights – particularly Article 25 (especially the freedom to profess and propagate religions) and those to follow personal laws of marriage, inheritance and adoption – are slowly being chipped away. As for 'indigenous' faiths, the National Commission for Minorities (NCM) Act 1992 recognized Sikhism and Buddhism as separate religions, distinct from Hinduism as minority religions. Recently, NCM has accorded religious minority status to Jainism. However, Sikhism, Buddhism and

... Good practice case study continued ...

A rich blend of modernity and tradition is what marks BMMA's nature as it embraces modern, liberal, democratic and secular values enshrined in the Indian Constitution on the one hand, and draws its inspiration from the *Quran* to uphold the values of peace and justice for all (including women) on the other. Unambiguously, the goal of the Andolan is to unshackle Muslim women from the bondage of poverty to enable them to lead lives of equality and justice with dignity. The broad objectives of the Andolan can be divided into four major themes: 1) to work towards understanding and ameliorating the marginalization, backwardness and insecurity of the Muslim community with a definite and special focus on Muslim women to ensure their social, economic, political, civil, legal and religious rights, 2) to promote liberal interpretations of religion which are in consonance with the principles of justice, equality, fairness and protection of human rights, 3) to oppose communalism, neo-liberalism and patriarchy, and 4) to take forward the process of legal reforms within the Muslim Personal Law.

Thus, it appears that the Andolan follows an approach of intersectionality in its working. There is a realization among the rank and file of the organization that the state is not meeting the demands of the minority population in every aspect of life. Thus, it is no wonder that the Andolan engages in a continuous process with the state and takes up issues of the economic, social and political rights of the minority population. While taking up the issue of life and security in a wider sense of the term and pointing out the failure of the modern state to protect the minorities, the Andolan also challenges the notion of the self-proclaimed Muslim male leadership in the country. The bridge, established between the modern state and the patriarchal Muslim leadership that assumes to 'represent' the entire community, has been challenged by BMMA. BMMA's objectives and activities have seriously questioned the problematic nature of the representation of women under the hegemony of a patriarchal Muslim leadership. This probably explains BMMA's focus on taking up the issue of gender justice in the broad sense of the term.

As part of its struggle to promote women rights, BMMA works on education, jobs, security, law and health. The BMMA pamphlet for 2016 notes:

1. Campaign for the implementation of Sachar report and all schemes and entitlements due to the Muslim community.

... contd. ...



Jainism continue in law and practice to be subsumed under Hindu. Their personal laws, for instance, are governed by the Hindu Code Bill. The definition of Hindu in Article 25 2 (b) of the Constitution and its ratification in the Hindu Code Bill and other legislations,<sup>12</sup> treats Sikhs, Jains and Buddhists as a part of the Hindu community refusing to recognize their distinct identities or accord them minority privileges despite demands by members of the communities. This compromises the multicultural character of the Indian state.

### ***Anti-conversion laws: Restricting freedom of religion***

Article 25 gives citizens the freedom of conscience and the freedom to profess, practice and propagate their religion. Yet there are many restrictions, both in the law and how it is interpreted and implemented by state authorities (and law courts) when it comes to Muslims, Christians and other faiths, not seen as 'indigenous' exercising that right, especially to profess and propagate. This relates to the issue of 'conversions' and the restrictions imposed on missionary groups. Given the definition of Hindu in Article 25 of the Constitution, 'conversion' implies change of religion to Islam, Christianity, Judaism or Zoroastrianism, but not to one of the three 'indigenous' religions (Jainism, Buddhism and Sikhism) subsumed under Hinduism. In many cases, and increasingly, the law itself is being amended or new laws are being made to prevent conversion. There is a historical background to this. In the post-independence era, in 1954 the Parliament took up for consideration the Indian Conversion (Regulation and Registration) Bill and later in 1960 the Backward Communities (Religious Protection) Bill, both of which had to be dropped for lack of enough support. A similar attempt much later, the proposed Freedom of Religion Bill of 1979, was opposed by the Minorities Commission due to the bill's evident bias (Legal Service India, 2011).

Several Indian states (Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh and Rajasthan) have passed freedom of religion legislations primarily to prevent people from converting to Christianity and Islam. Legal interpretation too has favoured a restrictive application of Article 25. Laws enacted by the Odisha and Madhya Pradesh high courts were challenged in the Supreme Court citing rights under Article 25. But the court in its judgment supported the laws saying, 'What is

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12. Notably, the Hindu Succession Act, 1956; the Hindu Marriage Act, 1955; the Hindu Adoptions and Maintenance Act, 1956; and the Hindu Minority and Guardianship Act, 1956.

*... Good practice case study continued ...*

2. Demanding implementation of all state reports for the political and social empowerment of the Muslim community.
3. Creating awareness and running programmes with Muslim youth and women and doing advocacy on issues of education, health, security, livelihood and PDS (through Sehr, Udaan and Karwaan).
4. Creating awareness about the Quranic rights of women and codifying the Muslim family law within the broader framework of Islamic feminism and the Indian Constitution.
5. Setting up alternative institutions and structures within the community to address institutionalized discrimination against Muslim women.
6. Conducting studies and research to highlight the conditions and demands of Muslim women.
7. Organizing and aligning with Dalit Muslim women and other subaltern women to highlight their specific issues and concerns.
8. Opposing communalism and working for upholding pluralism and diversity in society.
9. Highlighting and challenging the fundamentalism of conservative religious/cultural groups and working towards building and supporting alliances of women and youth across religions.
10. Creating alliances and solidarity with other subaltern feminist groups for addressing common issues of deprivation and discrimination.
11. Bringing before the world the social and political contribution of Muslim women.

Some of the achievements of the Andolan are:

1. Formation of Sehr groups comprising of young Muslim women in several cities.
2. Formation of Udaan groups comprising of young Muslim boys in several cities.
3. Running vocational training centres called Karwaans in seven cities.
4. Managing Aurton Ki Shariah Adalat in three cities.
5. Established the Darul Uloom e Niswaan – Centre for Religious Learning and Theology for women.
6. Prepared draft of Muslim Family Law which forms the basis of its work on law reforms.

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freedom for one, is freedom for the other in equal measure, and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion.' This position was criticized because it ignored Article 25 and did not differentiate between forced conversion and conversion by persuasion. Restrictions to Article 25 have taken more direct forms too.

It has been reported that since the 1960s, no new foreign Christian missionaries have been granted visas to work in the country. Still other laws seek to limit the entry of any foreign religious institution or missionary. Observers see the recent wave of anti-conversion laws in various Indian states as a gradual increase of the grip that ideological Hindu nationalism has on state institutions (US State Department, 2014). States that do not still have anti-conversion laws resort to provisions in IPC to target minorities. Section 153, prohibiting 'promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and doing acts prejudicial to maintenance of harmony' and Section 295A, prohibiting 'deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs', are often and mischievously used by a biased law enforcement to target missionaries and religious groups engaged in conversions. These together also provide the backdrop (and rationalization) for much of the violence against Christian missionaries (see Osuri, 2013b for a discussion on this).

### ***Personal laws and the secular character of the state***

The Constitution is seen to act to disincentivize conversions to so-called non-indigenous faiths thus acting unfairly in its treatment of citizens. A particular instance is the application of the Hindu Marriage Act 1955, that enables discrimination on grounds of conversion to a non-Hindu religion (Islam, Christianity, Judaism and Zoroastrianism). Children born to a Hindu after s/he has converted to another religion (and their descendants) are disqualified from inheriting property, unless any descendant re-adopts Hinduism before opening of succession. This acts as inducement for re-conversion to Hinduism. Further, the act enjoins that a wife's consent for adoption of a child is necessary only if she remains Hindu. And a married Hindu woman can directly adopt a child without the consent of her non-Hindu husband. Further, there is gender discrimination as well. A Hindu wife cannot directly adopt a child if her husband is Hindu. She can only be a consenting party (Engineer, 2012).

There are other instances too of the law violating the secular character of the Constitution and discriminating between religions, privileging Hindu

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7. Conducted national studies and researches for campaigning and advocacy.
8. Stood up in solidarity with the efforts of people from different excluded communities to uphold the constitutional values of social justice and equality.

These achievements appear to be a direct result of BMMA's continuous engagement with women from the grassroots level. Thus, for instance, organizing public meetings to create awareness among the women is an everyday phenomenon. We will come back to the issue of public meetings while discussing in some detail a few of the major achievements of the Andolan. The Andolan has been active in different parts of the country in connection with creating livelihood options for the minority population, with special reference to women's employment. For instance, in 2011 the Tamil Nadu unit of the Andolan led the right to food campaign; 245 persons benefited with OAP, ID cards and ration cards in Sivagangai district; 95 women and men benefited with OAP, ID cards and ration cards in Dindigul district; and 30 women and men obtained OAP, ration cards, ID cards and community certificates in Ramnad district. The achievement of the Odisha unit in the same year in terms of creating employment opportunities for women is worth mentioning. Paper bags and thongas were marketed to boutiques and different shops. This scheme benefitted 20 women. Young girls and women have been empowered and they are marketing their products. Ten Muslim women benefitted by supplying small envelopes to homoeopathic shops and hakims. Hamara Bagicha is a project in two districts of Odisha, Bhadrak and Cuttack Rural. Eight women have benefited from the project, the objective behind which was to help and encourage all eight members to grow healthy food which they can eat and sell to make profits. Apart from providing seeds, BMMA also provided them training on organic farming. Hamara Beapar is a project in two districts in Odisha, Khurda and Cuttack which supports six women.

## **Muslim Personal Law: A battle**

Let us now turn our attention to some of the Andolan's major achievements to get an idea of how it works at the grassroots level. Reform in the Muslim personal law is one of the primary objectives that the Andolan has been working for.

### ***Draft Muslim Family Law***

Over the last several years through multiple consultations involving  
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faith. One of the grounds for divorce in the Hindu Marriage Act is conversion by one party to ‘another’ religion and his/her ceasing to be a Hindu. Further, under the Special Marriage Act 1954, a Parsi, Muslim, Christian or Jew loses coverage of his or her personal laws for succession and will be covered under the Indian Succession Act of 1925, but a Hindu, Buddhist, Jain or a Sikh will retain the personal laws for succession except when it is an inter-religious marriage. This makes the state discriminatory as it favours some religions over others.

But there have been progressive developments too. In a landmark judgment in 2014 the Supreme Court ruled that any person can adopt a child under the Juvenile Justice (Juvenile Justice Care and Protection of Children) Act 2000, irrespective of the religion that he or she follows and even if the personal laws of the particular religion do not permit it. The right to adopt a child - till now restricted to Hindus, Buddhists and Jains – was thus extended to Muslims, Christians, Jews, Parsis and all other communities. Terming the JJ Act a ‘small step towards formation of a uniform civil code,’ the court said that a person was always free to adopt or choose not to do so and, instead, follow the personal law (India Today, 2014).

### ***Saffronization of education***

Education and schools are the crucibles of national identity. From representations of the nation’s history, to what makes its society and the roles that different sections play, are all material for the development of a national identity. It is also for this reason that public education policies and practices are often contested spaces between different ideological positions. What is taught in schools and textbooks goes a long way in making or breaking a plural society.

In recent times, and in clear violations of the constitutional provision guaranteeing freedom from attendance at religious instruction or worship in educational institutions (Article 28) the BJP ruled Madhya Pradesh and Rajasthan have introduced in government and government-aided schools, practices of a religious nature favouring the majority Hindu faith (*suryanamaskar*). In Rajasthan, the government has asked private schools too to follow the practice (*The Times of India*, 2015b).

But attempts at Hindu homogenization run deeper than this. In the late 1990s, the national government began school textbook revisions without much of a public consultation. These particularly affected history

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thousands of Muslim women, lawyers and religious scholars BMMA has prepared a draft Muslim family law based on Quranic tenets concerning age at marriage, mehr, talaq, polygamy, maintenance and custody of children. These are in consonance with the Constitution of India. Some of the important provisions of this draft law are:

1. Minimum age of marriage of a girl to be 18 years and a boy to be 21 years at the time of marriage.
2. Consent of both parties must be obtained without force or fraud.
3. Minimum mehr to be equivalent of one full annual income of the groom to be paid at the time of the nikah.
4. Talak-e-ahsan to be the method of divorce requiring mandatory arbitration over a 90 day period; oral unilateral divorce to be declared illegal.
5. Maintenance during marriage is the responsibility of the husband even if the wife has an independent source of income.
6. Maintenance after divorce as per the Muslim Women's Protection on Divorce Act 1986.
7. Polygamy to be declared illegal.
8. Both mother and father are natural guardians of a child.
9. Custody of a child based on the best interests of the child and the decision of the child.
10. Halala to be made an offence.
11. Muta marriage to be made an offence.
12. In property matters Quranic shares to be applied after making a will and clearing debts.
13. Daughters to get equal share as sons through hiba or gift-deed or will.
14. Compulsory registration of marriages.
15. Qazi to be held accountable for violations during talaq, polygamy and in other such matters.

### ***Divorce and right to alimony***

In 1986 the Supreme Court ruled that divorced Muslim women who were unable to sustain themselves were entitled, like their counterparts from other religions, to alimony throughout their lifetime or till they remarried. But the Rajiv Gandhi-led Congress government passed a law reverting the alimony period to the traditional three months, with a provision for women to move court if denied this

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textbooks. Few well-formulated propositions about pre-modern society in India, informed by the national anti-colonial movement's stress on pluralism and nation-building were revised and some deleted without debate and discussion. Observers have noted that this was a blatant attempt to replace mainstream (multi-cultural) history by the Hindutva version of history, basically seeing history through the prism of a Hindu-majoritarian ideology at a time when the then BJP-led government at the centre wanted the state educational system to conform to a Hindu-infused curriculum espoused by RSS and other Hindu cultural organizations to weaken the secular underpinnings of the Indian nation (Habib et al., 2003).

According to noted historian Bipan Chandra, Hindu communalism unfolding rapidly in the country from the late 1990s, is essentially an ideology and a communal interpretation of history which forms the core of this communal ideology (see Bipan Chandra 2001 and Thapar 2001). Much of this related to the relationship between Muslims portrayed in these accounts as non-indigenous invading forces and Hindus as victims in medieval India and its implications for inter-community relationships in modern India. Two myths were used by communal historians to point out the threat that the Hindus might face from the minority Muslim population. Firstly, the medieval period was a long history of Hindu-Muslim conflict where Muslims were seen as foreign invaders and Hindus, by and large, at the receiving end. And secondly, the entire medieval period was a 'dark age' compared to the 'glorious' advancement that India had made in ancient times. History taught in schools in this manner helps to create and consolidate communal divides against minorities and goes against the very ethos of secularism (Habib et al., 2003). This narration of history generates elements that are being manifested in popular culture. Thus, for example, over-glorification of ancient (read Hindu) India and denigration of the medieval period (read Muslim) is being reproduced in popular literature - cartoon strips, children's stories, television serials and social and mainstream media.

With the BJP returning to power in 2014, the communal fabrication of history with its implications for homogenization has started again and is rapidly spreading to other disciplines including the sciences. This organized effort to promote a history and worldview inimical to pluralism and an inclusive Indian identity is having repercussions in marginalizing minorities.

*... Good practice case study continued ...*

relief. Wakf boards are expected to help the women after this period but they say that they lack funds. Organically connected with this, Muslim women also face discrimination, at least in the present context of the interpretation of Sharia law, in Muslim men's right to polygamy and oral divorce.

Yasmin Khatoon, 32, a graduate from Kolkata, was orally divorced when her elder daughter was 6-years-old and her younger daughter was just six months old. Twenty-year-old Mumbai resident Sumana's five-month long marriage ended in an unfortunate oral talaq. In both the cases the women were denied any alimony, not even the three-month maintenance stipulated by Muslim Personal Law. BMMA claims that Yasmin and Sumana are not isolated cases. Asma from Jaipur left her family and converted to Islam to marry the man she loved. But instead of providing her a home, he pronounced triple talaq and tried to grab her house.

Another case is of Farida whose husband gave her a talaq on the grounds that she wore spectacles. It is, of course, ridiculous to hear instances of Muslim men divorcing their wives through letters, on telephone, Facebook, WhatsApp and other social media.

The real success of BMMA lies in its ability to connect to this vast majority of the destitute population. It is no wonder then that Yasmin, Asma, Farida, Sumana and many others are among the 70,000 members of the eight-year-old Andolan. The Andolan meticulously meets people throughout the year by taking up some activities. Without public meetings and continuous awareness programmes, the Andolan could not have taken up the issue to reform the Muslim Personal Law. From a 2011 report it can be seen that all the state units were busy in mobilizing women and creating public awareness through campaigns. Mention should be made of the public meetings organized by the BMMA unit in Uttar Pradesh where the issue of codification was discussed with the participants. The focus was on reforms pertaining to polygamy and halala.

In another public meeting organized by the Khajuraho district unit in Madhya Pradesh, this issue was discussed with members of the organizations working in the area. More than 500 women attended this meeting where rights of women in Islam were also discussed. A draft was prepared for codification which was circulated among different experts to seek their opinions. In Odisha and Uttar Pradesh,

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### ***Minority educational institutions***

Many believe that the most important minority right is contained in Article 30 – the right of minorities to establish educational institutions. While most rights conferred on citizens refer to all religious communities, minorities in particular are extended the right to manage educational institutions to provide for religious education in such institutions and to receive aid from the state to run these institutions. Article 30 is aimed at helping religious and linguistic minorities preserve their unique culture and identity, something that they can do by establishing institutions for this purpose. But just as the Constitution provides, it also takes it away. Restrictions have been placed on Article 30 through the provisions under Article 29 (2), which prohibit any citizen from being denied admission in any educational institution maintained by or receiving aid from the state, on the grounds of religion, race, caste or language.

Multiple judicial re-interpretations of particular provisions have resulted in weakening the right. The Supreme Court, in its judgment in the St. Stephen's College case (1992) placed a bar on the percentage of students that a minority institution could take from its own community at 50 per cent. The purported purpose was to promote national integration. Observers criticized this judgment, arguing that similar logic is not applied to reserve seats for minorities in non-minority institutions. According to them, the restriction placed amounted to placing the entire burden of national integration on the minorities. Another Supreme Court judgment, this one in the case of the TMA Pai Foundation (1997) was according to observers an unmitigated disaster for minorities (Nariman, 2014:44). The judgment had the outcome of watering down Article 30. Originally, the right of minorities to establish educational institutions was equated with the fundamental right granted to religious and linguistic minorities under Article 19 (to practice any profession, occupation, trade or business) as an unrestricted fundamental right. The re-interpretation of the right in the TMA Pai Foundation case, led to 'reasonable restrictions' being placed on the right through invoking Article 19 (1) (g). Recent attempts by the Government of India to bring in dispute the 'minority character' of Aligarh Muslim University (AMU) and Jamia Millia Islamia (JMI), two national institutions identified with Muslims, is the determined move of the state in the same direction (The Wire, 2016).

Clearly, the plural character of the Indian state, guaranteed in law, is still to be realized in practice and indeed, the secular character of the state is coming under increasing attack.

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the BMMA units took the initiative independently to call the lawyers for consultations. All these activities seem to suggest that the call to reform the Muslim Personal law could not have taken place without the active support and engagement of the large mass of the population.

The Andolan realized this from its early days and hence one can witness a thrust on mobilizing larger public opinion for reform in Muslim personal law. Most importantly, in its struggle to reform the law BMMA has gone beyond its usual circle. BMMA started collaborating with other like-minded organizations to come up with a common draft. Hence, a joint meeting was held between the Centre for Study of Society and Secularism and BMMA. In 2011, the draft of the Muslim family law was sent to experts for their opinions. The Muslim Lawyers Association, Majlis and AIDWA were also approached for their opinions and cooperation.

How exactly does BMMA function to reform Muslim Personal law to protect women? What is the source of its understanding that many Muslim women want a reform in the Muslim personal law? Or is it something that has been cooked up by the organization's chiefs? In order to understand the hardships of people like Sumana and Yasmin, the Andolan embarked upon completing a task across different states that required some intense surveys to come to some fundamental conclusions related to issues such as marriage, divorce, maintenance, custody of children and the traditional oral talaq. One such national study on Muslim women's views on reform in the Muslim personal law was released on 20 August 2015 in Delhi by the organization. This study was conducted across 10 states. As part of this study, 4,710 Muslim women were directly surveyed.

Another national survey called No More Talaq, Talaq, Talaq: Muslim Women Call for a Ban on an UnIslamic Practice was released at the 9th Annual Convention of BMMA held in Delhi on 6 November, 2015. This report carries case studies of over 117 Muslim women who have been victims of triple talaq. The report unhesitatingly highlights that an overwhelming majority of the respondents want a reform in the Muslim personal law in matters related to polygamy, marriage, divorce etc. (dna.com; *The Hindustan Times*, 2015). The survey, while bringing out the reality, is not the single factor that led to a reform in the law. A re-interpretation of the Quranic principles was also important that gave BMMA a basis on which they demanded a reform. In this connection, the knowledge and opinions of established

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## Conclusion

In a special debate in Parliament in November 2015 to commemorate 65 years of the adoption of the Constitution (in the Constituent Assembly in 1949), a senior leader of the ruling BJP, raised issues with 'secularism', noting how it had become the most misused word in Indian politics, arguing that the time had come to end such misuse (*The Hindu*, 2015). Earlier, in an advertisement released by the central government on the eve of Republic Day, the word secular had been edited out from the Preamble of the Constitution. Some claimed that this was a mischievous attempt by the ruling BJP to test waters in an attempt to undermine secularism (Punyani, 2015). Hindu nationalists have for long resented the secular aspects of the Indian Constitution and by extension of the Indian state. For a senior government minister to say so in a formal debate in Parliament was however a first. BJP and its associates have sought to force their Hindu majoritarian views in the past too. In its last stint in power at the centre, the BJP-led National Democratic Alliance (NDA) government had sought to push for a review of the Constitution, many claim with an eye to changing its secular character, among others.

The only reference to secularism in the Constitution is in its Preamble inserted only in 1976. But the provisions that have existed from the beginning, emphasizing religious freedom, freedom of conscience, equality and non-discrimination, leave no doubt about the Constitution's secular character. In the circumstance, NDA's plans for a major surgery of the Constitution came a cropper. But what has endured is the Hindu nationalist parties' commitment, as evidenced by their statements and actions from time to time to transform India from a plural country founded on secular principles to one that clearly has a Hindu imprint offering only second-class citizenship to its many minorities.

The tension between the current plural-secular character, written in law and that desired by a powerful section of the political community to see India as a Hindu *rashtra* (nation) is growing. These tensions came to a head recently with the BJP coming to power at the centre with a clear majority thus enabling an avowedly majoritarian party for the first time in independent India to be in a position to change laws governing majority-minority relations, the role of religion in matters of the state and such like. These are no mere threats – in states, as well as at the centre, where it has been possible for BJP and its allies to introduce Hindu cultural principles and practices they have done so, as we saw in the case of special Hindu prayers

... Good practice case study continued ....

experts on the *Quran* were also drawn on. However, there was opposition from the Muslim Personal Law Board. As a response, BMMA circulated documents, re-interpreting the Quran and drawing on different sources/writings of famous scholars, detailing issues like triple talaq as non-Islamic.

However, if not among Muslim leaders, the Andolan's acceptability is ever growing in the country, as is evident from the recent meeting organized by the AMU Teachers' Club on Women's Day where one of the founding leaders of BMMA was invited. In her speech Ms Zakiya Soman shared her experiences of working with Muslim women and the necessity to reform the Muslim Personal law in a patriarchal setting; her speech was well accepted. BMMA, as part of its agenda to reform the personal law on different issues that shape a Muslim woman's life, has written to Prime Minister Narendra Modi demanding codification of the Muslim Personal law to end discrimination against women (*The Hindustan Times*, 2015). Though we are yet to see any change in the Muslim personal law's framework, the relentless call to reform coming from one of the most deprived sections within the community is growing which might draw policymakers' attention to call for a review of the law in the future.

### **Qazi training: Challenge to the patriarchy**

BMMA has also formed the Darul Uloom Niswaan (DUN), a centre for Islamic learning and theology. As part of this initiative, DUN has started training women qazis. The initiative began in Jaipur with a group of 30 Muslim women who have embarked on the journey of becoming qazis. Candidates from across different states such as Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Tamil Nadu, Karnataka, Bihar, West Bengal and Odisha have so far undertaken two modules of three-day each. During its work in different states over the last 10 years BMMA has observed that owing to ignorance about Quranic injunctions there is widespread practice of triple talaq and halala in spite of there being no Quranic sanction for them. This is a way of challenging the male dominated interpretation of Muslim law. One of the objectives is to impart Islamic teachings that talk of gender justice principles.

The candidates have been given training in Quranic injunctions pertaining to marriage and family, personal laws in Muslim countries, the Constitution of India and the basics of Indian and global jurisprudence pertaining to gender justice and equality. Apart from this

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introduced through a government fiat in public and private schools in Madhya Pradesh and Rajasthan, both ruled by the BJP. Perhaps what is preventing a complete overhaul of the constitutional framework and the breaking up of the plural arrangement is rules of the game that disallow changing the 'basic structure' of the Constitution something defended jealously by constitutional courts. Some observers, however, believe that it is the Hindu underpinnings of the Indian Constitution, as it exists already, that make it possible for Hindu majoritarian parties to continue to have the resonance that they do among citizens and keep the pot boiling, so to speak. They contend that the secular foundations of the Indian republic are shallow.

Pritam Singh (2005) has argued, and many have concurred (Perry Anderson, 2012, among them), that 'despite the many admirable and historically progressive features, the Indian Constitution has many elements of retrogressive Hindu bias in it.' Singh (2005: 921) further argues, 'recognising the Hindu bias in India's constitution helps to show that Hindutva in India is widespread and deeply rooted and goes beyond what is represented by the Hindutva group of organisations known as the *Sangh Parivar*.' He goes on, 'this Hindu bias must be seen in the larger context of the continuation of Hindu bias in the national movement for India's independence. The rise of Hindutva forces can be considered more a continuation and deepening of that bias than a rupture with it' (Singh, 2005: 2).

- i. The bias according to Singh, starts with Article 1 of the Constitution, naming India as *Bharat*, a decision arrived through a compromise between the then ruling Congress party and a Hindu *sanyasi* who went on hunger strike for the adoption of *Bharat* (in place of India) (Singh, 2005: 911). *Bharat* has Hindu overtones. Article 1, according to Singh, also hints at another compromise to Hindutva forces – the choice of union, in place of federation, as a system of governance, a choice favoured by Congress, but particularly by Hindutva parties, standing for a Hindu, Hindi India that battled for a strong centre in place of a federation favoured by other parties, prominently Muslim League, but also Sikh parties and those representing the southern provinces in the Constituent Assembly (Singh, 2005: 914).
- ii. Article 25 (freedom of conscience and of free profession, practice and propagation of religion) provides another instance, according to Singh, of a Hindu bias, with Section 2 (b) expressing special interest of the state in favour of 'social welfare and reform' of Hindu religion. Singh clarifies: 'It seems that the overriding concern behind these social reform mea-

*... Good practice case study continued ....*

they have been trained in preparing elaborate nikahnamas, conducting a nikah and divorce procedures as per the talaq-e-ahsan method found in the *Quran*.

However, the journey has not been smooth as can be seen from different reports and incidents. Different Muslim religious organizations like the All India Muslim Personal Law Board and the Jamait-Ulema-i-Hind have objected to the very idea of women qazis. In another instance, two women, Jahan Ara and Afroz Begum who became qazis came under verbal assault from different quarters of society. But the training proved to be productive as these two women qazis are not worried by the assault. Jahan Ara commented, 'I have been working for Muslim women since a long time. I understand their daily trials and tribulations, and I realise there is a need to view issues in the Muslim community from women's perspective.' In an identical line, Afroz defended Quranic teachings of equality and commented, 'People are opposing us but nowhere in Quran it is said that a woman can't be a qazi. True, women can't be Imams (one who lead prayers in a mosque), but they can be qazis and help women' (Yasmin, 2016).

## **Important features of the Andolan**

It appears from BMMA's note, 'Bharatiya Muslim Mahila Andolan: Justice, Equality, Wisdom, Compassion, Freedom' that it works both at the local and pan-Indian levels. The essence of the training and conducting surveys bear testimony to a fine collaboration between the local and national levels. In fact, it will not be an exaggeration to say that the crux of its advocacy power at the policy level lies in the sheer number of its members – 70,000. What is even more important is that common Muslim women, defying the patriarchal notion of a traditional Muslim family (of course not everyone belongs to the highly orthodox, oppressive family structure), have come out to become a part of the Andolan that calls for a transformation of the traditional understanding of Islam and putting forth a more humane face of the religion. The intense network of BMMA workers in different states is helping in making this possible.

## **Lessons learned**

After talking to Ms Zakia Soman, the following points can be mentioned as the lessons that can be drawn on. BMMA is a Muslim women's organization but it has been able to successfully break down the patriarchal 'stereotype' of the Muslim community. BMMA's working

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asures was to prevent the exodus of the dalits from the Hindu fold.’ This, he concludes was an instance of active state intervention to consolidate the Hindu identity (Singh, 2005: 915). In any case, Explanation II of the article (situating Sikhs, Jains and Buddhist under the wider Hindu category) reflects a Hindu assimilationist perspective towards these communities in India. We have seen in our own assessment elsewhere of this formulation of Hindu, how the definition favours the majority faith at the expense of other ‘non-indigenous’ faiths.

- iii. There is also Article 48, a Directive Principle that urges the state to, among other things, endeavour to prohibit the slaughter of cows and calves and other milch and draught cattle. Insertion of this clause, according to Singh (2005: 917), is ‘an unmistakable reflection of the religious preferences and powers of the dominant upper caste Hindus among the constitution makers.’
- iv. Finally Articles 343 and 351, on Hindi in Devnagiri script being adopted as the official language of the union and the directive to develop the Hindi language respectively. According to Singh (2005: 917), ‘the importance accorded to Hindi language and especially to the Devnagiri script and the Sanskrit language in the constitution reflects the strong pro-Hindi and pro-Hindu bias of a very powerful section among the constitution makers.’

In this formulation, it is these Hindu underpinnings of the Indian Constitution, despite its clear progressive elements that seem to have compromised the essence of secularism as it affects citizens – equality and non-discrimination and also why minority rights in India have been interpreted as being mostly about cultural autonomy, with little to show on effective participation of minorities – in decision making at the national and local levels. Our own conclusion, drawn from an empirical analysis in the previous sections about the poor ability of the law to enforce equality and non-discrimination, echo these arguments. Clearly mere claims of secularism and multiculturalism are not going to go far enough, as evidence shows already. Without clear cut safeguards and a strong regime of anti-discrimination it will be difficult to ensure effective realization of minority rights in India.

## **Some other general conclusions**

- a. A survey of the state of religious minorities in India across the four minority rights,<sup>13</sup> makes it clear that there is great variation in how religious

... Good practice case study continued ...

pattern shows that it seems to have grasped the intersectionality between gender, religion and patriarchy as a first step in building a struggle. Through its on-going struggle, BMMA has tried to portray a new face of the religion. Despite being a minority, BMMA works within constitutional provisions. The emphasis on *jiski ladai uski agwayi* has been a good guiding principle. The organization has been able to bring in several Muslim women as social leaders as well as change makers in their personal lives. The working pattern and the all-India nature of the campaigns confirm that the campaigns are grounded in various local contexts, which enables maximum participation of women.

BMMA as an independent civil society organization points out the need to stay away from political parties as such an influence can affect ground level activists/activism. In mobilizing and working for the minority community, BMMA has engaged with the media in a sustained way but has not succumbed to the ideas/ideologies of media houses.

minorities perform on these four parameters. *Table 20* tries to plot the concerns that specific minorities have on the count. Clearly Muslims, besides Christians and Buddhists, especially those from backward sections, suffer the worst disabilities.

- b. Availability of data disaggregated by religious groups is a big challenge to the effective monitoring and tracking of minorities' performance. There is little systematic tracking and reporting of the state of minorities and rights violations in the country. The National Commission for Minorities and the union Ministry of Minority Affairs, the principal institutions for realizing minority rights in the country, produce poor reports. Besides that there are occasional, stand-alone and limited studies of which the Sachar Committee, Ranganath Mishra Commission and Kundu Commission reports are the principal official ones. There is also little non-state effort as most of it is around violence and some socio-economic rights. The Sachar Committee had proposed the setting up of an agency to collect and analyse data by socio-religious groups. The central government responded to this recommendation by announcing

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13. Of life and security, Socioeconomic rights, Participation and Identity and culture.



**Table 20. Minorities and their denials**

	Life & security	Socioeconomic	Participation	Identity& culture
Buddhists	✓	✓	-	✓
Christians	✓	✓	-	✓
Jains	-	-	-	✓
Muslims	✓	✓	✓	✓
Parsis	-	-	-	✓
Sikhs	✓	-	-	✓

Source: Anwar (2000:112).

the establishment of the Assessment and Monitoring Authority (AMA). But AMA has been a non-starter (Government of India, 2014b). One of the few official data to be made available to the public is police data published by the National Crime Records Bureau (NCRB). Since 2009, NCRB has been reporting prison data of detainees, under-trial prisoners and convicts by religious and other groups for each state. Similarly, it has reported the share of minorities in police forces in each state. It was reported recently that the government had decided to stop reporting even this data (*The Indian Express*, 2015).

Lastly, a quick word about the National Commission for Minorities (NCM) – the principal national institution for the protection and promotion of rights of minorities in India. Set up in 1978, NCM was granted constitutional status in 1993. But it has done little to develop the condition of minorities which was its charter (Rahman, 2002). The other national institution for promotion of pluralism, the Prime Minister-chaired National Integration Council, has also been a non-starter in either promoting the rights of different sections or preventing discord between social groups (Srivastava, 2013).

## Recommendations

Here we propose some tentative recommendations

For state parties:

- Data disaggregated by religion on life and security and socioeconomic rights and working of laws and programmes, collected and reported publically to enable effective tracking and documenting of

outcomes for minorities. The Assessment and Monitoring Authority set up to better record outcomes for excluded groups must be revived and strengthened and the scope of its data collection, tracking and dissemination must be expanded to include all minority rights. Or alternative arrangements be made to realize the goal of standardized data disaggregated by religious groups, available periodically, to aid in tracking.

- The Justice Ranganath Misra report (Government of India, 2007b) recommended that SC status should be delinked completely from religion, as it is in the case of STs thus proposing amending the presidential order of 1950 to include Muslim and Christian Dalits under the category of SCs. Various studies, notably by NCM, have proven the case for inclusion of Dalit Muslims and Christians within the SC category. The government must pursue the public interest litigation (PIL) with regard to extending reservations to Indian Christians being considered by the Supreme Court and include Dalit Muslims in it.
- The civil service, police and armed forces must reflect the diversity of society, especially at the frontline where the state comes in contact with citizens. The government must promote greater minority representation either through affirmative action policies or a strong programme of recruitment and coaching, much stronger than the current support programmes. This must be a time bound action plan.
- Demands for reservations for minorities in jobs and educational institutions must be expeditiously looked at by the Supreme Court and the government in power. The Ranganath Misra report recommends 15 per cent reservation of seats in non-minority educational institutions by law for minorities (10 per cent for Muslims and 5 per cent for other minorities).
- The Election Commission and political parties must proactively address the issue of low minority political representation, especially of Muslims in elected bodies – Parliament and state assemblies. Political parties must put forward more minority members as their candidates; and Parliament must look into the question of delimitation of constituencies to allay fears that they do not prevent minorities from better representation.
- There is need for greater accountability of law enforcement agencies and better rule of law so that the guilty are punished and justice done in cases of mass violence.

- The Parliament must re-examine special laws such as AFSPA and UAPA and their implementation, besides scrutinizing institutions governing them so as to ensure greater accountability of state actors in an effort to prevent systematic violations of human rights.
- Improved design, management and audit of pro-poor programmes ('universal' and 'minority') for excluded minority communities. The 15-Point Programme has been a damp squib. There have been demands for a minority sub-plan. The nub of the demand is better targeting (both who and what) and improved results.
- The National Commission for Minorities (NCM) must act more proactively as a body defending and promoting minority rights. It needs to be made more autonomous and free of government interference for it to act as a true defender of minorities. It should also work across institutions such as the National Human Rights Commission, the National Commission for Women and such like to ensure that minority rights are mainstreamed in those fora too.
- A policy decision to include a section of 'SC converted to Buddhists', which will only take count of SCs over 17 per cent and legislation on SCSP/TSP to prevent denial of due share to Dalits and Adivasis.

For civil society:

- Tracking and documenting outcomes as well as processes so as to create a body of evidence to both hold the state accountable and to educate the public on conditions of minorities.
- Greater focus on rights of minorities in their programming through mainstreaming minority rights.
- Public education and advocacy on minority rights including through use of media. This should include moving away from representation of minorities focused on identity issues to those on rights and their denial.
- Creating cross-minority/cross-excluded group platforms for minority and human rights, for solidarities, experience sharing and pro-poor/rights-based advocacy.
- Creating policy and grassroots capacity for minority rights/defenders and activists through documenting, creating awareness, organizing, project implementation and advocacy. This to enable policy changes to be translated in reality on the ground affecting the lives of minorities. The capacity of the grassroots' community is the big

missing link in minority rights work and without attention to this element the results on communities will remain but a pipe dream.

For minority communities:

- Working across minorities: creating minority-wide platforms, learning from each other, developing advocacy together on common issues of concern (violence against minorities, minority programmes, minority educational institutions, changes to the 1950 presidential order).
- Developing positions in thematic areas: not all minorities are affected in all domains (violence, socioeconomic rights, culture).
- Community mobilization, developing local leadership/a robust and progressive civil society at the grassroots.
- Ensuring that rights-based approaches also structure intra-community work seeing to it that minorities within minorities are equally protected and their rights defended.
- Connected is the point about developing community led organizations/community based organizations (CLOs/CBOs) of minorities to develop community capacity that have a clear rights base focus and agenda.

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## Chapter 4 Nepal

# A Country of Minorities

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It is commonly asserted that Nepal is a country of minorities because it is home to 125 different caste/ethnic groups who speak 123 recognized languages, follow 10 different religions and live in three distinct ecological zones (CBS, 2012). Geographically, the population is distributed into two near equal groups of those living in the southern Tarai plains and those living in the hills and mountains, but there is no majority group in terms of caste/ethnicity or language. Hindus, however, form a majority at 81 per cent of the population although there are great internal variations in terms of caste/ethnicity and language among those who profess Hinduism.

The historical trajectory of the country has given rise to a dominant minority in the form of hill-origin, upper-caste groups, now called the Khas-Aryas, comprising 31 per cent of the population. The other macro-ethnic categories of Dalits, Adivasi Janajatis and Madhesis are in a subordinate position vis-à-vis the Khas-Aryas but at the same time the Janajatis and upper-caste Madhesis exhibit similar traits of dominance towards Dalits.

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These different groups are spread across Nepal and there are only a few areas where any one of them is in a majority. There are also significant overlaps between and among these groups. For instance, there are Dalits who are also Madhesis while there are also a significant number of Janajatis whose origins, along with those of the Madhesis, are in the Tarai (plains) belt of Nepal (CBS, 2012). Despite this diversity, large sections of the population are either inherently marginalized, like Dalits; historically denied access to influence, like the Adivasi Janajatis or ‘indigenous nationalities’; or not considered full citizens of Nepal, like Madhesis (DIFD, 2006). There are also religious minorities who, too, have been marginalized due to their religious identity such as Muslims nearly all of whom face exclusion like Madhesis (Sijapati, 2012) and, more recently, Christians.

There is no universally accepted definition of minorities, but the one that has received wide circulation was provided in 1977 by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-commission on Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (United Nations Human Rights Office of the High Commissioner 2010).

In Nepal, the term ‘minorities’ was used for the first time in the 2007 Interim Constitution<sup>1</sup> to denote groups requiring special protection from the state.<sup>2</sup> The Constitution of Nepal 2015 also uses ‘minority group’ and ‘minorities’ for the same purpose but has expanded the number of such groups.<sup>3</sup> Unlike the 2007 Interim Constitution, however, the 2015 Constitution actually defines what constitutes a minority:

1. Nepal has enacted seven constitutions so far in 1948, 1951, 1959, 1962, 1990, 2007 and 2013.
2. Article 35(14) of the Interim Constitution of Nepal 2007 lists them as: ‘landless squatters, bonded labourers, persons with disability, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes (Adivasi Janajati), Madhesis and Muslims’ Source: [www.lawcommission.gov.np](http://www.lawcommission.gov.np). Activists prefer ‘indigenous nationalities’ as a translation of ‘Adivasi Janajatis.’
3. Namely, ‘socially or culturally backward women, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya,’ [www.lawcommission.gov.np](http://www.lawcommission.gov.np).

**Table 1. Groups Identified as Minorities for this Report**

Groups	Population
Adivasi Janajatis (Mountain, Hill and Tarai)	35.8 per cent (26.1 per cent Hill-Mountain Janajatis and 9.75 per cent Tarai Janajatis).
Madhesis	Including the Tarai Dalits in this category, Madhesis constitute 19.23 per cent of the total population of Nepal. If Tarai Janajatis are included as well, it would be 28.97 per cent. Excluding Tarai Janajatis and Tarai Dalits, the rest of the Madhesi population is 14.77 per cent of the population.
Dalits (Madhesi Dalits and Hill Dalits)	12.58 per cent (8.1 per cent Hill Dalits and 4.5 per cent Tarai Dalits).
Muslims	4.4 per cent.
Christians	1.4 per cent.

Source: Groups taken from Sharma (2014), Sharma (2008); CBS(2012).

Note: The Census figures are generally contested by all the minority groups listed in the table, with each claiming a higher share of the population.

4. 'Part - 34, Definitions and Interpretations,' The Constitution of Nepal 2015.
5. The 2015 Constitution also used the terms 'minority/minorities' and 'marginalised' consistently in tandem, providing further cause to equate 'marginalised' with 'minority' in the case of Nepal.

[E]thnic, linguistic and religious groups whose population is less than the percentage specified by the Federal law, and includes groups that have their distinct ethnic, religious or linguistic characteristics, aspirations to protect such features and subjected to discrimination and oppression<sup>4</sup>.

At the time of writing this report it was not clear which of the 125 caste/ethnic groups would qualify as a 'minority'. However, following a UN document on minority rights that states that the main requirement to be counted as a minority group is to be in a non-dominant position (United Nations Office of the High Commissioner, 2010), this chapter uses this definition to consider the country's ethnic, linguistic and religious groups – Dalits, Janajatis, Madhesis, Muslims and Christians –all of whom are in a non-dominant position in one way or another (see Table 1).<sup>5</sup>

## Historical context and constitutional provisions

The modern state of Nepal was created by Prithvi Narayan Shah in the mid-to-late 18th century. Its consolidation during the Rana regime (1846-1951)

was based on the organizing ideology of the Hindu caste system and national integration was attained through a default ‘unification’ of diverse groups. As a unifying framework, the caste system codified in the Muluki Ain (National Code) of 1854, subsumed the different languages, customary laws and religious, social and cultural traditions found in the country into one overarching framework informed by Hindu religious law. Further, it also ranked the different social groups in Nepal according to Hindu concepts of ritual purity and pollution, thus institutionalizing inter-group discrimination and marginalization (Gaige, 1975).

Nepal has undergone major shifts in its constitutional and legal framework since the end of the Rana rule, starting with the abortive 1948 Constitution by the dying regime and through the Constitution of 2015. It took until the 1990 Constitution, when the country shifted from an autocratic monarchy-based system to a multi-party democracy, for statutory recognition of Nepal’s great socio-cultural diversity as well as the inherent inequities inherited from the past.

### ***The 1990 constitution***

The 1990 Constitution declared Nepal a ‘multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu, Constitutional Monarchical Kingdom’ and granted ‘equality before law and equal protection of law.’ It made special provisions to secure the interests of ‘women, children, incapacitated persons or those who belong to a class of socially, economically and educationally backward groups.’<sup>6</sup> Despite these positive developments, the Constitution contained provisions that were discriminatory towards different groups. For instance, Hindu statehood was retained,

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6. Hence, Article 26(2) stated: ‘The State shall...pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.’ Likewise, Article 26(10) stated: ‘The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.’ But the 1990 Constitution had no reference to Dalits, Adivasi Janajatis and Madhesi as historically marginalized groups. Because of the absence of any specific reference to these groups, a case was filed in the Supreme Court against the affirmative action policy of the government relating to a scholarship grant for higher education. The dispute arose because it was claimed that Dalits and Adivasi Janajatis were not clearly mentioned in the 1990 Constitution as the targeted beneficiaries of the policy. There was only a vague provision of special measures for those who were economically and socially backward. Since no law had been enacted pursuant to this provision the policy was challenged. The Supreme Court issued a directive order in 2004 for the enactment of a law to implement the provision for affirmative action.

privileging Hindu norms and values; Nepali language was declared the language of the nation even though other native languages were to be allowed in schools up to the primary level. Hence, though Articles 11.2 and 11.3 mentioned religion, race, sex, caste, tribe or ideological convictions as the bases for non-discrimination, language was not mentioned. Further, Article 112.3 restricted the mobilization of socio-cultural groups for collective welfare and empowerment and constrained political choices (Lawoti, 2005).

### ***The interim constitution 2007***

The Interim Constitution (IC) of 2007 marked a significant departure from the 1990 document. One of the key objectives of IC, which itself had emerged from the Comprehensive Peace Agreement (CPA) between the state and the Maoists after a decade-long conflict, was the commitment to progressive restructuring of the state. As a result, IC declared Nepal to be a secular,<sup>7</sup> democratic, federal state in an attempt to address the ‘problems’ that the state had been facing on the basis of class, ethnicity, religion and gender while undertaking ‘an inclusive, democratic and progressive restructuring of the state.’<sup>8</sup> Its 4th amendment in May 2008 abolished the monarchy and declared Nepal a federal republic. Similarly, IC also emphasized the need to strengthen national unity by maintaining cultural diversity through the promotion of healthy and harmonious social relations. It also explicitly recognized Dalits, Adivasi Janajatis and Madhesis as historically marginalized groups requiring special treatment from the state.<sup>9</sup>

The Fundamental Rights enshrined in IC were: right to life; right to a (criminal) justice system; right against preventive detention; right against torture; right against exploitation; and right against exile. The provisions relating to inclusion incorporated in IC were: right against untouchability and racial discrimination (Article 14), positive discrimination for Dalits, women, indigenous/ethnic groups, Madhesis, farmers and other socially and economically marginalized communities (Article 13[3]); and proportional

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7. Nepal was declared a secular state in May 2006 following the Second People’s Movement against a monarchy that had usurped power in the previous years.

8. Preamble, Part 1, Article 3, 5; Part 3, Article 13, 14, 1; Part 4, Article 33, 35 (3); Part 7, 63 (3.a) and (4.5); Part 16, Article 142 (4), Part 17, Article 138 of the Interim Constitution of Nepal 2063 (2007).

9. The 1990 Constitution recognized the existence of different ‘communities’ in the country when dealing with the right to culture and education (Article 18), different ‘denominations’ when dealing with the right to religion.

representation of women, Dalits, Madhesis, indigenous/ethnic groups and other oppressed groups in the state structures (Article 21).

### ***Constitution of Nepal 2015***

The latest Constitution of Nepal was promulgated on 20 September 2015 only to be immediately contested by the Janajatis and Madhesis, giving rise to a prolonged agitation in the Tarai. The major issues of contention were a demand for more proportional representation (PR) seats, demarcation of electoral constituencies on the basis of population, re-organization of the proposed federal units and amending discriminatory citizenship laws, along with the demand that past agreements between the government and different groups be honoured. Compared to IC, the 2015 Constitution reduced the proportion of PR seats in Parliament from 56 per cent to 40 per cent while the issue of proportional inclusion was not mentioned in the case of accommodating minorities in different state structures. As a response to the Tarai agitation, the Constitution was amended in January 2016 and the principle of proportionate inclusion in state bodies (Article 42) was introduced while the demarcation of electoral constituencies would consider population as the main basis and geography as the second point (Article 84).

## **Methodology and data collection**

This chapter looks at the state of Nepal's minorities in a historical context and examines the last three constitutions of Nepal that can be considered relatively inclusive: the 1990 Constitution, the Interim Constitution of 2007 and the 2015 Constitution. It analyses how the current Constitution measures up to international standards vis-à-vis minority rights. Using publicly available data, it delves into specific themes:

- i. Right to life and security with a focus on the criminal justice system;
- ii. Right to non-discrimination and equality by looking at indicators of socioeconomic attainments in education, health, poverty and employment;
- iii. Right to participation, providing an overview of the representation of minorities in national government institutions; and
- iv. Right to culture and identity with an overview of the denial and attainment of identity and cultural rights.

The information presented in this chapter is derived from sources such as national censuses and surveys as well as human development reports

from different years to provide a comparative perspective on the status of each group. Data on representation in various state organs was collected from the respective bodies and also from reports from organizations working on minority issues as well as other available literature.

## **Limitations**

A study of minorities is inherently complex, particularly in a country like Nepal that is home to numerous minority groups, which have not yet been recognized as such. A major challenge was the difficulty in obtaining caste/ethnicity and gender-disaggregated data on the various indicators considered. Lack of standardized data on violence did not allow for a systematic study in comparative terms. The biggest limitation, however, is the absence of almost any kind of data on Christians. Nepal's rapidly changing political context was also challenging, particularly since it had a direct bearing on the content of this chapter.

## **Right to life and security**

Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) provide for right to life and security of every individual and protection against arbitrary arrest, detention or exile. These principles were subsequently translated into Article 9 of the International Covenant on Civil and Political Rights (ICCPR). These reminders are especially relevant for post-colonial regions like South Asia where the debate on human security has remained at the level of rhetoric and has not fed into policymaking even as groups demanding a more people-centred conception of security have challenged its 'military-centred' conceptions (Bajpai, 2000). In particular, struggles to re-define nationalism vis-à-vis increasing ethno-nationalist demands and the radical redefining of structural arrangements in Nepal have resulted in the 'securitization' of the state and the failure to institutionalize people-centred policies and bringing human security to the fore. The state has invested the security forces with unprecedented power, resulting in the abuse of power at the cost of suffering of the most marginalized.

## **Structures and functions of the criminal justice institution**

All three constitutions—1990, 2007 and 2015—guarantee the right to justice to all citizens and require anyone detained to be informed about the grounds for arrest as well as be produced before a court of law within 24



hours of the arrest. Article 14(4) of the 1990 Constitution provided protection against torture, and even though it mentioned compensation to the victim it was silent on punishment for perpetrators. Nepal also acceded to the United Nations Convention against Torture in 1991, and Article 26 the Interim Constitution and Article 22 of the 2015 Constitution provide for the 'right against torture'; they also say that any such act would be punishable by law and the victim would have the right to compensation.

At the same time, there are multiple shortcomings in Nepal's criminal justice system that not just promote impunity and foster human rights' abuses but also stand in contravention of the spirit of all the three constitutions. Some of these include extant legal provisions from an authoritarian past. For instance, Section 22 of the 1989 Public Security Act (PSA) grants immunity to state officials for any acts committed 'in good faith' in the course of their duty. PSA allows people to be held in preventive detention for up to 90 days on the orders of a local authority, which is normally the Chief District Officer (CDO). This period can be extended to six months with permission from the Home Ministry. Likewise, the equally draconian Anti-State Crimes and Penalties Act 1989 (ASCPA) contains provisions that are in clear breach of the Constitution as well as international obligations such as ICCPR (Amnesty International, 2003).

Nepal has not yet defined what constitutes crimes against humanity and extrajudicial killings. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2014, enacted to look into excesses committed during the decade-long Maoist conflict, defines gross violations of human rights but abstains from including provisions in line with the Rome Statute, such as Article 7 that specifies 'crimes against humanity' consisting of, among others, 'imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law' and 'persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.'<sup>10</sup> The 2014 Act only mentions murder, abductions, enforced disappearances, physical and mental torture, mutilations, physical disabilities, rape and sexual violence and any kind of acts inconsistent with international human rights or humanitarian laws or other crimes against humanity. The act, however, also contains provisions for amnesty even in the most serious cases of human rights violations and that, too, without the consent of the victim. These provisions were retained over the objections

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10. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2071; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

of the National Human Rights Commission (NHRC) although with the Supreme Court having nullified some of them it is not clear how the act will be implemented.<sup>11</sup>

The 1959 Army Act contained provisions for a court of inquiry board and a court martial for violations of the act. But nothing in the 1959 Act or any other law requires the army to release full and complete details of court martial proceedings or other such judgments, even if a first information report (FIR) has been filed and the civilian police has commenced criminal investigations on the matter. This has obstructed investigations into alleged extrajudicial executions and other abuses. For instance, in the well-known Maina Sunar case, in which a 15-year-old Dalit girl was killed by the Nepal Army in 2004, the army's refusal to share the findings of the court martial with the police and her family, despite a court directive, is a case in point (Amnesty International, 2013). In another example, in 2015 the Bardiya district police office refused to register FIRs in six cases of political killings during the Maoist conflict, despite a 2014 order from the Appellate Court in Nepalgunj.<sup>12</sup> Similarly, the widespread torture and at least 200 disappearances after arrests by security forces in Bardiya district during 2001 to 2003, in which the vast majority of victims were from the disadvantaged Tharu community, indicates the vulnerability of marginalized groups to atrocities at the hands of security forces (International Crisis Group, 2010). More recently, during the agitation in the Tarai following the promulgation of the 2015 Constitution, more than 50 people, most of them of Tarai origin, lost their lives (Human Rights Watch, 2015).

Although difficult to come by, there is some evidence that members of minority groups fare worse at the hands of the security forces. As a report of the Nepali human rights organization, Advocacy Forum, on the situation in the Tarai details detainees belonging to groups such as Muslims and other Tarai groups are more likely to be tortured while those from Bahun-Chhetri groups are least likely to face the same fate (Kathmandu Advocacy Forum, 2010)

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11. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2071; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

12. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review,' 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

## Grievance redressal mechanisms

As stated earlier, Nepal's justice delivery system faces major shortcomings. Most cases never make it to the courts. Criminal cases reported to the police are most often dealt with by the police itself. Since there is no accountability for failure to investigate cases, there is little incentive for the police to register and investigate cases.<sup>13</sup> Many civil cases are mediated through traditional or informal means, while others do not reach the courts because citizens do not understand the court system, the legal process, or more broadly, their rights as citizens. There has been little systematic education to raise awareness about the role of the courts, how they can protect citizens' rights, or what rights citizens possess. Judicial independence is further hindered by political pressure as well as the general perception that judicial appointments are driven by political partisanship (James et al., 2015).

Confidence in the justice system's institutions is further weakened by the historic exclusion of many groups. The police, courts and government prosecutors' offices consist predominantly of men from 'upper castes' who lack sensitivity towards the social diversity of Nepal. Excluded groups face cultural resistance and structural barriers in entering professions in the judicial sector. While most lawyers begin their careers with unpaid 'apprenticeships', women and men from marginalized groups often lack financial or other means of social support to complete this stage. They find it difficult to break into professional networks dominated by men from the traditionally dominant castes. The judicial sector, hence, does not represent Nepal's social diversity, reducing confidence about fair treatment among the marginalized (James et al., 2009). This situation has, however, started changing with the provision of reservations in government service since 2007, but its impact is yet to be felt fully in terms of having such groups better represented in the higher echelons of the judicial service.

Criminal proceedings and decisions by quasi-judicial authorities take place behind closed doors and generally without defence lawyers or by following standardized procedures, public hearings and witnesses. Such practices also impede the process of fair trials. Quasi-judicial authorities such as CDOs and district forest officers (DFO) often do not have even the basic training in legal or judicial matters and are not independent since they are also part of the executive branch of the government (Adhikari, 2013).

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13. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review', 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

There are only limited legal aid services available to disadvantaged Nepalis: the first is where the Supreme Court appoints and supervises a member of the bar as a 'stipendiary advocate' in most courts; and the second, launched under the Legal Aid Act of 1997 and administered by the Ministry of Law and Justice, relies on legal aid committees set up in collaboration with local bar cells in each district to assess legal aid applications and appoint private lawyers to act for those granted assistance. However, both schemes are poorly funded and the absence of a system for monitoring their effectiveness translates into only a low level of assistance to those eligible to use such services (James et al., 2009).

## **Right to non-discrimination and equality**

In Nepal, social and gender identity determine individual and group access to assets, capabilities and voice. In this regard, poverty outcomes, including indicators of economic well-being, human development and voice and political influence reflect the results of discrimination and inequality faced by minorities due to historical and cumulative discrimination and exclusion in Nepal (DFID, 2006). Being party to international agreements such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Nepal has an obligation to right these long-standing inequities since these instruments require ratifying states to grant all people 'the right of self-determination...[to] freely determine their political status and freely pursue their economic, social and cultural development' (Article 1, ICESCR) and to do all it can to eliminate such discrimination (Article 2[2], ICERD).<sup>14</sup>

In 2007, Nepal also became the only country in Asia to ratify the Indigenous and Tribal Peoples Convention 1989 (ILO Convention 169) along with the United Nations Declaration of the Right of Indigenous Peoples

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14. Article 2(2) of ICERD states, 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.

15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

(UNDRIP).<sup>15</sup> However, the National Action Plan on ILO Convention 169 has not been implemented yet and is pending cabinet approval since being drafted in 2009. Likewise, the Committee on Natural Resources, Economic Rights and Revenue Allocation of the first Constituent Assembly had called for inclusion of the provision '[t]o ensure prior use rights to the indigenous, ethnic and other communities in natural resources and their use' in the Preamble to the Constitution ([http://www.ncf.org.np/upload/CA/concept\\_paper\\_Natural\\_Resource.ENG.pdf](http://www.ncf.org.np/upload/CA/concept_paper_Natural_Resource.ENG.pdf)). But the dissolution of that CA meant such provisions calling for greater social inclusion in the Constitution died a quiet death.

On the other hand, the 2015 Constitution has continued to uphold the principles of non-discrimination and equality while the practice of untouchability has been made a punishable offence. In practice, however, the government has not been able to fully safeguard all these rights. Additionally, the 2015 Constitution fails to guarantee collective rights over traditional territory, land and resources in line with UNDRIP and ILO 169, which the Adivasi Janajatis have demanded as inalienable individual rights in the Constitution.

## **Cases of identity-based violations**

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act was adopted by Nepal in 2011. This act states that if any one commits or causes to commit any act of discrimination shall be deemed to have committed caste-based discrimination and untouchability, and is liable for punishment.<sup>16</sup> However, the mechanisms to eliminate such discrimination are not effective and only a few cases relating to untouchability have been lodged in the courts.<sup>17</sup> Most police officers are either unaware that caste-based discrimination is a crime or they are reluctant to file cases in the name of maintaining social harmony and instead tend to pressure victims

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15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

16. Caste-Based Discrimination and Untouchability (Offence and Punishment) Act 2011 (2068). Retrieved from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_190732.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_190732.pdf).

17. 'The NHRI Nepal Joint Submission for The Second Universal Periodic Review of Nepal' submitted to the United Nations Human Rights Council, Geneva, and submitted by the National Human Rights Commission, the National Women's Commission and the National Dalit Commission on 22 March 2015.

to withdraw their complaints. According to one report of the 18 registered cases related to caste-based discrimination and untouchability that reached the courts, none of the perpetrators was sent to jail and instead they were imposed paltry fines with small compensations provided to the victims. In fact, in two incidents the victims were forced to change their cases of physical assault stemming from caste discrimination into cases of slander under the less serious State Case Act 1990 and Libel and Slander Act 1959 (Kisan et al., 2015).

According to the Office of the Attorney General's annual reports, 10 cases related to untouchability were taken to the courts in the fiscal year 2014-15, which represent a decline from the 14 in the previous year (Pun, 2015) and indicate either lack of awareness or foot-dragging on the part of police officials who often cite the absence of rules and regulations to implement the act.

The Nepal Social Inclusion Survey (NSIS) conducted by Tribhuvan University recorded that incidents of violations of the rights and security of Dalits and Muslims took the form of both verbal abuse and physical violence, while psychological abuse was reported to be the highest against Madhesi Dalits, Hill Dalits and Muslims. The latter groups also faced discrimination by being barred from entering private homes (CDSA, 2014a) (*see Box 1*).

## **Socioeconomic status of minority<sup>18</sup> groups**

### ***Multidimensional Exclusion Index (MEI)***

The Multidimensional Exclusion Index (MEI) developed by the World Bank measures the status of social exclusion/deprivation of 80 different caste/ethnic groups<sup>19</sup> along health, income, education and empowerment-related indices. The MEI is a tool developed to measure exclusion using three dimensions; economic life, social services and civic and social participation (Bennett and Parajuli, 2011).

According to the MEI measure, the Chepang-Raji-Raute-Kusunda cluster is the most excluded/deprived in Nepal with a MEI value of 0.53, whereas the Marwaris are the least excluded with a MEI value of 0.04, followed

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18. Details are given in Annex 2. Data on minorities in Nepal.

19. The 80 different caste /ethnic populations are classified into four categories: highly excluded, excluded, included and highly included.

### **Box 1. Setbacks and reasons for hope**

#### *Discrimination against Madhesi Dalits*

The Teacher's Service Commission had announced the fulfilment of the quota of three Dalit science teachers for the secondary level for the country's western region. There were only three applicants for the post, including Gulab Chandra Chamar (a Madhesi Dalit), as evident in the list of applicants provided on the website of the Western Regional Education Directorate. When the results were published, Gulab's name was missing and in his place was someone from a Hill Dalit community. Gulab's application form as well as his examination paper had both gone missing, and when he sought clarifications the officials refused to respond (<http://taraihumanrights.org/Details.php?news=106>).

#### *Caste-based Discrimination*

A couple was banished from their village in Gorkha district for inter-caste marriage. A Dalit boy named Ganesh married Jyoti, a Thakuri (hill high-caste) girl. The Thakuris not only evicted the couple from the village but also all members of Ganesh's family. The couple were to sit for their 12th Grade examination from the village school but were not allowed to do so and Ganesh's brother was also barred from attending school (Singh, 2016).

#### *Justice for Dalits*

There are some instances where some cases have been decided in favour of Dalits. For instance, in the attempted rape case of Maya Sarki in July 2013 in Belbari VDC of Morang, Maya and Manoj Bishwokarma, a local Dalit rights activist were publicly humiliated for accusing a local of a crime. Following investigations by the CDO's office and the Morang district court, in April 2014 the court penalized nine offenders with a fine of NPR 15,000 each (Kisan et al., 2015).

by the Thakalis, Kayasthas, Newars and Hill Bahuns. Musahars are the second-most excluded/deprived group with a MEI value of 0.47.

### **Poverty headcount ratio**

According to the Nepal Human Development Report (NHDR) (2014), poverty incidence or the poverty headcount rate for Nepal was 25.2 per cent. However, as can be expected, poverty levels varied according to social identities and locations—the highest incidence of poverty was among Hill Dalits (43.6 per cent) and Tarai Dalits (38.2 per cent), followed by Tarai middle

castes (28.7 per cent), Hill Janajatis (28.3 per cent), Tarai Janajatis (25.9 per cent), Muslims (20.2 per cent) and Tarai Brahmins (18.6 per cent). Hill Bahuns and Newars had the lowest incidence of poverty at approximately 10.3 per cent.

### ***The Human Development Index (HDI)***

In 2014, Nepal's HDI score was 0.458, the lowest in South Asia apart from Afghanistan.<sup>20</sup> Within Nepal, HDI scores varied significantly between minority groups and the rest of the population. Muslims had the lowest HDI value (0.422), followed by Dalits with an HDI value of 0.434 and Janajatis (excluding Newars) at 0.482. In contrast, the Bahuns/Chhetris had the highest HDI value of 0.557. In terms of intra-group differences, HDI for Madhesi Dalits was lower (0.400) than Hill Dalits (0.446); Tarai Janajatis (0.473) fared worse than Hill Janajatis (0.509).

### ***Education***

According to NHDR (2014), Nepal's adult literacy rate was 56.5 per cent. However, there were significant variations across different groups. The literacy rate of Janajatis overall was 66.93 (Hill Janajatis, 68.45 per cent; Tarai Janajatis, 62.48 per cent). Muslims had the lowest literacy rate (43.56 per cent), followed by Dalits (52.48 per cent) and Madhesi castes (55.49 per cent). Disaggregated further, literacy rates for Madhesi Dalits was only 34.50 per cent, significantly lower than Hill Dalits (61.93 per cent). Although all groups have seen significant attainments in higher levels of education, Hill and Tarai Dalits remained the lowest at the tertiary level with 2.1 per cent each followed by Tarai Janajatis at 3.1 per cent (CDSA, 2014b).

The percentage share of teachers from Dalit and Janajati groups by level and gender was also lower compared to their share in the population. Dalits made up only 4.9 per cent of the teachers at the basic level (Grades 1 to 8) while Janajatis did better at 28.1 per cent (DoE, 2015). The DoE Flash Report does not provide comparable data for other minority groups, although this percentage was much lower in proportion to their shares in the national population at 12.58 per cent for Dalits and 35.8 per cent for Janajatis.

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20. The Nepal Human Development Index (NHDI) measures long and healthy life, knowledge and standard of living. Healthy life is measured by life expectancy, knowledge is measured by adult literacy and mean years of schooling and living standard is measured by the gross national income (GNI) per capita in purchasing power parity.



## **Employment**

According to the 2011 Census Tarai Janajatis (72.9 per cent) had a higher rate of involvement in agricultural-related employment, followed by Hill and Tarai Dalits (69.3 and 69.4 per cent respectively) and Hill Janajatis (66.5 per cent). The figures for Hill Bahuns/Chhetris and Tarai Brahmins/Rajputs were 54.6 per cent and 39.6 per cent respectively and within the Hill Bahun/Chhetri group, the situation of Chhetris at 71.5 per cent was comparable to Tarai Janajatis whereas only 59.2 per cent of the Bahuns were engaged in agriculture (CDSA, 2014b).

## **Health**

The Nepal Demographic Health Survey (2011) showed that people from the Tarai faced greater problems in accessing healthcare despite travel being relatively easier in the region compared to the hills and mountains. Muslim women (86.3 per cent) and Tarai Dalit women (85.3 per cent) faced severe problems of accessibility, followed by Hill Dalits (79.2 per cent) and Hill Janajatis (72.9 per cent). Muslims (318), Madhesis (307) and Dalits (273) had the highest maternal mortality rates (MMR) per 100,000 live births, and while Janajatis (207) also fared better, Bahuns/Chhetris (182) and Newars (105) had the lowest MMR (Government of Nepal, 2013).

## **State programmes**

The 9th Plan (1998-2002) laid the foundation for introducing 'social inclusion' in government programmes and policies. It had a separate chapter on Janajatis with regard to their integration in society and in a first-ever instance it mentioned providing 20 per cent of the employment opportunities in the public sector to women ([http://npc.gov.np/images/download/ninth\\_eng\\_2.pdf](http://npc.gov.np/images/download/ninth_eng_2.pdf)). Moving ahead, the government adopted 'social inclusion' as one of its major policy objectives in the 10th Five-Year Plan (2002-07) (also known as the Poverty Reduction Strategy Paper). The 10th Plan envisaged social inclusion as the third pillar of poverty reduction and sought to include marginalized sections of the population and backward regions into the mainstream of development and also to make visible progress in reducing existing inequalities (Government of Nepal, 2007). The Three-Year Interim Plan (2007-10) also came up with special programmes for disadvantaged groups, including women, Dalits, Janajatis and Muslims (Government of Nepal, 2007). The Interim Plan, drawn up concurrently with the Interim Constitution 2007, introduced for the first time reservations for Dalits, women, Muslims, Madhesis and Janajatis to increase their participation in the education, health and employment sectors. The Interim Plan also

allocated budgets for each group—NPR 13 billion for Dalits, NPR 15 billion for Janajatis, NPR 10 billion for Madhesis and NPR 1.5 billion for Muslims. The current Three-Year Plan (2013-16) also has programmes to identify and amend legal and policy provisions aimed at marginalized groups.

Building on the goals and achievements of the previous periodic plans, the government's budget for 2014-15 (Ministry of Finance, 2014) has provisioned monthly stipends of NPR 1,500 to 3,000 for students belonging to low-income groups from Dalit, Chepang and Raute communities who have passed the School Leaving Certificate Examination with a first division from public schools. Similarly, announcements have been made that the government will bear all the costs for students from Dom, Badi, Chamar, Musahar and Dalit communities pursuing graduate-level studies in engineering and medicine. In addition, the budget speech also ensures that scholarships will be provided to intelligent, disabled, conflict-affected, liberated *kamlari* (former female bonded child labourers), marginalized and Dalit students.

Some vague provisions vis-à-vis Madhesis have also been inserted: 'Suitable mechanism of addressing Madhesi issues and mainstreaming them at various levels of the state will be developed. A policy of getting participation of Madhesi community in the process of programme preparation, implementation and monitoring related to the Madhes will be followed' (Government of Nepal, 2007). The said mechanism has been left undefined, hence it is difficult to measure any achievements in this regard.

The political context played an important role in shaping the focus of Nepal's different development plans. The 9th Plan was adopted when the Maoist insurgency was rising while the 10th Plan tried to head off the Maoist insurgency that was beginning to reach its peak. The 11th Plan was the most inclusive since it was formulated in the backdrop of the CPA and the 2006 People's Movement, both of which had inclusion at their core. However, these advances fizzled out in the 12th and the 13th Plans, and the emphasis reverted as earlier more towards poverty in general.

### **Government structures**

Gender Equality and Social Inclusion (GESI) units have been established in a number of key ministries to address the issue of marginalization of different social groups.<sup>21</sup> Gender itself had been given priority with the establishment of a Gender Responsive Budget (GRB) committee in the Ministry of Finance (Ministry of Finance, 2012) while a Gender Equity and Environ-

ment Division (GEED) has been functional in the Ministry of Agriculture and Cooperatives since 1992. These units, however, have still not integrated other dimensions of exclusion in their mandate. Even where GESI units/sections have been established, these are afflicted by the same problems that made the Gender Focal Persons ineffective – institutional failures to link their responsibilities to the core functions of ministries, inadequate technical qualifications of staff and lack of specific funds for activities.

A positive development with the 2015 Constitution is the statutory provision for various minority commissions—the Women’s Commission, Dalit Commission, Janajati Adivasi Commission, Muslim Commission, Madhesi Commission, Tharu Commission and an Inclusion Commission—although these have been given a mandate of only 10 years after which their fate will be re-evaluated. So far, the duties and responsibilities of these commissions have not been spelt out apart from the case of the pre-existing Dalit Commission and Women’s Commission.

## **Education**

In terms of education, Nepal has taken progressive measures such as adopting Education for All (EFA) as a national campaign. With the prime objective of ensuring access and equity in primary education, enhancing the quality and relevance of primary education and improving efficiency and institutional capacities, EFA has adopted both a pro-poor approach and targeted gender mainstreaming, while Dalit students have been singled out as the prime beneficiary group. The School Sector Reform Programme (SSRP 2009-15) (Ministry of Education, 2009), which complemented EFA, however, provided for special assistance only to Dalits (and residents of Karnali zone). An important aspect of SSRP is its institutionalization of traditional education systems such as madrassas, gumbas/vihars and gurukuls/ashrams to enable these bodies to meet the national standards of formal education. However, the Multilingual Education Implementation Guidelines 2009 are being implemented in only 24 schools even though the aim was to operationalize multilingual education in 7,500 schools by 2015 (Ministry of Education, 2009).

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21. These include the Ministry of Finance, Ministry of Health and Population, Ministry of Urban Development, Ministry of Women, Children and Social Welfare, Ministry of Cooperatives and Poverty Alleviation, Ministry of Agriculture and Cooperatives and the Ministry of Federal Affairs and Local Development. The Ministry of Education has an Inclusive Education section and a Gender Equity section.

## **Right to participation**

The aim of minority rights' regimes set forth in international instruments such as ICCPR is both right to diversity and removal of structural barriers to equal opportunities and participation by members of minority groups. Recognizing that different groups have in the past faced multiple discriminations, Nepal sought to address such historical inequities through constitutional and legal frameworks. Additionally, realizing that formal equality or 'equal treatment' is not always sufficient to ensure equal rights and opportunities for historically disadvantaged groups, special measures including affirmative action policies, have also been introduced to 'level the playing field' for members of such groups.

### **Legal and policy framework**

#### ***Constitutional provisions***

The Preamble of the 2015 Constitution commits the state to creating 'an egalitarian society on the basis of the principles of proportional inclusion and participation to ensure equitable economy, prosperity and social justice'. Accordingly, specific provisions in the Constitution to promote participation of minority groups include:

- Article 40(1), giving Dalits the right to proportionate participation in all agencies of the state.
- Article 70, which requires that the President and the Vice-President belong to different gender or macro-ethnic categories.
- Articles 83, 84, 88(2) and 176, which provide for a parliament at the federal level and assemblies at the provincial, while ensuring a degree of inclusiveness within the legislative bodies.

#### ***Legal provisions***

The 2007 amendment to the Civil Service Act 1991 set aside 45 per cent of the civil service positions for different marginalized groups. Accordingly, 15 per cent of all the seats are reserved for women, 12 per cent for Janajatis, 10 per cent for Madhesis and 4 per cent for Dalits (and 2 per cent for the disabled and 2 for 10 districts identified as backward). The only comparable earlier legislation is limited to the Local Self-Governance Act 1999 that stipulated that village, municipal and district councils have at least one Dalit member.

## ***Progress in Increasing Participation***

### ***Political Representation***

In the three parliaments in the post-1990 period, only one Dalit had been elected. Their representation under the existing first-past-the-post (FPTP) system was 0.5 per cent in 1991 and nil in both 1994 and 1999. Even in the 2008 Constituent Assembly, which is considered a landmark for its inclusivity, Dalits managed to secure just 2.9 per cent of the seats under that system, a figure that went down to 0.8 per cent in 2013 (Vollan, 2015). Representation of all the other minority groups was considerably better and with the introduction of quotas in the proportional representation (PR) part of the CA elections of 2008 and 2013, their presence became more pronounced although with the exception of Tarai Janajatis overall it went down in the second CA.

Although better than that of Dalits, political representation of Muslims too has been far from satisfactory. No Muslim candidate was elected in the 1959 elections and the king nominated one Muslim to the national legislature in 1960 and 1963. Two Muslim candidates were elected to the national legislature, the Rastriya Panchayat, in 1981, while there was only one nominated member in the 1986 Rastriya Panchayat (Gaborieau, cited in Sijapati, 2012). Muslim representation was steady in the years after 1990: 2.4 per cent in 1991, 2.4 per cent in 1994 and 2.0 per cent in 1999. The 2008 CA saw 16 Muslims elected including, for the first time, four Muslim women (*see Table 2*).

The record in the executive branch, however, has not been altogether encouraging despite all the focus on creating a more inclusive polity. The first cabinet formed after the promulgation of the 2015 Constitution reflected this regressive tendency, with nearly two-third of the members of the cabinet belonging to the dominant Khas-Arya group (*see Table 3*).

In fact, the record of previous cabinets in the transitional period (2007 to 2015) is also quite mixed. None of the cabinets demonstrated the kind of inclusiveness that has been possible in the two constituent assemblies (*see Figure 1*).

### ***Representation in government structures***

Historically, there has been poor representation of minorities in the administrative structures of the state such as the civil services, the judiciary

**Table 2. Representation in the Constituent Assembly 2008 and 2013 (Caste/Ethnicity)**

Caste/Ethnicity	2008				2013			
	First-Past-The-Post		Proportional Representation		First-Past-The-Post		Proportional Representation	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Hill Castes	99	41.3	94	28.1	132	55	102	30.4
Hill Mountain Janajatis	61	25.4	90	26.9	46	19.2	89	26.6
Tarai Janajatis	17	7.1	28	8.4	21	8.8	32	9.6
Hill Dalits	6	2.5	29	8.7	1	0.4	26	7.8
Madhesi Dalits	1	0.4	15	4.5	1	0.4	11	3.3
Madhesi Caste	50	20.8	69	20.6	34	14.2	61	18.2
Muslims and Sikhs	6	2.5	10	3.0	5	2.1	14	4.2
<b>Total</b>	<b>240</b>	<b>100.0</b>	<b>335</b>	<b>100.0</b>	<b>240</b>	<b>100</b>	<b>355</b>	<b>100</b>

Source: NHDR (2009); Vulliam (2015).

Note: This data does not include the 26 nominated seats.

and security forces. The presence of Janajatis is substantial in the security services although that is generally limited to some Hill Janajati groups only.

However, after the 2007 amendment of the Civil Service Act and the provision of quotas, there has been some progress although not to the extent possible as evidenced in the 2009-12 period, when unavailability of appropriate candidates and the poor performance of those who attempted to get in resulted in less than 40 per cent of the seats set aside for minority groups being filled up (Awasthi and Adhikary, 2012).

Since Muslims are not considered a separate category for reserved quotas, there is no information on how the new provision has affected their participation in government service.

Security forces, mainly the Nepal Army, have remained inherently exclusive vis-à-vis Madhesis. The presence of Madhesis in the security forces has remained practically negligible. To rectify this situation, in 2007 the Nepal Army established a new battalion to include Madhesis (Nepalnews.com, 2015), but the participation of the Madhesi community in the Nepali Army continues to remain low.

### ***Citizenship***

The 2015 Constitution retained citizenship provisions that directly discriminate against women by declaring that, ‘in case of a person born to Nepali woman citizen married to a foreign citizen, he/she may acquire naturalized citizenship of Nepal as provided for by a Federal law if he/she is having the permanent domicile in Nepal and he/she has not acquired citizenship of the foreign country.’ This impinges on equal citizenship rights for women to confer full citizenship to their children since naturalized citizens are not allowed to hold any constitutional positions. This provision is particularly discriminatory towards Madhesis because cross-border marriages are highly prevalent in the Tarai and so children born to Madhesi women and domiciled in Nepal will forever be denied the opportunity to rise to the high levels of governance.

## **Right to culture and identity**

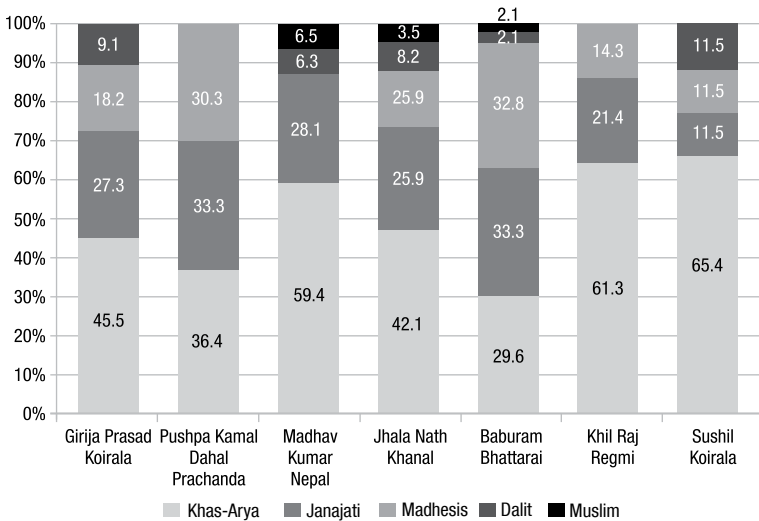
Despite acceding to ICCPR, which states that where ‘ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of this group, to enjoy

**Table 3. Social Composition of First Council of Ministers formed after the 2015 Constitution**

Caste/Ethnicity	Number of Ministers	Percentage
Khas-Arya	25	62.5
Hill Janajati	5	12.5
Tarai Janajati	2	5.0
Tarai Caste	5	12.5
Hill Dalit	1	2.5
Tarai Dalit	1	2.5
Muslim	1	2.5
<b>Total</b>	<b>40</b>	<b>100</b>

Source: <http://www.opmcm.gov.np/en/council>.

**Figure 1. Social Composition of Council of Ministers under Prime Ministers, 2007-2015**



Source: Dhruba et al., (forthcoming).

Note: The figures represent the number of individuals who were nominated as ministers and does not reflect the duration of their office terms.



their own culture, to profess and practice their own religion or to use their own language' (Article 27), in law and practice, the Nepali state continues to place curbs on these rights. Historically, this began with the process of sometimes-forced adoption of the Nepali language and Hindu religion. Ever since the emergence of Nepal as a modern nation-state in 1769 and through the end of the Panchayat system (1960-90), the rulers have promoted a doctrine of 'one nation, one culture, one language, one religion' to the exclusion of minority languages (Turin, 2007). Till 1991, discussions about ethnic difference or inequalities were jailable offences (Miklian, 2008). Under Panchayat rule, the supreme status ascribed to Nepali language left little incentive for mother tongue Nepali speakers to learn minority languages, while political, educational, developmental and administrative activities required speakers of other languages to learn Nepali (Turin, 2007). Many members from Janajati groups from the middle hills adopted both the language (Nepali) and the culture of the dominant group in this period.

The 1990 Constitution provided a slight departure from this policy by preserving Nepali as the 'language of the nation' but also designating all languages spoken as mother tongues in the country as 'national languages' and guaranteed the right to primary education in these languages (Gellner, 2015). The latter right, however, was never brought into practice by the state, and neither were the 'national languages' accorded any kind of official sanction. A well-documented case is that of the independently arrived decisions in 1997 by the Kathmandu municipality to use Newari and by the Dhanusha District Development Committee and Rajbiraj municipality to use Maithili as languages of communication in addition to Nepali. The Supreme Court ruled that the use of regional languages by local bodies was unconstitutional and illegal (Turin, 2007), and there has been no judgment so far to reverse this decision. But in an indication of how far the ground has shifted over time, following the uproar by Vice-President Parmananda Jha taking his oath of office in Hindi, ruling on a case filed before it, the Supreme Court decided that taking the oath in one's mother tongue was not unconstitutional, and Jha took his oath once again—in Maithili. Given that the 2015 Constitution provides federal units to determine one or more languages in addition to Nepali as the official language, a start has been made in some district courts to appoint, at government expense, interpreters.<sup>22</sup>

In terms of religious freedom in an apparent step back from the Interim Constitution, which had categorically defined Nepal as a secular state, the

## Profile of a vulnerable minority:

### Musahars

Musahars are a historically marginalized and highly excluded Dalit caste group from Nepal's Tarai region. This case study describes the current status of Musahars in Nepal and provides an overview of their historical background and how they continue to be discriminated against and marginalized by landowners and the state.

The origin of Musahars in Nepal is linked to the history of Musahars in India. Musahars believe that they are the descendants of the Kol tribe of the Chhota Nagpur Plateau in eastern India. Being landless, their ancestors migrated to Bihar in the 12th century to serve as agricultural labourers and remained the largest labour force there (Kumar, 2006). The term 'musahar' is derived from *masa*= 'flesh' and *hera*= 'seeker' (Dahal et al., 2014). However, it has since been distorted by the mainly Hindu Brahmin *jamindars* (Kumar, 2006), to mean 'rat-eaters'.

Musahars are found mainly in the eastern and central Tarai districts of Siraha, Saptari, Dhanusha, Sunsari, Morang, Udayapur, Mahottari, Bara, Parsa, Sarlahi, Rautahat and Nawalparasi. According to the 2011 Census, Musahars formed 0.89 per cent of the population of Nepal and constituted the second-largest Tarai Dalit group. Although there is a lack of records about the history of Musahars in Nepal, it is believed that they entered and settled in the plains of Nepal during the Rana regime working as labourers—clearing forests for agricultural land and working for the extension of the railways between Nepal and India. As labourers, Musahars were bonded to the *jamindars* in the Tarai during the Rana regime and were treated as untouchables (Dahal et al., 2014; Salter and Gurung, 1999). Musahars claim that they have no specific ritual occupations among the Hindu caste groups and that they are an ethnic group with their own distinct cultural identity and proximity to the Bhil and Munda tribes in India (Giri, 2012).

### Discrimination and Marginalization of Musahars

According to the Census 2011, the literacy rate among Musahars was only 21.8 per cent, which was far below the national average of 65.9

... contd. ...

2015 Constitution qualified ‘secularism’ to mean ‘religious, cultural freedom including protection of religion and culture handed down from time immemorial’, the latter being an explicit reference to Hinduism with its use of the term ‘sanatan’ in the Nepali original of ‘time immemorial’. Further, the cow has been retained as the national animal, which impinges on the food culture of some indigenous and religious groups (Constitution of Nepal, 2015). The Nepali state has long punished members of Janajati communities who kill cows for consumption with jail terms extending up to 12 years. In 2013 and 2014 alone, at least 38 individuals belonging to Janajati groups were either serving prison time or facing prosecution on charges of cow slaughter (Ghale, 2015).

## Religious minorities of Nepal

### Muslims

According to the 2011 Census, Muslims in Nepal constituted the third largest religious group with a 4.39 per cent share of the population. Muslims have registered consistent growth over the years from their share of only 2.54 per cent in 1952.<sup>23</sup> Muslims in Nepal are primarily rural, with 85 per cent residing in rural areas (CBS, 2014).<sup>24</sup> They form the largest population group in five Tarai districts—Banke (21.10 per cent), Rautahat (19.47 per cent), Kapilvastu (19.42 per cent), Parsa (15.41 per cent) and Bara (13.43 per cent). In five other Tarai districts, Dhanusha, Mahottari, Sarlahi, Sunsari and Siraha, Muslims constitute the second largest group (CBS, 2001).

Muslims fare poorly on major socioeconomic indicators. The literacy rate of Grade 5 and above is only 43.6 per cent among Muslims (as compared to the national average of 65 per cent). Muslims have only 3.24 mean years of schooling—the least for any social group in Nepal. Their per capita income of US\$695 is also among the lowest; although minimally better than Yadavs and Madhesi Dalits (US\$671 and US\$616 respectively), it is substantially lower than the national average of US\$1,160 (NHDR, 2014) (*See also Annex 1.*)

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22. For instance, the Chitwan District Court has provided for interpreters in 11 different languages while it was reported that the Panchthar District Court has appointed interpreters for 14 languages. <http://kantipur.ekantipur.com/news/2016-04-04/20160404073956.html> and <http://gorkhapatraonline.com/news/28569>.

...Profile of a vulnerable minority continued ...

per cent. Further, the National Social Inclusion Survey (2012) revealed that only 0.69 per cent Musahars had attained education up to the intermediate level. According to the Multi-Dimensional Exclusion Index, Musahars were located at the very bottom among all the caste and ethnic groups in Nepal (Bennet and Parjauli, 2011). Political participation of Musahars at all levels was negligible as was their presence in the civil services (NHDR, 2009).

Musahars have been economically, politically and culturally marginalized. The practice of untouchability continues to be a major problem for the community since it leads to their exclusion even from public places such as drinking water sources. Landlessness is a major cause of the economic and political marginalization of Musahars (Dahal et al., 2014), who dependent on the landowners for their survival. After the 2001 abolition of the *haruwa-charuwa* practice, which bound them to their landlords, Musahars have started working as free labourers, making their living as agricultural labourers, by fishing, selling firewood and pulling rickshaws.

Specific socioeconomic developments programmes targeted at Musahars are lacking. On the contrary, development interventions such as those relating to community forestry and national parks have ended up displacing and further marginalizing Musahars from their livelihoods (Paudel et al., 2007).

### **Poor over Generations**

Fifty-year-old Bombholi Sada is a resident of Babhangamakatti village in Saptari district. His father, Bechan Sada, spent his entire youth and old age as a servant for an affluent family in the village. Bombholi also spent his entire youth as a cowherd for others. His late brother, Sakunta, worked as a labourer until he was killed in a machine accident in Punjab. Not only Bombholi and Sakunta, but all the five sons of Bechan spent their lives as labourers. Bombholi's grandfather also worked as a servant until he died. Bombholi's son works as a tractor labourer. No one in his family has received any education. Bombholi said, 'For many generations, we have been working for others and we have remained poor and we have survived somehow.'

... contd. ...

### ***The National Muslim commission***

Despite the history of Muslim settlements in Nepal going back to the early 16th century, until recently there was no recognition of Muslims as a separate religious and cultural group. Equal citizenship was not granted to Muslims by the Nepali state until 1962. Muslims were categorized as ‘impure but touchable’ in the caste hierarchy codified in the Muluki Ain (National Code) of 1854 (Hoefer, 2004). Acknowledging the extent of marginalization of the Muslim community, on 5 April 2012, the cabinet approved the formation of a Muslim Commission, which was given constitutional status by the 2015 Constitution (<http://www.nmc.gov.np/>).

### **Christians**

Christians make up another small religious minority in Nepal and currently account for 1.4 per cent of the total population.<sup>25</sup> It is believed that the first Christians came to the Kathmandu Valley in 1628 (Whelpton, 2005) and Christian missionaries have been arriving intermittently from the beginning of the 18th century (Lindell, 2002). After his conquest of Kathmandu Valley in the mid-18th century, Prithvi Narayan Shah expelled all the Christians along with the new converts. These exiled Christians settled in Bettiah in the Indian state of Bihar and returned to Nepal only after the demise of the Rana regime in 1951 (Rongong, 2012).

In 1947, Father Marshall Moran, an American Jesuit, arrived in Kathmandu to supervise the BA examinations at Tri-Chandra College, which was then affiliated to Patna University. Responding to entreaties by Kathmandu’s elite, the priest set up the St. Xavier’s School for boys in Kathmandu in

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23. Many Muslims and even Hindus in Nepal claim that the total population of Muslims reported in the Census is incorrect and that the precise figure for Muslims is anywhere between 6 to 10 per cent of the population. In the report ‘Indian Ethnic Groups in the Nepal Tarai. Ansari (1980), showed that the population of Muslims living in Sunsari district was more than 50,000, which is three times the number reported in the 1971 Census (19,373). The often-cited reasons for the under-representation of Muslims include: fear of being discriminated for being Muslim; use of Census data for possible conscription in the army; and imposition of more taxes (see also Siddique 2001, Dahal 1978). These reasons imply that Muslims strategically under-represent themselves, but as a 2014 Census of a VDC in Parsa district found, the 6.7 per cent Muslim population had been reported as zero (Ayub et al 2014).

24. Although Muslims can be divided into Hill Muslims and Tarai Muslims, the latter are so small that they were not even enumerated in 2011. In 2001, they numbered just 4,893 compared to the national Muslim population of 975,873.

*...Profile of a vulnerable minority continued ...*

Eighty-year-old Dular Sada of the same locality is in his twilight years. His father, Pachu and grandfather, Faagu, worked in the village. Until he got old, Dular worked at digging soil in the fields. His nephew, Bhutai, is also working as a labourer. 'In our family, there has been no difference from the time of grandfather till now. We earn during the day, eat at night, and start again in the morning. Fate has been like that. What can we do?'

'Leaders promise a lot during elections, but they have never come back and helped in improving our livelihoods,' said Dewan Sada, the leader of the locality.

Another local, Bulan Sada, said, 'Our main problem is land. Since we do not have land, we cannot even take the facilities provided by the government.'

The only Musahar who has achieved a high political position is Asarfi Sada from Saptari. He was a nominated member of the legislature-parliament in 2007-08. He is currently a leader of the UCPN (Maoist).

*Source: Jha (2016).*

1951 (Messerschmidt, 1977), marking the formal entry of Christians back into Nepal. A school for girls run by Catholic nuns, St. Mary's School, was established in 1954.

### ***Caste discrimination and Christianity***

It is claimed that growing poverty and religious and caste discrimination have contributed to the growth of Christianity. Although the focus has been on people from the 'lower castes' converting to escape an exploitative caste hierarchy, statistics indicate that people from all castes and ethnicities convert to Christianity. However, even among Christians, converts from

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25. Now Nepal has one of the fastest-growing Christian populations in the world, according to the World Christian Database, which tracks global trends in Christianity (<http://www.npr.org/sections/goatsandsoda/2016/02/03/463965924/why-nepal-has-one-of-the-worlds-fastest-growing-christian-populations>).

'lower caste' groups continue to be discriminated against (Bhattachan et al., 2009), while top positions in the Christian community are disproportionately occupied by converts from Hindu 'high-caste' backgrounds (Shah, 1993).

There is a dearth of writing on the Christians of Nepal. What is clear though is that Christians began their work in the name of modernization and contributed to different sectors such as education, health services, communication and transportation. But the Nepali state has always viewed Christians with suspicion with regard to proselytism, particularly during the Panchayat years. At the end of the Panchayat system in 1990, there were 30 persons serving jail sentences for conversion-related charges and another 200 had cases pending against them in different courts. All of them were granted amnesty when the interim government was formed. But, the 2015 Constitution continues to retain the discriminatory clause against Christians by considering proselytising a crime (Article 26[3]).<sup>26</sup> The ambiguity in the Constitution regarding what constitutes 'forceful conversion' and the right of an individual to change one's religious faith has provided the state with leverage against Christian communities and organizations. In another blow to the Christian community, coinciding with the promulgation of the 2015 Constitution, the practice of declaring Christmas a national holiday that had started after 2007 has since been stopped.

There have also been some attacks on Christians by right-wing Hindu groups who blame them for the introduction of secularism in 2006. In 2008, a Roman Catholic priest was killed in eastern Nepal and in 2009 an explosion in a church in Kathmandu killed three people. While physical attacks have ceased after members of the self-styled National Defence Army were arrested, Christians in Nepal still feel discriminated against and treated like untouchables (Timsina, 2013).

## Conclusion and recommendations

Nepal was under monarchical rule for a long time with most powers reposed in the king. In its efforts to institutionalize a monolithic state, the monarchy suppressed minorities and the diverse cultures of Nepal by denying

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26. Article 26 (3) states: 'While exercising the right as provided for by this Article, no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.'

Good practice case study:

## Nepal Federation of Indigenous Nationalities

Since the re-introduction of multi-party democracy in Nepal in 1990, the issue of identity politics has strengthened people's claims on every structure of the government (Lowati, 2005). The shift in discourse to 'inclusion' within the 'mainstream' political and social institutions has become central in challenging structural inequalities based on caste, ethnicity, gender, religion and region (Gellner, 2003). One of the leading organizations in this struggle has been the Nepal Federation of Indigenous Nationalities (NEFIN).

### Brief history of NEFIN

NEFIN began life as the Nepal Federation of Nationalities (NEFEN), which was formed in 1990 as an umbrella organization of indigenous people (Onta, 2006). The founding members of NEFEN included eight organizations representing Gurung, Limbu, Magar, Newar, Rai, Sherpa, Sunuwar and Tamang communities. During the pre-1990 period, organizations representing different Janajati groups had been formed such as Chwasa-Pasa (1924), the Tharu Kalyankarini Sabha (1949) (Krauskopff, 2003), the Nepal Tamang Ghedung (1957), the Nepal Bhasa Manka Khala (1979) and the Nepal Langhali Sangh (1982) (Tamang, 2004). But NEFEN paved the way for a national-level network.

NEFEN changed its name to NEFIN in 2001. It currently consists of 48 organizations representing communities distributed throughout the Tarai, Hills and Himalaya of Nepal. The recognition of NEFIN's work has led to its involvement in different international fora such as the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Asian Indigenous People's Pact (AIPP). Over time, with the help of international development partners, NEFIN has also led and coordinated projects with a particular focus on empowerment among which are the Janajati Empowerment Project (JEP and JEP-II) supported by the Department for International Development and Enabling State Programme (DfID/ESP), the Janajati Social and Economic Empowerment Project (JANSEEP) with Care Nepal and the European Union (EU) (JANSEEP) and the Sustainable Development of Disadvantaged Ethnic Communities in Nepal (SAMARTHYA) with Action Aid and EU.

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them fundamental rights to culture, language, citizenship and identity. This made Nepal's transition to democracy challenging since democratic consolidation, which is largely determined by participation in power-sharing and by addressing and reducing social inequalities, has yet to see significant progress. Although Nepal has made progress in its overall development indicators, it still fares badly in economic growth as compared to its South Asian neighbours, with the marginalized sections faring even worse. Dalits in particular fare badly on all socioeconomic indicators as well as on indicators of political participation. Nepal has acceded to most of the international conventions relating to minority rights even though it is yet to meet all its obligations under them.

Nepal made significant progress in its constitutional provisions with the Interim Constitution of 2007. Some of these gains were reversed with the 2015 Constitution. That this has not been fully accepted by marginalized groups such as the Madhesi is an indication of the state's failure to recognize and address the interests of minority and marginalized groups. The weakness of the state in ensuring fair distribution of resources, development flows and power-sharing among all sections of the population is clear. The deep-rooted marginalization of minority groups is also due to incoherent development plans and their ineffective implementation.

## **Recommendations**

- i. There is a need for a robust and categorical definition of 'marginalized' and 'minorities' with clear listings of caste, ethnic and religious groups. Further, these categories should be used in all sectors and for affirmative action to ensure effective representation.
- ii. Although government agencies have started disaggregating data by ethnicity and gender since the 1991 Census, there is a need for greater disaggregation of all relevant national data based on similar criteria. Given their increasing numbers, the data should also deal with Christians as a separate category.
- iii. The provision of different commissions in the new Constitution to address issues of minorities is a positive step and included in the duties and responsibilities of these commissions should be to defining the types of inclusion that will address the demands of these groups and monitor progress of the same.
- iv. The periodic development plans need to focus on gauging progress along different socioeconomic indicators by minority and marginalized

... Good practice case study continued ...

## **Campaigns and interventions**

Focusing on the need for the inclusion of this huge mass of population within the mainstream developmental agenda, NEFIN's demands in the main were (Bhattachan and Bhattachan, 2003):

- right to self-determination,
- ethnic autonomy,
- equal language rights, including a tri-lingual language policy and education in the mother tongue,
- secularism, and
- affirmative action.

It is a measure of NEFIN's advocacy work, along with other political processes that by the end of the 1990s, the Government of Nepal had considered introducing the following (Subba et al., 2008):

- right to education in the mother tongue,
- reservations for Janajatis in higher technical education,
- use of local languages in local offices,
- secularism,
- special or proportional representation and ethnic autonomy,
- establishment of a foundation/academy to preserve and promote Janajati languages and cultures,
- positive discrimination in government jobs,
- removal of discriminatory provisions in the Constitution, laws, by-laws and policies,
- recognition of rights to natural resources,
- disaggregated data by ethnicity and caste, and
- ratification of ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

## **Interventions and impact**

The objectives of NEFIN have been to develop unity and fraternity among Janajatis while also developing their leadership and capacities (NEFIN.org). The establishment of District Coordination Councils (DCCs) has been instrumental in this context. So far, NEFIN has established DCCs in 69 districts (NEFIN.org), paving the way for strengthening Janajati political activism. This allowed NEFIN to play a prominent role in the 2006 people's movement that led to

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groups. Further, the plans need to build on previous iterations as there exist discontinuities between successive plans.

v. Constitution:

- The 2015 Constitution articulates sentiments for ending discrimination, but since it does not spell out clear pathways to promote equality, the government will have to take heed of the spirit behind the sentiments when designing specific interventions.
- Citizenship rights to women have been particularly discriminatory in Nepal. Multiple clauses in the Constitution ensure transfer of citizenship to children only through the father and curb women's right to transfer full citizenship rights to their children. The state, therefore, has the duty to repeal discriminatory clauses based on citizenship, avoid statelessness and prevent arbitrariness in conferring citizenship (Malla, 2016).

vi. Public Service:

- Since Dalits are particularly vulnerable to their human rights being violated, there should be a provision to include at least one Dalit representative in the National Human Rights Commission.
- The quota or reservation system should be strengthened by making special provisions to encourage members of marginalized communities to seek employment in civil service and public institutions.
- Political participation of Dalits, especially of Tarai Dalits, is bleak. Dalit inclusion should be mandatory at each level of government planning and implementation. The state should develop effective mechanisms for checks and balances to ensure that affirmative action in this regard is implemented.

vii. Implementation of International Standards:

- Nepal has rejected all the 29 recommendations on human rights made during the 23rd Universal Periodic Review held in Geneva in 2015, including those related to conventions on transitional justice and has refused to ratify the Optional Protocol to the Convention against Torture, International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court (Rai, 2016). Nepal should ratify these protocols and also adhere to pledges made for accountability and justice to the people.

... Good practice case study continued ...

the end of direct rule by the king and the end of the Maoist conflict (Shah, 2008).

After the political change of 2006, inclusion became a major agenda in Nepal's political discourse. The issues and demands of the Janajatis focused on state restructuring along the lines of federalism, autonomy with the right to self-determination, representation of Janajatis in government structures in proportion to their population and special representation for minority Janajati groups. Following a protracted struggle, NEFIN signed a 20-point agreement with the government in August 2007, which included a provision accepting ILO Convention 169 and UNDRIP. Around the same time, the Interim Parliament also approved revisions to the Civil Service Act 1993, which led to fixed quotas for Janajatis (and also others) in government jobs.

### **Lessons for advocacy**

Despite many challenges, NEFIN provides a number of lessons for advocacy. Changes in the provisions of the constitutions since the 1990s reflect effective advocacy on the part of NEFIN. NEFIN has successfully advocated for the definition and classification of indigenous/Adivasi Janajatis and also legitimized the definition via various protests, rallies, demonstrations, press conferences and publications (Tamang, 2004). However, the real strength of the organization – engaging in advocacy – became possible only through regular interactions at the grassroots level since its branches are spread across different districts and villages.

However, NEFIN has also had its share of problems. The most prominent of these was its falling out with the UK's Department for International Development (DfID), which had supported the Janajati Empowerment Project. Following a national strike in 2011 called in support of its position of federalism that would recognize identity as one of the bases for the division of provincial units, NEFIN was served a warning by DfID to refrain from the sometimes-violent street confrontations. NEFIN refused and DfID withdrew its support for a very effective awareness-raising programme.

Since then, NEFIN has been reduced to a shell of its former self. Growing interference by political parties has led to factionalism within NEFIN members and led to a weakening of the whole Janajati movement. Co-optation of the organization's leaders and activists by established parties has challenged its legitimacy and also undermined all its previous efforts.

- International standards set by instruments such as ILO Convention 169 should be implemented to protect the rights of indigenous people. Existing initiatives of land reforms and management should incorporate a specific focus on the rights of indigenous people over land, territories and natural resources that they have traditionally owned or used, either individually or collectively. Accordingly, the state should obtain free and informed consent of indigenous people prior to giving approval to any project affecting their land, territories and other resources.

viii. Education:

- Nepal has not ratified crucial international documents like the UNESCO Convention against Discrimination in Education (1960). Existing plans for bilingual education should be enforced as a matter of priority in order to promote and develop lingual diversity and also to make teaching and learning processes more effective, including by allocating the required human and financial resources to allow for effective implementation of such programmes. This includes supporting madrassa education and accepting it as a formal educational institution up to the higher level.
- Nepal has implemented plans like EFA and SSRP, but access to education appears discouraging since groups such as Janajatis, Madhesis and Dalits still struggle to educate their children. In a welcome move, the government has been providing scholarships to Dalit children. What is required next is effective monitoring of the distribution of scholarships and creating a Dalit children-friendly environment in schools.
- Scholarships, food and uniforms in schools should be provided to Dalits, backward communities and the poor in order to reduce drop-out rates.

ix. Access to Justice:

- Studies show that the torture inflicted among Madhesis, Dalits and Janajatis is higher as compared to Bahuns, Chhetris and Newars (Advocacy Forum Nepal, 2012). Civil society as well as the state should invest in making core law-enforcing bodies such as the Nepal Police and the Armed Police Force more tolerant and sensitive towards the socio-cultural diversity of Nepal.
- Existing laws must be strengthened through amendments to guarantee that complaints are registered, investigations proceed in a timely

manner, investigators are shielded from political or other pressures and victims are afforded requisite protection.

x. Caste-based Discrimination:

- Mechanisms to eliminate caste-based discrimination should be made effective.<sup>27</sup>
- The government needs to repeal all discriminatory laws, regulations, rules, directives, policies and programmes that contravene the human rights of groups such as Dalits.

xi. Economic, Social and Cultural Rights:

- Special arrangements need to be made for the inclusion, protection and promotion of human rights of the Muslim community while recognizing their existence as a religious community with distinct customs, culture, language and way of life.

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## **Chapter 5 Pakistan**

# **Need to Go Back to Founding Principles**

*Bushra Khaliq and Kashif Aslam*

August 11 is a historic day that marks the celebration of Minorities' Day in Pakistan. It was on this date that the father of the nation, Mohammad Ali Jinnah, in a speech at the first Legislative Assembly of the country on 11 August 1947, i.e., three days before the official announcement of the creation of Pakistan, proclaimed all minorities as equal citizens of the new nation. The Government of Pakistan subsequently declared August 11 as "Minorities Day". The day got an official reorganization in 2009 due to the efforts of former minister of Pakistan Minority Affairs Clement Shahbaz Bhatti, who was murdered on 2 March 2011 by the Tehreek-e-Taliban in Islamabad.

At the time of its formation, the rhetoric around Pakistan included rights to freedom of religion. The forefathers of the State envisaged a free state where each minority group would have the right to profess their beliefs freely, without fear of being persecuted. Unfortunately soon after its creation, the political religious parties, purporting to be guardians of Islam, hijacked the State of Pakistan. And, today, intolerance towards pluralism and inter faith harmony has seeped into the general populace and the apparatus of the state.

Attacks on minorities and forced conversions are a common occurrence resulting in mass exodus of the minorities, as in the case of Hindu minorities of Sindh. The Constitution and other laws and policies officially restrict religious freedom. The government's limited capacity and will to investigate or prosecute the perpetrators of extremist attacks

against religious minorities is promoting further intolerance, allowing impunity for those who take the law into their own hand.

*Each year there have been several reports of societal abuses or discrimination based on religious affiliation, belief, or practice, a trend that is unfortunately increasing. Violent extremists in the country have demanded that all citizens follow their authoritarian interpretation of Islam and threatened brutal consequences if anyone chooses not to abide.*

**Bushra Khaliq**, State of Minority Rights in Pakistan.<sup>1</sup>

This chapter discusses the condition of religious minorities in Pakistan. The attempt is to report on the conditions and not so much to analyse and identify the factors and drivers that create the conditions, although some effort has been made in that direction too. However, given that this is the first ‘annual report’ on the state of minorities in this series, our attempt was also to develop something like a baseline for future annual documentations. This necessarily meant that we had to go back into history to understand among other things the context and the evolution of the structures of today that have implications for minorities. The chapter uses the UN minority rights framework in looking at minorities’ various rights – to life and security; non-discrimination in services and opportunities; participation; and to culture and identity. This is also how the paper is structured. It begins with a quick overview of who the minorities in Pakistan are with a focus on religious minorities and what the constitutional framework is for them.

## Minorities in Pakistan

According to the last official Census (1998), religious minorities made up 4 per cent of the total population of Pakistan (close to 5 million persons in a total population of 132.4 million).<sup>2</sup> Christians formed the largest group, numbering between 2-3 million (1.69 per cent of the population), equally divided between Catholics and Protestants living in urban centres as well as in rural areas mostly in Punjab province. Occupationally, most of them were landless labourers, farmhands and sweepers. There were 2.5 million (1.4 per cent) Hindus. A vast majority lived in Sindh province, with half

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1. Based on the reports by National Commission on Justice and Peace, Women in Struggle for Empowerment (WISE), Asian Human Rights Commission-Hong Kong, Human Rights Committee-UK.

2. The current population is estimated at 199 million.

of that number in Tharparkar district alone. Most worked as farm labour, many of them 'bonded'. Dalits formed a large section (0.33 per cent of the total population). Smaller non-Muslim minorities included Sikhs, Parsis, Bahais and Buddhists, numbering in thousands. Among Muslim minorities, Ahmadis, numbering between 500,000-600,000, made up 0.35 per cent of the population (although these figures may have been very under-reported), with most concentrated in Rabwah in Jhung district in Punjab province.<sup>3</sup> Shias made up a quarter of the country's Muslim population with large concentrations in Karachi and other urban centres as well as in rural areas of Baluchistan (mostly Hazaras) and Punjab (MRG 2002:1; Zia, 2010:144).

Urdu is the national language and most Pakistanis converse in or understand it. Yet it is the first language of only about 10 per cent of the population – the *mohajir*, or post-partition immigrants. Regional languages, Punjabi, Balochi, Pushtu and Sindhi, among others form other linguistic groups with Punjabi being the language of the majority (MRG, 2002). English was the official language until 2015.<sup>4</sup> Territorially, Pakistan is made up of four provincial and three administrative territories – Azad Kashmir, Gilgit-Baltistan and Federally Administered Tribal Areas (FATA), with over a dozen religious and ethnic groups. Language, ethnicity and regionalism which are the markers of identity combine and overlay each other to determine outcomes for citizens and political contestations across these identity divides often also resulting in conflicts, as best seen in the case of Baluchistan. Religion is thus one of the ways in Pakistan's case-determining minority status of a community. But both language and ethnicity also play a role in determining the minority status of its citizens.

## Minority rights framework – the successive erosion of a plural space

The foundational debate in post-independence Pakistan that had implications for minority rights was about differing visions of the objectives of the (pre-partition) demand for Pakistan: protecting the rights of India's largest minority versus establishing an Islamic state. Whilst M.A. Jinnah stood

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3. In 1974, Ahmadis were officially deemed non-Muslim, thus making them a non-Muslim minority.

4. Replaced recently by Urdu (See <http://www.bbc.com/news/world-asia-34215293>).

5. One view holds that Jinnah maintained some ambiguity about the relationship between the two.

for the former,<sup>5</sup> a strong section saw the movement providing an opportunity for establishing an Islamic state. Contributing to the crisis was the fact that Pakistan was not a territorial state, and its leaders were at a loss to find its purpose as many leaders of the Muslim League were without a constituency in the newly formed state. This state of limbo was a process that entailed a delay in democratic decision-making. In the absence of such a process, the authorities resorted to the language of Islam to provide validation for their governance strategies. Most found it convenient to do so in religious terms. Jinnah's early demise, the particular situation that a fledgling Pakistan found itself in and the vested interests of the ruling class wanting to maintain the status quo meant that the Islamist sections won the day.

The outcome was the Objectives Resolution adopted by the first Constituent Assembly (March 1949) that settled the Islamic credentials of Pakistan. It accepted the premise that 'sovereignty over the entire universe belongs to God Almighty alone, and that the state of Pakistan would exercise authority within the limit prescribed by Him' (Ispahani, 2016:41)

The Objective Resolution opened the doors for a further push by Islamist parties. Over the years, the plural character of the state has been compromised with each of Pakistan's successive constitutions enhancing its Islamic content, consequently narrowing the space for minority rights. An early straw in the wind indicating what was to come was the mass sectarian violence against Ahmadi Muslims in 1953 (an estimated 2,000 were killed) and the mobilization against their fundamental right to freedom of religion.

But the state's compromises with Islamists were no insurance against loss of power; 1953 was also the year when the first bloodless coup took place supported by a strong military-civilian bureaucracy combined that took power away from a duly elected government. This, Ispahani notes, signalled the 'rise of the national security establishment, that would repeatedly use religion to tighten its grip over power,' in opposition to popular legitimacy obtained through elections (Ispahani, 2016).

Pakistan's first Constitution was announced in 1956. The Objective Resolution became its Preamble (Article 2A). Pakistan was designated 'Islamic Republic of Pakistan' where 'the principles of freedom, equality, tolerance and social justice, as enunciated by Islam would be fully observed' (Zia, 2010: 150). Part 3 contained Directive Principles of State Policy that included many Islamic provisions including the declaration that 'steps shall be taken to enable the Muslims of Pakistan... to order their lives in accordance

with the Holy Quran and Sunnah.’ The Constitution barred non-Muslims from holding the office of head of state. Part 12 titled ‘Islamic provisions’ called for Islamic research and education.

More significantly, Article 198 proclaimed, ‘No law shall be repugnant to the injunctions of Islam, as laid down in the Quran and Sunnah.’ The Constitution also sought to bring existing laws in conformity with Islamic injunctions (Zia, 2010).

Observers have noted that the long state of limbo – with there being no constitution and elections put off for most of the first 10 years of the country’s existence - allowed for the founding ideas of Pakistan, as espoused by its founder, M.A. Jinnah, to be questioned and compromised with Islamist parties and the military-bureaucratic leadership gaining centre-stage in place of elected politicians (Ispahani, 2016).

In 1958, Ayub Khan staged a coup and took power establishing a military dictatorship with a focus on national security and conflict with India. This focus also had adverse implications for Hindus who were seen as Indian sympathizers. Ayub Khan was a strong believer in Pakistan as an Islamic ideological state (as against secular). The second Constitution that he devised in 1962 mirrored the 1956 Constitution with regard to the minorities. It incorporated Islamic provisions, including the setting up of a Council of Islamic Ideology, to recommend changes to bring laws in conformity with Islamic injunctions (Ispahani, 2016: 68). The Constitution ‘legitimized the view that religious minorities lived in the country only at the sufferance of the Muslim majority’ (Ispahani, 2016: 71). Ayub Khan also oversaw the revision of school curricula. Social studies was introduced in classes 6 to 10 and Islamic studies in classes 6 to 8 as a means to indoctrinate young minds reflecting the thinking of the ideological state that he sought to build.

Observers see Ayub Khan using Islam to bolster the authoritarian system he envisaged for Pakistan (Ispahani, quoting Khalid bin Sayeed, 2016: 68). His successors put Islam to similar cynical purposes. Yahya Khan, who took over from Ayub in 1969, issued the Martial Law Regulation 51 (1970), penalizing publishing or possession of any book, pamphlet ‘offensive to Islam’ attracting a penalty of seven years rigorous imprisonment. This was the precursor to the draconian blasphemy laws to come later. The slide into further homogenization as reflected in law was quick and so was further marginalization of minorities.



The secession of East Pakistan to become Bangladesh in 1971 was in part the consequence of these homogenizing tendencies. It reduced the minority composition of Pakistan's population to about 4 per cent that was a significant drop. The larger Hindu population in united Pakistan had given a measure of voice, however limited, to its minorities. That was no longer the case. Tellingly, 'having achieved a measure of purity in relation to non-Muslims within Pakistan, Islamists were now getting ready to purify the country of unorthodox groups hitherto identified as Muslims' (Ispahani, 2016:96).

The third Constitution, 1973, that emerged out of a compromise that an elected government (Bhutto's Pakistan People's Party) struck with the powerful Islamist plank retained the Islamic provisions of previous constitutions. Additionally, Islam was made the state religion (Article 2) and the President and Prime Minister were required to be Muslims (Article 41 and 91 respectively). Notably, succumbing to Islamist parties and to Bhutto's own interests in limiting his exposure to this issue just as he had launched a massive army operation against the Baluch independence movement, the PPP government amended the Constitution, declaring Ahmadis as non-Muslims in response it claimed, to 'the will and aspirations of the Muslims of Pakistan' (1974). 'Qadianis', as Ahmadis are pejoratively called, were included as a minority (Article 106, Clause 3) and the Constitution also sought to define 'Muslim' (new clause to Article 260), to effectively exclude Ahmadis from the category. This amendment to outlaw Ahmadis who consider themselves Muslims, has been the source of severe violence against and disenfranchisement of the Ahmadi community. Their legal status is such that by practicing their religion, Ahmadis break the law of the land. In later amendments, access to citizenship services – passports, identity cards, public sector jobs and the like – were made contingent on Muslims negating Ahmadism, thus foreclosing these rights for Ahmadis. The amendments paved the way for the draconian anti-Ahmadi ordinance of 1983.

In 1977 Zia ul Haq took power through another coup and ruled as martial law dictator for 11 years legitimizing his rule by claiming the mantle of Islamization. According to Ispahani (2016: 110), '(the) end of Bhutto's government marked the end of efforts to strike a balance between Jinnah's vision of a pluralist Pakistan and the demands of Islamists for an Islamic state.' Zia ul Haq undertook a series of amendments to the Constitution and penal codes that were meant to emphasize his Islamic credentials. These changed the spectrum of policies and attitudes towards minorities (and women) (Hussain, 2010:191). These included:

- i. the 'hudoob' decree (1979) creating sharia courts, with stringent punishment for four offences (intoxication, theft, adultery and false allegations) to emphasize the Islamic codes of personal behaviour;
- ii. blasphemy laws (1980, 82 and 86), criminalizing any act deemed as dishonouring the Prophet, his family, *sahabas* (companions) and Islamic symbols;<sup>6</sup> and
- iii. the presidential ordinance XX (1984) against Ahmadis basically barring them from being Muslims and making their 'outraging the religious feelings of Muslims, by whatever means', punishable by imprisonment.

Offences were vaguely defined, and there were little procedural safeguards. In the hands of interested parties – jihadist groups as well as malicious neighbours and fellow workers, among others - these discriminatory laws became handy tools for harassing the minorities.

To sum up, 'fundamental rights, liberties and liberal principles were duly incorporated in the 1956 Constitution and retained in the 1962 Constitution and the Legal Framework Order, 1970 and the 1973 Constitution. However, alongside was the parallel constitutional debate flowing from the Objectives Resolution, which produced the incorporation of "Islamic provisions"' (Zia, 2010:150). Zia ul Haq's discriminatory legal order brutalized minorities. This left a legacy of denial of rights and marginalization of the minorities that has proved difficult to roll back to this day.

## Constitutional provisions and minorities

We now discuss provisions regarding minorities with regard to fundamental rights, protection and religious practices. Article 36 of the Constitution guarantees right to protection of religious minorities. Article 28 guarantees protection of language and culture and Article 33 discourages racial, sectarian and provincial prejudices. There are other provisions too that guarantee equality and non-discrimination. But a closer examination reveals that many constitutional provisions are negated while some others are compromised by other laws. Thus, quite apart from the poor implemen-

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6. In a 2013 reply to the Human Rights Council's (HRC) Universal Periodic Review (UPR) process, while rejecting recommendations for repeal of blasphemy laws, the Pakistani government stated, 'while the government has accepted and is already implementing measures that call on it to prevent the misuse of blasphemy law, there is no national consensus on the repeal of these laws' (Pakistan's statement during the Adoption of UPR Report in its 22nd Session of the Human Rights Council, Geneva, 2013).

tation of many rights' provisions, many laws themselves are discriminatory and violate international human and minority rights covenants contained in statutes such as the UN Minorities Declaration (1992) and the Durban Declaration on Racism and Racial Discrimination (2001).

Article 20 guarantees right to freedom of religion but it has many provisos. It states 'every citizen shall have the right to profess, practice and propagate his religion.' However, other constitutional provisions and laws impose limits on this right, which is 'subject to law, public order and morality' opening the floodgates to complaints of violation of this freedom against Muslims and non-Muslims, especially Ahmadis (US State Department, 2014: 2). Further, the constitutional requirement for all laws to be consistent with Islam means that many provisions of the right to freedom of religion are neutralized.

According to the Constitution and Penal Code, (1978 amendment, Clauses C and D of Section 298B of PPC) Ahmadis are not Muslims and are prohibited from calling themselves Muslims or their belief in Islam as well as from preaching or propagating their religious beliefs, proselytizing or insulting the religious feelings of Muslims. These put definitive restrictions on Ahmadis' right to freedom of religion.

Ahmadis being declared non-Muslims also has other implications as their rights are denied to them:

- i. The Constitution provides for 'freedom to manage religious institutions,' but Ahmadis cannot call their place of worship a mosque thus effectively barring them from this right.
- ii. Ahmadis are barred from propagating their faith or publishing religious texts something that the Constitution allows the minorities.
- iii. Passports, national identity cards and electoral rolls designate religious affiliations. Applicants for public sector employment too require that the religion be mentioned. In both cases, Muslim applicants must negate the Ahmadi movement and denounce its founder. This effectively disenfranchises Ahmadis denying them access to citizenship rights and public sector jobs.

Article 25 guarantees equality before law and equal protection of law. But many provisions of the Constitution discriminate against minorities:

- i. Freedom of speech is subject to ‘reasonable restrictions in the interest of the glory of Islam,’ as stipulated in the Penal Code. Blasphemy laws too are Muslim specific (that is only against Islam) and prescribe extremely strong penalties (Sections 298A, 298B and 298C of the Pakistan Penal Code). Persons are subject to death for ‘defiling Prophet Muhammad,’ to life imprisonment for ‘defiling, damaging, or desecrating the Quran,’ and to 10 years’ imprisonment for ‘insulting another’s religious feelings.’ Speech or action intended to incite religious hatred is punishable by up to seven years’ imprisonment. And Ordinance XX (1984), targeting Ahmadis is particularly discriminatory with its vague definition of offence and draconian punishments. According to one estimate, up to 1992, 1,790 criminal cases had been filed under this ordinance (Lau, 2006: 114-115).
- ii. The Hudood laws too discriminate thus contravening Article 25. Witnesses against a Muslim accused are required to be adult Muslim males. There is no such restriction for non-Muslim accused. And the presiding judge (in a case involving a Muslim) must again be a Muslim. Besides violating the guarantee to equality this also violates the guarantee given under Article 227 (3) that nothing under the Islamic provisions section would affect the personal laws of non-Muslims or their status as citizens (Zia, 2010:155).

There is no system of civil or common law marriages, marriages being performed and registered according to individuals’ religions. But the government does not have a legal mechanism to register the marriages of Hindus and Sikhs causing women from these religious groups difficulties in inheritance, accessing health services, voting, obtaining passports and buying or selling property (US State Department, 2014: 3). It was only recently, in February 2016 that the parliamentary panel approved the Hindu Marriage Bill 2016 and the Sindh Assembly passed the bill, 2016 (*The Hindu*, 2016).

Article 22 assures freedom from forced religious instructions.

Article 22 guarantees that no person shall be required to receive religious education other than his own, prohibits discrimination on the grounds of religion alone with regard to admission in educational institutions and receiving public assistance and allows affirmative action by public authorities for the advancement of disadvantaged groups. Islamic studies are compulsory for all Muslim students in state-run schools, which in itself

is a violation of individual rights. And although students of other religious groups are not legally required to study Islam, they generally are not offered parallel studies in their own religious beliefs and by default are required to take up Islamic studies (*The Hindu*, 2016).

Article 27 guarantees non-discrimination in public service appointments. But violating that is Article 41 which stipulates that only Muslims can be the head of state and the mandatory oath of office for the Prime Minister (swearing that he/she is a Muslim and believes in the unity of god and finality of the Prophet) effectively debars non-Muslims and Ahmadi. Non-Muslim judges and advocates are discriminated in the Federal Supreme Court and under the Hudood Ordinance unless the accused is a non-Muslim (Zia, 2010: 167). Applicants for public sector employment, designating themselves as Muslims, must sign a declaration negating their Ahmadi beliefs and its founder.

## **Right to life and security**

It is the state's duty to provide security to its citizens, ensuring protection of their lives, security and property regardless of their religious, ethnic or linguistic affiliations. Minorities in any context expect the state to perform this basic state function and so do minorities in Pakistan. However, as recent events demonstrate the Pakistani state is increasingly unable to guarantee this basic right, especially to its minorities. The latest Pakistan edition of the US State Department International Religious Freedom report, comments that the country represents one of the worst situations in the world for religious freedom, with Pakistan continuing to experience chronic violence targeting Shia Muslims, Christians, Ahmadi Muslims and Hindus – Pakistan's principal religious minorities (USCIRF, 2015: 109). To give an idea about the kind of attacks on minorities in Pakistan, we refer to some incidents in 2015 when an estimated seven cases of organized assaults on minorities took place; of these terrorist organizations affiliated to Islamist parties attacked on four different occasions. In one such attack on 15 March on St. John's Catholic Church and Christ Church in Lahore left 19 dead and 70 injured. Identical attacks against Christians took place on 26 and 27 May 2015.

Attacks on minorities on questionable grounds of blasphemy, occurred on two occasions in 2015. In one instance, there was an attack on a factory belonging to a member of the Ahmadi community in Jhelum district.

## **Life and security of minorities**

Different laws like the ones on blasphemy and attacks by a variety of extremist groups on different minority communities have increased over time. This section catalogues the many ways in which life and security is denied to the minorities using a historical lens but focusing on recent trends. This section is arranged based on the intensity of violence that principal religious minorities have suffered in recent years. Thus, we begin with the Shia community, followed by Ahmadi Muslims, Christians, Hindus and Sikhs. The last section discusses the issues of both omission and commission by the state to point out its inability to protect its minorities from the attacks that are increasing throughout the country at an alarming rate.

### **Attacks on Shias**

Recent trends of assaults on the Shia community are a worrisome tendency that started developing in the mid-1980s. The site of many of these attacks was Punjab province – especially Jhang district - as well as urban areas across the country. According to available reports, between 1985 and 1989, over 300 Shias were killed in Jhang. Between 1989 and 2003, 1,468 Shias were killed and 3,370 injured in approximately 1,813 incidents. Over time anti-Shia violence has spread to other parts of the country, especially large urban centres. According to one report, in Karachi alone 293 people died of whom 200 were Shias in different riots between 1994 and June 2002 (Online Encyclopaedia of Mass Violence). According to a report by the Jinnah Institute, violence against Shias peaked in 2012-15: ‘The overall number of bomb blasts and targeted attacks have reached unprecedented levels with 1,304 people killed from explosions, and another 601 people falling victim to targeted killings.’ The number of people injured in bomb blasts was 950; 23 Imambarahs also came under attack in 2012-15.

The severity of violence targeted at Shias is given in *Table 1*.

In recent years, ethnic Hazaras, predominantly Shias, have been facing violent attacks, especially in Balochistan province. Since 2008, an estimated 500 Hazaras have been killed in different attacks. This has resulted in large-scale migration (nearly 30,000 Hazaras, according to one report) of Hazaras from Balochistan in the last five years. On 21 January 2014, a suicide bomber attacked a bus carrying Hazara Shia pilgrims in Balochistan’s Mastung district killing 24 and injuring 40. On 23 October of the same year,

a gunman fired on a bus transporting Hazara traders killing eight persons (US State Department, 2014: 11). Attacks on Shia mosques, some with deadly consequences, have become common – in a two-month period in early 2015, 90 Shias were reported killed in three major attacks against Shias in Shikarpyr (Sindh), Peshawar and Rawalpindi (Punjab) (SATP, 2015). Poor security for Shias has also been facilitated by the increasing Shia-Sunni tensions, some of which at least were fanned historically by Zia ul Haq’s Islamization drive in the 1980s deepening sectarian tensions in Pakistan.

## **Attacks on Ahmadis**

Ahmadis, another Muslim minority, have faced the brunt of attacks and violence. The first large-scale violence against minorities in post-independence Pakistan against Ahmadis was in 1953 when an estimated 2,000 persons were killed by rampaging mobs in Rabwa town in Jhang district, Punjab. A repeat of this mass violence in 1974 in the same area resulted in the death of 42 persons of whom 27 belonged to the Ahmadi community (Online Encyclopaedia of Mass Violence). The frequency of anti-Ahmadi violence and its intensity have increased since (*see Table 2*). The constitutional change in 1974, resulting in Ahmadis being declared non-Muslims, vitiated the atmosphere against them making them further vulnerable to attacks.

A recent study on Ahmadis reveals the seriousness of the assault on the community from 1984 to 31 December 2015. (*see Table 3*).

Many Ahmadis continue to be labelled as blasphemers and violent attacks by mobs against Ahmadis occur at regular intervals. In 2014, 11 Ahmadis were killed in mob attacks. According to media reports, on 16 May 2014 one Khalil Ahmad, an Ahmadi, was in police custody allegedly for committing blasphemy. He was shot dead in police custody by someone who walked in and fired a gun at him. On 26 May, Dr Mehdi Ali Qamar, a Canadian-American cardiologist who had come to Pakistan was shot dead by two strangers. On 27 July 2014 a mob attacked an Ahmadi neighbourhood in Gujranwala and burned down eight houses because some members of the community had posted blasphemous material on Facebook (HRCP, 2015: 131-134; US Department of State).

Ahmadi places of worship too are not spared the violence. In early October 2005, an Ahmadi mosque was attacked in village Mong near Mandi

**Table 1. Statistics on Targeted Violence against the Shia Community in Pakistan**

Time period	Number of attacks	Killed	Injured	Targeted bombing	Targeted shooting
July 2012 to June 2013	54	514	769	17	28
July 2013 to June 2014	54	222	289	11	29

Source: Compiled by the author from Factsheet Pakistan, August 2014 (US State Department 2014: 3-4).

Note: We are unable to provide more up to date data as more recent data on violence, disaggregated by religion is not available.

**Table 2. Statistics on Targeted Violence against the Ahmadi Community in Pakistan**

Time period	Number of attacks	Killed	Injured	Targeted bombing	Targeted shooting
July 2012 to June 2013	40	17	28	1	20
July 2013 to June 2014	10	10	1	0	4

Source: Compiled by the author from Factsheet Pakistan, August 2014 (US Commission on International Religious Freedom, pp. 3-4).

Note: We are unable to provide more up to date data as more recent data on violence, disaggregated by religion is not available.

**Table 3. Statistics on human rights violations of Ahmadis (From 1984 to 31 December 2015)**

Type of Incident	Number
Ahmadis killed	248
Ahmadis target-killed this year	2
Ahmadis assaulted for their faith	323
Ahmadi mosques demolished	27
Ahmadi mosques sealed by authorities	32
Ahmadi mosques set on fire or damaged	20
Ahmadi mosques forcibly occupied	16
Ahmadi mosques whose construction was barred by authorities	52
Ahmadi bodies exhumed after burial	39
Burial of Ahmadis was denied in common cemetery	65
Incidents of Kalmia (Islamic creed) removal from Ahmadi houses and shops	43
Incidents of Kalmia removal from Ahmadi mosques	102

Source: A Report on Persecution of Ahmadis in Pakistan During 2015 retrieved from: <https://www.persecutionofahmadis.org/wp-content/uploads/2010/03/Persecution-of-Ahmadis-in-Pakistan-2015.pdf>.



Bahauddin. The attack took the lives of eight Ahmadis, another 18 persons were injured. In 2006, five different Ahmadi places of worship came under attack. In February, 2009, another mosque of the community was attacked (South Asians for Human Rights, 2010:144). On 23 January 2014, some unknown persons burned down an Ahmadi place of worship. On 26 January of the same year, another Ahmadi mosque was attacked in Faisalabad. In June, some men accompanied by the police destroyed an Ahmadi mosque in Dera Ghazi Khan (HRCP, 2015: 133).

## **Attacks on Christians**

Attacks on Christians too have been common. They spiked immediately after western intervention in Afghanistan in 2001. On 28 October 2001, 18 Christians were gunned down inside the St. Dominic Church in Bahawalpur, Punjab. On 17 March 2002, four grenades were thrown inside a church in Islamabad, an incident that claimed the lives of five people and injured over 40. In a suicide bomb attack on 8 May 2002, 14 people were killed including 11 French naval engineers who were associated with a submarine project with the Pakistan Navy (Online Encyclopaedia of Mass Violence).<sup>7</sup> Over the years, attacks against Christians have become regular (*Table 4*).

Often Christians are accused of blasphemy, and often immediately after being accused they fall prey to attacks by majoritarian mobs. A Christian couple (Shama and Sajjad) in Kot Radha Kishan, Punjab were lynched in 2014. They were beaten to death and then burned on the pretext that they had desecrated a copy of the *Quran* (HRPC, 2014: 129; US Department of State:12). A serious attack on Christians took place in September 2013 in Michael Town, Korangi, Karachi, when 300 Christian homes were burned down in mob violence forcing the victims to flee (HRCP, 2015: 130).

In the same year, a Muslim mob of more than 3,000 persons in retaliation against alleged blasphemy, burned 100 Christian homes in Lahore's Joseph Colony (US Department of State: 8).

Attacks on churches takes place frequently in Pakistan. In 2005, *madrassa* students pulled down an under-construction church on the grounds that it was being erected in close proximity to a mosque. Local Muslim religious leaders declared that a church could not be constructed

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7. The post-2001 situation saw an increase in the attack and this point was well accepted in different reports. Mention could be made of Minority Rights Group International (2013: 7).

**Table 4. Statistics on Targeted Violence against the Christian Community in Pakistan**

Time period	Number of attacks	Killed	Injured	Targeted bombing	Targeted shooting	Rapes
July 2012 to June 2013	32	7	33	0	3	3
July 2013 to June 2014	22	128	185	1	5	3

*Source: Compiled by the author from Factsheet Pakistan, August 2014 (US Commission on International Religious Freedom, pp. 3-4).*

*Note: We are unable to provide more up to date data as more recent data on violence, disaggregated by religion is not available.*

in close proximity to a mosque (South Asians for Human Rights, 2010:143). One of the largest attacks against Christians took place in September 2013 when a suicide bomb attack killed more than 100 persons at the All Saints Church in Peshawar (Minority Rights Group International, 2013: 7). Attacks on churches continue. On 15 March 2015, at least 15 people were killed and 70 injured when two Taliban suicide bombers attacked churches in Lahore (*Dawn*, 2015a). And, in yet another instance of suicide bombing, this time on Easter Sunday on 27 March 2016 over 70 persons were killed in Lahore city.

There are other forms of violence too against Christians. According to a report of the Movement for Solidarity and Peace in Pakistan, every year around 700 Christian women were abducted, forcibly converted to Islam and then married to Muslim men. As a consequence of this violence and lack of security, thousands of Christians have migrated out of the country (HRCP, 2015: 129-130).

## **Attacks on Hindus**

Violence against Hindus is also commonplace. *Table 5* provides data on anti-Hindu violence in recent years.

Most of the violence against Hindus takes the form of forcible conversions, especially of women, to Islam. Cases of Hindu girls being abducted and then being forcibly converted to Islam and married to Muslim men is common. The Secretary-General of the All Pakistan Hindu Panchayat reported that approximately 1,000 girls in Sindh had been victims of forced conversions to Islam (HRCP, 2015: 126). However, many incidents of forced

conversions go unnoticed and are hence not reported (South Asians for Human Rights, 2010: 162). Kidnapping of Hindu traders too takes place with regularity, especially in Balochistan (HRCF, 2015: 126). Attacks against Hindu places of worship too are common. Reports point to the destruction and takeover of temples after Partition. A recent report commented that ‘thousands of temples have been destroyed or converted into mosques in the years since then, and there are an estimated 360 temples remaining (with a smaller number still functioning).’ In retaliatory violence against the destruction of the Babri Masjid in India in 1992, there was a spike in temple attacks in Pakistan (Hindu American Foundation, 2015: 67). According to *The New York Times* (8 December 1992), Muslims attacked more than 30 Hindu temples across Pakistan on 7 December 1992.

A recent HRCF report cites cases of such attacks. In January 2014, a Hindu temple was attacked in Peshawar; the police suspected it to be a militant attack. On 15 March just before midnight another temple in Larkana, Sindh, was attacked by a mob and subsequently burned down after a rumour spread that a member of the Hindu community had desecrated a copy of the *Quran*.<sup>8</sup> Incidents of an identical nature were also witnessed in different corners of the country:

- i. on 17 March a temple in Badin was attacked,
- ii. on 28 March a small Hindu temple was torched in Hyderabad,
- iii. on 30 March the Faqir Par Braham Ashram in Tharparkar was desecrated, and
- iv. on 21 November an idol of Hanuman and some religious books were burned down in the Sindh area.<sup>9</sup>

The first half of 2015 also saw a spike in incidents at Hindu religious sites. In February 2015, three Hindu temples in Sindh were attacked:

- i. Makli Mata temple in Makli district;
- ii. Radha temple in Mirpurkhas; and
- iii. Krishna temple in Hyderabad (Hindu American Foundation, 2015: 68).

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8. Reuters (2014). The same incident was reported in other reports that dealt with the issue of minorities in the same year. See, for instance, United States Department of State:14).

9. The attack on 21 November in the Sindh area was reported in different periodicals. See, for instance, Dawn, 21 November 2014 at: <http://www.dawn.com/news/1145998>.

**Table 5. Statistics on Targeted Violence against the Hindu Community in Pakistan**

Time period	Number of attacks	Killed	Injured	Targeted bombing	Targeted shooting	Rapes
July 2012 to June 2013	10	2	2	0	3	5
July 2013 to June 2014	4	0	1	0	0	0

Source: Compiled by the author from Factsheet Pakistan, August 2014 (US Commission on International Religious Freedom, pp. 3-4).

Note: We are unable to provide more up to date data as more recent data on violence, disaggregated by religion is not available.

The trend of attacking temples continued in 2016 as one of the leading Indian newspapers *The Hindu* reported on 2 February 2016 that a 60-year-old temple in Karachi was attacked on 21 January. The land mafia in Pakistan has occupied temples for different commercial purposes without the consent of the Hindu community (see, for instance, South Asians for Human Rights, 2010: 142).

Sustained attacks against Hindus have resulted in a steady migration of Hindus out of Pakistan, mostly to India. As a result, the Hindu population's ratio in Pakistan declined from 15 per cent in West Pakistan in 1947 to just 2 per cent in 1951. In Karachi, there was a sharp decline in the number of Hindus (from 51 per cent in 1947 to approximately 2 per cent in 1951) (Hindu American Foundation, 2015: 60). The number fell to just 1.85 per cent according to the 1998 Census. The increase in violence has resulted in large-scale migration of the Hindus, out of Pakistan to India (The Times of India, 2014). According to Ramesh Kumar Wankwani, a PML-N lawmaker and head of the Pakistan Hindu Council, around 5,000 Hindus have migrated from Pakistan to India every year due to religious persecution (See HRCP, 2015: 127).

## Attacks on Sikhs

Details of the violence against Pakistan's Sikh community in recent years are given in *Table 6*.

On 3 September 2014, unidentified gunmen killed a Sikh in his shop in Shaheedan Bazaar, Mardan. Three days later, in another instance, there was open firing on three shops run by Sikhs in Hashtnagri, Peshawar. One Sikh was killed and two others were injured. Kidnapping and abductions are also

common against the Sikh community across the country. The abductors often demand a large amount and in many cases the Sikhs are unable to pay and hence the kidnapped Sikhs are killed (HRCP, 2015: 124-125). Killing of Sikhs is also reported elsewhere like <http://www.dailymail.co.uk/wires/afp/article-3043102/Spate-attacks-shake-Pakistans-dwindling-Sikh-community.html>.

Pakistan is an important place for the Sikh community. Guru Nanak Dev, the founder of the Sikh faith was born in Nankana, a town in Pakistan Punjab. A large number of Sikh pilgrims visit the country every year and there are many important gurdwaras across the country. But the security of these religious sites is in question. In September 2004, a violent mob attacked the famous gurdwara in Nankana Sahib. In 2008, a Sikh temple in Lahore was forcibly taken over by a group of Muslims (South Asians for Human Rights, 2010: 140). A HRCP report (2015: 125), said this on the security of Sikh places of worship: 'the Sikh community said they were afraid to go to gurdwaras to worship and many of their religious places were closed due to the poor security situation in the region. A lot of Sikhs also had to close down their shops. Many parents were not sending their children, especially boys, to school because they could be easily identified by their headdress.'

## **Attacks on other communities**

Other minority groups have also been attacked. Zikris, concentrated in south-western Balochistan, is one such vulnerable community. They fear that they will suffer the same fate as the Ahmadi community as there have been demands from certain majoritarian groups to identify Zikris as a non-Muslim minority on the ground that they are predominantly Baloch ethnic groups (upi.com, 2015). Sunni/Namazi Muslims, belonging to different fundamentalist organizations have launched attacks against Zikris (Malik, 2002). Their places of worship have come under attack. One such instance occurred when Khana-i-Zikr in Teertej in Awaran was attacked in late August 2014. Six persons were killed in the attack by unidentified gunmen. *Dawn* (2015b) reported that 'soon after the attack in Teertej, other cases targeting Zikris were also reported from across Awaran. It included instances where Zikris were identified while travelling and asked to step down and were looted.'

## **Omissions by the state**

It is difficult to state categorically who the actors are that have unleashed the reign of terror against minorities in Pakistan. The responsibility for the

**Table 6. Statistics on Targeted Violence against the Sikh Community in Pakistan**

Time period	Number of attacks	Killed	Injured	Targeted bombing	Targeted shooting
July 2012 to June 2013	2	1	0	0	0
July 2013 to June 2014	3	2	0	0	1

*Source: Compiled by the author from Factsheet Pakistan, August 2014 (US Commission on International Religious Freedom, pp. 3-4).*

*Note: We are unable to provide more up to date data, because more recent data on violence, disaggregated by religion is not available..*

attacks on Shias has been attributed to Lashkar-e-Jhangvi (LEJ) and other militant organizations with avowed anti-Shia interests. As for the other minorities, there is no clearly identifiable group. Overall, it will be safe to say that although Pakistan does not present itself as a case of state sponsored massacres that often take place in other South Asian countries, non-state actors are actively engaged in attacks on different minority communities, something that the state is unable or unwilling to contain. The United States Department of State noted ‘there were several incidents involving the abuse of religious groups by individuals or organizations designated as terrorist organizations by the U.S. government, and by armed sectarian extremist groups with strong links to such organizations, including Lashkari Jhangvi, TTP, and Sipah-e-Sahaba.’ Other reports such as those by FIDH and HRCP, highlight the ‘...impunity for systematic attacks against members of minority groups by State and non-State actors’ (See FIDH, 2015).

In any case, minority religions do not receive the same protection that Islam has been granted under the law. All fundamentalist forces seem to have exploited this gap in the law to launch assaults against religious minorities. At the same time, attacks on minorities should be seen in the wider context of terrorist violence in the country and the overwhelming of the state by different terrorist organizations launching assaults on different occasions. The 2014 annual report of the State of Human Rights reported that 1,723 Pakistanis had lost their lives and 3,143 were injured in 1,206 terrorist attacks, including 26 suicide hits in 2014 (<http://www.dailytimes.com.pk/national/18-Apr-2015/hrcp-s-state-of-human-rights-report-1-723-pakistanis-lost-their-lives-in-terrorist-attacks-in>). A large proportion of the victims belonged to different religious minorities.

## **Commissions by the state**

It must, however, be noted that it is not only non-state actors - armed organizations designated as terrorists and violent majoritarian mobs – who unleash attacks on religious minorities. There are also cases where the state machinery has been accused of carrying out attacks on religious sites. The HRCP annual report (2015: 122) notes:

US Commission on International Religious Freedom pointed out that Pakistan topped the list of countries that jailed citizens for allegedly attacking religion. Though courts gave death sentence to people who were charged with blasphemy, no one had ever been executed by the state. However, the accused often faced mob attacks and vigilante violence. A majority of the people charged with blasphemy were Muslim. More Ahmadis were booked under these laws than Christians, Hindus, and Sikhs.

The army was reportedly planning to demolish a Hindu temple in Rawalpindi to build a barrack and an educational complex. In March, an unauthorized development project also threatened a 160-year-old Shri Ratneshwar Mahadev Mandir in Clifton, Karachi when Bahria town started digging up the road leading up to the temple to build a flyover. It was reported that the vibration from the excavators was damaging the roof of the historic underground temple. On the basis of a HRCP letter (2015: 128), the Chief Justice of the Supreme Court summoned relevant officials. To meet this challenge, the Evacuee Trust Properties Board (ETPB) was set up with a mandate to protect the properties of minorities such as Hindus and Sikhs. But a survey conducted by the All Pakistan Hindu Rights Movement (APHRM) in March 2014 reported that out of the 428 places of worship, only 20 were operational, the remaining 95 per cent had been leased for residential and commercial purposes by ETPB itself (Minority Rights Group International, 2013: 22). In a similar manner, in June 2014 the police forbade Ahmadis from building a place of worship in Narowal (HRCP, 2015: 133).

Another important point is use of the blasphemy laws to penalize members of minority communities where the state has an active involvement. In 2014, 12 cases were registered under blasphemy laws. Sometimes the police itself crosses the line in using blasphemy laws. Mohammad Asghar, 70, a psychiatric patient, was arrested for claiming to be a prophet. He was shot by a police officer. His cell mate, a Christian pastor was arrested for

blasphemy and was shot dead during an attack by the same police officer (HRCP, 2015: 133). There have also been cases where individuals were penalized by the judiciary for merely expressing their views that some sections of the population thought were blasphemous. Mention can be made of Younis Sheikh who was arrested under blasphemy laws in early 2005. He was sentenced to death by the Anti-Terrorism Court, Karachi on the ground of writing 'blasphemous material' in his book *Shaitan Maulavi* (Satanic Cleric) (South Asians for Human Rights, 2010: 147).

Penalization of members of the Ahmadi community by the police is perhaps the most telling example of commission by the state. In 2015, 19 persons were charged by the police on religious grounds in eight cases (See A Report on Persecution of Ahmadis in Pakistan during the year 2015 (Summary): 139).

A report notes: 'Between 1927 (year in which Britishers introduced section 295-A) and 1986, there had been only seven reported cases of blasphemy. However, 1986 onwards as many as 4,000 cases have been reported. Between 1988 and 2005, Pakistani authorities charged 647 people with offences under the Blasphemy Laws. Fifty percent of the people charged were non-Muslims. More than 20 people have been murdered for alleged blasphemy. Two third of all the cases are in the Punjab Province of Pakistan' ([http://www.eepa.be/wcm/dmdocuments/EP\\_Hearing\\_Pakistan/Blasphemy\\_law\\_fact\\_sheet.pdf](http://www.eepa.be/wcm/dmdocuments/EP_Hearing_Pakistan/Blasphemy_law_fact_sheet.pdf)). So widespread is the misuse of blasphemy laws that in its 12th Regular Session, the General Assembly of the Human Rights Council of the United Nations observed: 'Since 1986 blasphemy laws have been frequently used to intimidate and persecute religious minorities and to settle personal vendetta. Hundreds of innocent people have been imprisoned, forced to leave the country or killed by Islamic extremists' (See <http://un.op.org/en/node/2814>).

We have already seen the nature of attacks by Muslim fundamentalist groups on temples, churches etc. There have been some attempts to resist such attacks. On one occasion, in the aftermath of the church attacks in March 2015, the Sindh provincial government announced that it would hire 2,000 Hindu and Christian police officers to protect temples and churches. There is no denying that the initiative is a noble one, but one is unclear whether this has been implemented and how effective it has been or will be (Hindu American Foundation, 2015: 68).



A consequence of these relentless attacks on the minorities has been the drastic fall in their population in the country – many who could, have migrated. This seems to be an outcome of the tendency of a section of Pakistan’s leaders to declare Pakistan as an Islamic state, a case of abandoning Jinnah’s idea of a secular Pakistan. In the 1960s, it was also accompanied by a sustained anti-Hindu (often Bengali) sentiment which resulted in regular violence against Hindus across the country. From 1970s onward (to be specific from 1974), with Zia ul Haq’s rule, a process of Islamization took roots. Islamization is a term used by some scholars to denote an all-out effort to make legislations and a legal framework in the country in tune with Sharia law. It is in this context that the Ahmadis were declared non-Muslim. This, in turn, gave many fundamentalist organizations an opportunity to unleash violence against the Ahmadis. From the mid-1980s Shias have come under many attacks. It is not only religious minorities, but even certain sections of Muslims, deemed non-Muslim by these fundamentalist organizations, who are being attacked.

## **Right to non-discrimination in the socioeconomic sphere**

The right not to be discriminated against is important in protecting the rights of minorities. But minorities in Pakistan experience significant discrimination in their daily lives. In the absence of any disaggregated data, it is difficult to come up with numbers to show the status of the minorities in terms of their socioeconomic rights. Lack of data is a finding in itself that needs to be addressed if any progress is to be made in combating discrimination and improving the lives of the minorities.

In this section, we map out the socioeconomic conditions of Pakistan’s minorities within the larger context of the socioeconomic situation in Pakistan. We try to understand the intersectionality between religion on the one hand and socioeconomic conditions on the other as it is seen that religious minorities in Pakistan have higher chances of being poor. We focus on three different themes: poverty, education and health to map the socioeconomic conditions of the minorities. Since there is no disaggregated data to point out poverty among members of religious minorities we focus on available sources to demonstrate the marginalized existence and poor levels of employment of members of different religious minorities. For this, we drew on material from various sources, including civil society reports. What we present in this section are patterns and trends of how minorities fare with regard to access to different socioeconomic rights.

## Poverty

In the absence of any data related to the poverty prevalent among religious minorities, we studied employment figures. The Government of Pakistan (in 2009) reserved 5 per cent of all jobs in government departments for educated and skilled members of religious minorities. *The Express Tribune* (2014) reported that despite the quota, government departments only had a negligible number of non-Muslim employees. Only eight non-Muslims were employed in the State Life Insurance Corporation of Pakistan that works under the Ministry of Commerce –four in Karachi and four in Punjab. The corporation’s offices in Khyber-Pakhtunkhwa (K-P) and Balochistan had no non-Muslim employees. Similarly, only four non-Muslims were employed in the National Insurance Company Limited. Most members of religious minorities live in extreme poverty and their children fail to attain education. Thus, quotas make little difference as few can meet the eligibility requirements. Most Christians are sweepers or brick kiln workers. Similarly, a majority of the Hindus, also identified as Dalits, are engaged in the agricultural sector; in reality they are engaged as bonded labour.<sup>10</sup>

There is no official data disaggregated by religion to show the conditions of minorities in terms of employment. However, a survey by the Indian Institute of Dalit Studies (IIDS, 2008: 26), reported that more than 48 per cent Scheduled Caste Hindus worked as agriculture workers and daily wagers. Of the total working population of Dalits in Pakistan, 11 per cent worked as domestic workers (IIDS, 2008:26). A large portion of them worked as bonded labour in agriculture. Similarly, the Christian population in Pakistan was marginalized to such an extent that a majority of them picked up jobs in brick kilns, willing to be engaged as bonded labour. As a consequence of these working opportunities, Dalits and Christians generally lived a life of impoverishment. Thus, for instance, as wage labourers in agriculture, 85 per cent of the Dalits earned monthly incomes between Rs 500 and Rs 3,000, which even at the maximum level of Rs 3,000 was 35 per cent less than the official national minimum wages of an un-skilled worker (IIDS, 2008: 27). The fact that Dalits, according to many accounts, represent the bulk of the Hindu population, says a lot about the condition of Hindus and other minorities in general.

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9. A report called “Status of the Minorities in Pakistan” commented the following: “Vast majority of the Hindu population is concentrated in few districts of Sindh desert. They are grouped as Hindus and Scheduled Cast which means a good number of them belongs to low cast (Dalits)” (See [http://www.eepa.be/wcm/dmdocuments/EP\\_Hearing\\_Pakistan/Fact\\_Sheet\\_Minorities\\_in\\_Pakistan.pdf](http://www.eepa.be/wcm/dmdocuments/EP_Hearing_Pakistan/Fact_Sheet_Minorities_in_Pakistan.pdf), page 1).

Estimates of the Dalit population in Pakistan continue to be a matter of contestation. According to the 1998 Census, the total population of Hindus in Pakistan was 2,443,514 of which 2,111,171 were Hindu jatis (upper castes) and 332,343 were Scheduled Caste Hindus (lower castes). But according to IDSN (2008: 10-11), official sources seriously under-reported the Dalit population. A majority of the Hindus in Pakistan were Scheduled Castes. According to another study, and confirming IDSN's claim, 85 per cent of the Hindus in Pakistan were Dalits (Counter Currents, 2012). According to civil society groups, official denial of the Dalit status of most Hindus is a clear example of the denial of rights to Dalits and other minorities.

### ***Bonded labour***

A significant section of the workforce belonging to minority communities experiences modern day slavery in many parts of the country. In this typical form of slavery, the employers 'forcibly extract labor from adults and children, restrict their freedom of movement, and deny them the right to negotiate the terms of their employment' (HRW, 1995:1). The Global Slavery Index (2013) commented on the widespread practice of bonded labour in the country and ranked Pakistan as the third worst place in the world for forced labour. Another report estimated that there could be 3 to 8 million bonded labour across the country (*Dawn*, 2014a). The existence of a bonded labour force, primarily belonging to the Dalit and Christian population, can be seen in different activities like brick kilns, agriculture, carpet weaving, mining, tanning, cotton seed production, handicraft production, production of glass bangles and domestic work (IDSN, 2014).

### **Access to employment opportunities**

The issue of employment and livelihood for religious minorities is not restricted to the question of bonded labour. Overall, employment avenues for religious minorities do not suggest a happy picture. Most of them are largely confined to low-wage, menial employment. Although it is also true that a small section within the minorities has held influential positions. Thus, for instance, only one Christian has reached the position of Major General in the history of the Pakistani Army (Hisam and Qureshi, 2013: 37). The issue of minorities not having access to better employment opportunities and merely being reduced to wage earners and menial workers was also brought forth by the Minority Rights Group International (2014). In most of the cases, Hindus and Christians living in cities were engaged in menial work including low-level sanitary jobs and working as street sweepers, which the Muslims were generally unwilling to do. A large number of Christians were

## Profile of a vulnerable minority: **Bonded Labour**

One of the problems that a vast majority of the workforce in Pakistan has experienced over time is the existence of bonded labour, a form of modern day slavery in certain parts of the country. The existence of bonded labour in modern Pakistan can also be seen as a larger problem of religious minorities, as significant sections of the Hindu Dalit and Christian population are trapped in this practice. Human Rights Watch has commented on the practice of bonded labour as (HRW, 1995: 1):

Throughout the country employers forcibly extract labor from adults and children, restrict their freedom of movement, and deny them the right to negotiate the terms of their employment. Employers coerce such workers into servitude through physical abuse, forced confinement, and debt-bondage. The state offers these workers no effective protection from this exploitation. Although slavery is unconstitutional in Pakistan and violates various national and international laws, state practices support its existence. The state rarely prosecutes or punishes employers who hold workers in servitude. Moreover, workers who contest their exploitation are invariably confronted with police harassment, often leading to imprisonment under false charges.

The situation has not improved much since then. On the contrary, the Global Slavery Index 2013 commented on the widespread practice of bonded labour in the country and ranked Pakistan as the third worst place in the world for forced labour. This situation is connected to the inequalities between religious minorities and the Muslim majority. It could be mentioned here that a large number of religious minorities constitute bonded labour in the country (MRG, 2014: 21). In the absence of official data, one has to rely on different sources that point out the number of bonded labour in Pakistan: "There is no exact calculation of the number of bonded labourers.

Research by the Pakistan Institute of Labour Education and Research (PILER) in 2000 estimated that the total number of sharecroppers (haris) in debt bondage across the whole of Pakistan was over 1.8 million people. Furthermore, surveys showed that more

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engaged as street sweepers (Minority Rights Group International, 2014: 21). A blog suggests the prevalence of minorities doing menial work in cities (see [Pakistansuntouchables.blogspot](http://Pakistansuntouchables.blogspot)). Another survey among the Christians of Lahore reported that about 71 per cent of the Christian population in the city was a part of the labour force. Out of this, the employment rate for Christians in Lahore was 37.1 per cent. The remaining 62.9 per cent were unemployed. The report added that 93.93 per cent of the employed Christians worked in the private sector, while only 6.07 per cent were engaged in public sector jobs (Minority Voices).

The problem of employment for minorities is not only confined to the vast uneducated sections of the communities. It has been widely reported that even the educated Christian population finds it difficult to find employment. This is particularly true in Punjab where Christians are categorically marginalized to the extent that the educated lot feels discriminated against in accessing the employment sector (the Jinnah Institute, 2011: 51).

## **Denial of relief during disasters/natural calamities**

Denial of basic services for Dalits, who are also a part of the Hindu minority in Pakistan, is a common practice in the country. The Pakistan Dalit Solidarity Network reported that Dalits were denied access to flood relief camps because of their caste identity and were forced to live under the open sky in 2010-11 (IDSN, 2011). When it comes to access to rehabilitation schemes during floods, the Dalits are the worst affected in different parts. In its 2010 report IDSN said: 'thousands of Dalit families faced caste discrimination in relief efforts, hampering their access to necessary help. There is only limited disaggregated data available about the affected population. The estimated number of dalits affected is 500,000, mostly in the Sindh province. The information collected by PDSN and its member organisations suggests there was severe discrimination against dalits during emergency rescue and relief work. Media, both printed and electronic, have also reported that scheduled caste Hindus were discriminated in distribution of food and denied shelter.'

## **Education**

Pakistan has one of the lowest literacy rates in the world. Only 52 per cent of its population can read and write. A survey conducted in 2008 noted that 'vulnerable and marginalized groups of the population such as women, children, religious minorities, low caste, and bonded labourers make the majority of illiterate population' (IDSN, 2008: 28). Another report, prepared by

*...Profile of a vulnerable minority continued ...*

than 6.7 million people were involved in the practice of *begar*, which refers to a traditional system of family labour which is unpaid, compulsory, and amounts to debt bondage. Hence the calculated number of people kept in bondage based on the PILER study amounts to come more than 8.6 million. The Human Rights Commission of Pakistan in 1994 estimated that approximately 20 million were kept in forced labour (International Dalit Solidarity Network, 2014c,d). In the absence of any official data, the same source continues to note: 'Dalits and other low caste Hindus bear the brunt of these abuses because of their minority status. The multiple disempowerment of being poor, low caste or Dalit as well as non-Muslim are the main contributing factors to the oppressive conditions of bonded labour in Pakistan claims a PILER report' (See International Dalit Solidarity Network, 2014c,d). The issue of bonded labour with reference to the employment of minorities in the country is a growing concern.

It has been estimated that there are several hundred thousand Dalits working as bonded labour across the country. In a 2014 seminar on bonded labour experts claimed the existence of 3 to 8 million bonded labourers in the country (*Dawn*, 2014). The practice of bonded labour can be seen in big and petty productive activities that typically include brick kilns, agriculture, carpet weaving, mining, tanning, cotton seed production, handicraft production, production of glass bangles and domestic work (IDSN, 2014). Out of these sectors brick kilns and agriculture are the areas where the problem of bonded labour is the highest (HRCP, 2015: 251). This position seemed to have taken a turn for the better in 2014 as Pakistan ranked sixth in the Global Slavery Index 2014. According to the Index's estimates, there were approximately 2,058,200 people in Pakistan living a life of slavery. It could well be mentioned at the outset that marginal differences might exist in the different datasets that estimate the number of bonded labourers. In the absence of any government data, there is always the possibility of different civil society organizations working on the same theme to come up with slightly different sets of data, owing primarily to the different methodological approaches that they follow.

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the National Commission on Justice and Peace estimated that only 47 per cent of the minority women interviewed were educated; this was much lower than the national average of 57 per cent and far behind the urban literacy rate for women at 65 per cent (*Dawn*, 2012). Another study on the Christian community in Lahore reported literacy rates of 69.80 per cent. These fell to 28.7 per cent if one considered that an individual can read and write after passing the 10th standard (<http://www.minorityvoices.org/news.php/en/1081/pakistan-study-shows-christians-in-lahore-lag-behind-in-education-employment>).

The issue of poverty and illiteracy among large sections of religious minorities is organically connected as people are illiterate because they are poor and they are poor because they have failed to receive any education or they could not send their children to school.

It should also be noted that widespread discrimination is an everyday phenomenon in the admission process in the educational sector. Hisam and Qureshi's 2013 study pointed out that in institutions of higher and professional education, minorities were denied admissions on the basis of merit after the filling of reserved seats was completed. A survey by the Jinnah Institute (2011: 51) pointed out cases of young Christian students who, despite obtaining high grades, were refused admission in colleges.

Reports also point to Ahmadi students being routinely ostracized by both teachers and students in colleges. The infamous Punjab Medical College case shows systematic discrimination against Ahmadi students in the college. Twenty-three students from the community, 15 female and eight male, across the five years of medical school were expelled by college authorities, 'accused' of preaching their religious beliefs. Interestingly, the college authority did practically nothing to prevent continuous discrimination of the Ahmadi student community (the Jinnah Institute, 2011: 53-54).

## **Health**

Health is another important social indicator which shows the level of development of any nation or a group of the population. Dalits and religious minorities in Pakistan face poor health outcomes (Indian Institute of Dalit Studies, 2008: 31). Associated with this is chronic malnutrition and hunger, particularly among Dalits. A recent report points out that 'starvation and hunger is a real threat to many dalits in Pakistan, particularly those in the Thar desert, which is often hit by droughts.' In March 2014, the Pakistan

*...Profile of a vulnerable minority continued ...*

## **Brick kilns**

One of the prominent sectors characterized by the use of bonded labour are brick kilns. It is estimated that nearly 90 per cent of brick kiln workers in Pakistan are bonded, facing extremely harsh work conditions. According to ILO, in 2001 the estimated population in the brick kilns industry was approximately 1,000,000 (Friedrich Ebert Stiftung, 2013: 13). A survey by the Jinnah Institute pointed out the case of insecure working conditions with a higher level of oppression for bonded labour in brick kilns most of whom were Christians.

There are five categories of brick kiln labourers. One such category is called patheras. They are the main brick makers as their work involves excavating the clay, making the mixture and moulding lumps of clay into bricks. Some 65 per cent of the patheras belong to the Christian community (Walbridge, 2003, 120-121). The International Religious Freedom report 2011 states that Christians are the victims of bonded labour in brick-making industries (Immigration and Refugee Board of Canada).

A Human Rights Watch report confirms this when it comments that 'relative to their percentage of the total population, a high proportion of bonded brick-kiln workers in Punjab are Christians: thirteen out of nineteen brickkiln workers interviewed individually in Punjab by HRW/Asia were Christian' (Human Rights Watch, 1995: 41).

A majority of the brick kilns are located in Punjab, which is interestingly home to a good majority of Pakistani Christians – 52 per cent of the Pakistani Christians live in cities in the Punjab region, while the remaining 48 per cent belong to rural areas (Europe External Policy Advisors). The largest number of brick kilns is in the state of Punjab. This was even reported in one of the local English periodicals (see *The Friday Times*, 2015). It is interesting to note that while Punjab is one of the richest provinces in the country it still continues to engage in bonded labour.

In 2012 the Punjab government fixed a minimum wage of Rs 0788 per 1,000 bricks for special bricklayers. However, a recent survey

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Dalit Solidarity Network reported starvation deaths of more than 100 children, a majority of whom belonged to Dalit families in the region. More deaths of Dalit children in the same area were reported again in September of the same year (IDSN, 2014).

## **Right to effective participation**

A key minority right is effective participation of persons belonging to minorities in public affairs and in all aspects of life to ensure that the diversity of society with regard to minority groups is reflected in public institutions and that minorities have a voice in taking decisions. If these are the standards, Pakistan's minorities enjoy very limited participation in elected bodies, in civil service and in general in the private sector.

### **The separate electorate system**

During Zia ul Haq's time, the system of a separate electorate for minorities came into play. Let us take a quick look at the history of this system in Pakistan. The very idea of a separate electorate came into play in British India and it was voiced, among others, by the Muslim community led by the Muslim League. They feared that they would not get their due share in elected bodies and hence they called for separate electorates. Separate electorates were introduced in 1909 in central and provincial assemblies. The system of separate electorates continued after the formation of Pakistan. No general election was held in Pakistan under the Government of India Act 1935 that served as the country's provisional constitution. It was only in March 1956 that the first indigenous Constitution was enforced. Thus, the provincial assembly elections in Punjab, Sindh, Khyber Pakhtunwala and East Bengal, held between 1951 and 1956, that is, after the formation of Pakistan till the adoption of the first Constitution, continued to have the system of separate electorates.

During the discussion that took place on having an indigenous constitution for the country after the formation of Pakistan, elected members from East Bengal put forth the idea of joint electorates. But no action was taken to translate this demand into reality. It was at the time of the general elections in 1958 that the separate electorate system was changed to joint electorates. The Constitution Commission was set up under the chairmanship of Shahabuddin and tasked with examining the system of electorates, among other issues, as its main terms of reference. The commission favoured a joint electorate. However, Ayub Khan disregarded the commission's

*...Profile of a vulnerable minority continued ...*

points out that the owners of the brick kiln industry do not necessarily follow the government's directives. One worker is reported to have received less than Rs 100 (Friedrich Ebert Stiftung, 2013: 13-14). According to rough estimates, each kiln has an average of 25 families working on the site. Most families are indebted to the owner of the brick kiln as they are tied in a system called paishgi, according to which labourers borrow money from the owner to meet their needs. During the period of paishgi repayment (loan payback), the entire family becomes a prisoner of the kiln owner. After subtracting the 'loan payment', the workers receive a wage much below the government directive and not adequate enough to fulfil material needs (Friedrich Ebert Stiftung, 2013: 14). Paishgi continues and is transferred from one generation to the next. Thus, a bonded labour family does not find any avenue to come out of this situation. There is no implementation of the Bonded Labour System Abolition Act.

The working conditions of brick kiln workers entail cruel and inhuman treatment, which facilitates increased bondage. The workers have a shift of 14 hours of work. A limited number of the workers have a written contract, while most of them are merely reduced to an unorganized working class with an informal 'verbal understanding' of an abysmally low wage, thus forcing them to live below the poverty line (the Jinnah Institute, 2011: 52). A huge number of children are forced to work as bonded labourers and needless to say they are the worst affected by this inhuman practice. In an interview, 12-year-old Jheeni said that she dreamt of becoming a teacher but his dream is very distant as he is forced to spend long hours in the brick kiln. Said he, 'I accompany my family to the workplace at six o'clock in the morning and we work all day, ending late when it is dark...During summer, it becomes hard to sustain the heat and work pressure. Often my hands are burnt while carrying baked bricks' (Al Jazeera, 2014).

Once disadvantaged people, especially Christian minorities take up jobs in brick kilns in the local area possibly because of dire economic needs, they are almost permanently trapped in the work. In some desperate situations, these people take very small loans in exchange for work for a few weeks in the brick kilns. But when this period is over and when they want to go back, the owner of the brick kiln uses

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recommendation and favoured separate electorates over joint electorates. The system of joint electorates continued even in the general elections in 1977. General Zia ul Haq reversed this from joint to separate electorates as it was an essential part of a larger political plan to promote Islamization in Pakistan's politics. In order to reverse the process of joint electorates, Zia amended the basic laws in 1985 (Human Rights Commission of Pakistan: 3-9). He chose to divide the Pakistani electorate into Muslim and non-Muslim entities. Under this new system, non-Muslims would have their own constituencies and separate representatives. Thus, the constituency of non-Muslim voters would not be decided by his/her locality. They would not share the same constituency with another Muslim, despite living in the same vicinity. One particular reserved constituency for the minorities might be shared by different people living across the country, thus going beyond the spatial/territorial limit of the constituencies. As a result, a minority representative might be a complete stranger to a non-Muslim voter residing in a completely different space (Malik, 2002: 19-20).

In the system put in place during Zia's rule, ten seats in the National Assembly were reserved for non-Muslims – four for Christians, four for Hindus, one for Sikhs and Parsis together and one for the Ahmadi community. There were also reservations for non-Muslims in the four provincial assemblies. Thus, for instance, nine seats were reserved in Sindh (five for Hindus, two for Christians, one for Sikhs and one for the Ahmadi community). Balochistan had two seats reserved for non-Muslims (one for Christians and one for Hindus, Sikhs and Parsis combined) (Malik, 2002: 19-20). There was opposition to the separate electorate system. A minority candidate in the Punjab assembly, Naeem Shakir, challenged the separate electorate system in an application before the Supreme Court in 1993. The court allowed Muslim and non-Muslim voters to cast their votes interchangeably across religious boundaries. However, the verdict was confined to the particular constituency and was not given general applicability. More importantly, this verdict proved to be temporary as the Supreme Court reversed its earlier verdict on 4 October 1993. The verdict did not allow Naeem Shakir to contest an election from a Muslim constituency (Malik, 2002: 19-20). However, much later, in early January 2002 the system of separate electorates was finally abolished by Musharraf.

Both the 1956 and 1962 constitutions do not have any provisions for reserved seats for minorities. The 1973 Constitution made provisions for reserved seats for religious minorities in provincial assemblies. Nine seats were reserved for different minority communities in the four provincial as-

*...Profile of a vulnerable minority continued ...*

different tricks to not let them leave work. One of the most recurrent clauses that the owners come up with is: 'No, you've lived in our house, you've eaten our food. Now you owe us twice as much, get back to work' (Whiteman, 2015).

A 2014 report suggests the continuing deplorable conditions of brick workers who are even denied the status of industrial workers even when brick kiln production has been declared an industry (International Dalit Solidarity Network, 2014c,d). One can possibly imagine a situation where a mass body of the 'industrial' workers, primarily Christians and other minorities, are robbed off their rights of social security, a clear breach of labour laws.

## **The agriculture sector**

Another important area of bonded labour is the agriculture sector. The Sindh area is the largest for Hindu Dalit bonded labourers in agricultural production. A vast proportion of the Hindu population is concentrated in a few districts in the Sindh area. A majority of the Scheduled Caste population in Pakistan belongs to rural areas (93 per cent of the total Dalit population). Eighty-nine per cent of the Dalit population lives in six districts – Tharparkar, Umerkot, Mirpur Khas and Hyderabad in the Sindh area and Rahimyar Khan and Bahawalpur districts in the Punjab area (Indian Institute of Dalit Studies, 2008: 23-24).

This vast majority of Dalits does not have access to land and capital and is very often reduced to bonded labour in agriculture. Sindh also has the highest incidence of poverty (Arif : 5). Thus, the largest section of the Hindus is in a region that is marked by chronic poverty. The total estimated number of bonded labour employed in the agricultural sector is roughly 1,800,000 (Friedrich Ebert Stiftung, 2013: 12). Dalits in Pakistan are the poorest and do not own any land as farmers. This situation leads them to bonded labour (International Dalit Solidarity Network, 2014c,d: 2-3).

Bonded labour is the most oppressing result of an inequitable land tenure system. Landholding patterns in the interior of Sindh are one of the most unjust systems that the country has witnessed. It is in

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semblies. Through the 4th amendment to the Constitution in 1975, provisions were made for reserved seats in the National Assembly. Six additional seats were created in the National Assembly to realize the policy of reserved seats for religious minorities. In 1985, Zia increased the number of reserved seats from six to 10 in the National Assembly. Reserved seats for religious minorities in the same amendment were increased from nine to 23 (Human Rights Commission of Pakistan: 3-9). After revocation of the system of separate electorates, the minorities were granted reserved seats in Pakistan's National Assembly –10 out of the 342 seats were reserved for them in the national Parliament. Clearly, this is too little. All these reserved seats are usually filled on the basis of proportional representation. Therefore, rather than being directly elected, minority legislatures are nominated by political parties. In the general elections in 2013 held under this system of nomination, five Hindus, three Christians and one Parsi made it to the Parliament. The five Hindus and one Parsi selected to the National Assembly are from Punjab and Sindh provinces. Two Christians are from Balochistan province and one is from Punjab province (Pakistan Christian Post, 2016).

There is no denying that the dynamics of separate electorates and reserved seats imply different manners of representation. What should be noted is that these two ideas are not opposed to one another. In fact, reserved seats for minorities were increased under Zia at a time when he revived the old trend of separate electorates. Although reserved seats for religious minorities with separate electorate mechanisms ensures that they find a place in elected assemblies, it ends up separating minorities from the majority population even in the same area. Majority Muslim political leaders representing different parties do not necessarily come in contact with members of local religious minorities. On the other hand, members of religious minorities can become aware of their potential role in the electorate process only when they are included in the larger whole of joint electorates. Reserved seats for religious minorities in the system of joint electorates not only secure their representation in the democratic process, but also ensure them greater bargaining power at least theoretically. Restoration of joint electorates in 2002 also had a decisive effect on the nature of minority representation. Except for the Ahmadis, it became possible for members of religious minorities to contest on general seats, which were formerly identified as Muslim seats. As a result of the change in policy, in many places non-Muslim candidates started participating in larger numbers in the elections and contesting from general seats (Human Rights Commission of Pakistan: 10-11).

...Profile of a vulnerable minority continued ...

this area where bonded labour is extensive; landowners use coercion for more profits (Human Rights Watch, 1995: 84).

Dalits and other low caste Hindus constitute a majority of the bonded labourers in the Sindh area ([http://www.antislavery.org/includes/documents/cm\\_docs/2009/g/goonesekere.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/g/goonesekere.pdf)). Dalit and poor Hindus are doubly affected as besides being poor they are also low caste or Dalit as well as non-Muslim (International Dalit Solidarity Network, 2014c,d). The prevalence of the lower caste or religious minorities in bonded labour is a well-accepted fact in Pakistan, with special reference to agriculture in certain parts (*Dawn*, 2015; ILO, 2005: 31). The working conditions for bonded labour in agriculture are extreme and many cases of non-payment of dues, harassment and violence against the labourers were reported from different districts in Sindh province in 2014 (HRCP, 2015: 253).

Pakistan's major parties have not ensured adequate representation of minorities in Parliament. In the 2013 elections, major parties like the Pakistan People's Party (PPP) and its rival the Pakistan Muslim League did give national parliamentary tickets to non-Muslims. Ironically the country's largest religious party, the Jamaat-i-Islami, which is considered to be far more conservative, had one non-Muslim candidate. Pakistan Tehrik-e-Insaf had one Christian candidate from Karachi. Karachi-centred Muttahida Qaumi Movement party nominated non-Muslims for 26 national and provincial legislature seats (United Press International, 2013).

However, in 2012 the government decided to introduce a new bill to increase the number of seats for minorities in Parliament, proportionate to their population (*The Tribune*, 2012). If this 23rd Constitutional Amendment is passed, then minorities' seats will increase from 33 to around 44 in the national and provincial assemblies (Speroforum, 2012). The number of reserved seats in the national assembly alone will increase from 10 to 15 (UCAnews, 2016). At the moment, the bill relating to an increase in the number of seats for minorities in the national assembly is pending before both houses of Parliament (*Dawn*, 2016).

## **Minorities in armed forces and civil service**

The position and extent of participation of the non-Muslim population in the armed forces has been very low. For instance, Hindus were not allowed

to join the armed forces until 2000 (*Dawn*, 2015a). A process of Islamization also started in the late 1970s, when the last batch of Anglo-Indians was about to retire. During Pervez Musharraf's time Hindus were allowed to join the army. Again in the 2000s, the Pakistan Army opened its platform in a limited way. One Sikh and two Hindu officers in the army and a few Hindu sailors in the Pak Navy were enrolled (Riaz, 2015). However, the representation of the Christian population in the army has always been there. We have not come across any concrete data to get an idea about the number of Christians in the Pakistan Army. But the following lines from an independent blog seem interesting in understanding the extent of their representation: 'according to the "Shuhada Cell" of GHQ, so far 52 Christians have sacrificed their lives for Pakistan from Pakistan Army alone excluding PAF and Pak Navy. It is also encouraging to know that out of 70 Sitara-i-Jur'at of PAF, seven are Christians and, out of seven, two embraced martyrdom' (<https://www.ispr.gov.pk/front/main.asp?o=t-article&id=106>). In the absence of any current overall data on the representation of minorities in civil and army services, we quote an estimate of 1983 that was later referred to in *Human Rights in Pakistan: from Zulfikar Ali Bhutto to Musharraf* (2007). According to this estimate, Hindus were 0.2 per cent and Christians were 1.15 per cent of the total strength of the civil and armed services (Singh, 2007: 113).

## Right to culture and identity

The United Nations Declaration on Minorities (1992) recognizes that national or ethnic and religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public freely and without interference or any form of discrimination. Pakistan's legislative framework outlined earlier shows quite clearly that minorities in Pakistan do not enjoy religious and cultural autonomy. The Constitution fails to recognize cultural and linguistic plurality and citizens' religious diversity, while it seeks to differentiate Pakistan's citizens on the basis of religion – Article 260 defines Muslim and non-Muslim faiths. Islam is the state religion and the Constitution provides for establishing a Council for Islamic Ideology and the Federal Shariat Court. Both the bodies (that have no minority representation) are charged with Islamizing laws and policies. These restrict cultural and religious freedoms of minorities and seek to promote a homogenous Islamic identity. Constitutional provisions and laws impose limits on the right of freedom of religion (Article 20); especially discriminatory is the case of Ahmadis who are prohibited from calling themselves Muslims or their belief Islam, as well

Good practice case study:

## National Commission for Justice and Peace

The National Commission for Justice and Peace (NCJP) is a human rights body, established by the Pakistan Catholic Bishops' Conference in 1985. In a country that has periodically witnessed large-scale violence against different minority groups including Christians, the emergence of NCJP as an advocacy organization braving the odds to safeguard minority rights, deserves credit. NCJP's aim is to strengthen the human rights of marginalized communities in Pakistan, especially religious minorities, women, children and bonded labour. NCJP's focus is on discriminatory laws and policies of the state in relation to minorities. It is involved in interventions regarding awareness, opinion building about law and policy reforms. NCJP launched its campaign against the inhuman practice of bonded labour in 1987. In 1988, another campaign for joint electorate systems gained momentum. NCJP has also been campaigning on the issue of biased curriculum in schools that teaches hatred against religious minorities.

Based out of Lahore, NCJP is a Pakistan-wide organization with a regional presence in all its provinces. Its strength is its cadre of over 500 human rights activists (volunteers) belonging to different religions, cultures and administrative regions of Pakistan. These enable NCJP to carry out its activities and campaigns. In recognition of its good work in the field of human and minority rights, NCJP received an International Human Rights Award by the Tji-Hak- Soon (Tulip) Foundation of South Korea in 2001 (<http://www.ncjp-pk.org/>).

### NCJP's work

Of its many campaigns one of the most successful ones has been against inclusion of a column on religion in national identity cards. Without doubt this campaign gave NCJP a wider currency across the country.

On 21 May 1992 President Ghulam Ishaq Khan made a promise during a meeting with Qazi Hussain Ahmed, the then Jamaat -i-Islami chief, to include a column on religion in the identity card (Pakistan Christian Congress, 2009; UCAnews.com, 1992a). Finally the Ministry of Religious Affairs, headed by Maulana Abdul Sattar Niazi, announced on 13 October that the national identity cards would be amended to include one column for religion.



as from preaching or propagating their religious beliefs, proselytizing or insulting the religious feelings of Muslims.

## **Discriminatory laws and policies**

The Constitution does not provide an institutional mechanism for implementation of standards of non-discrimination nor does it bar legislation based on discrimination (The Choice of Reforms: 14). This has led to the creation of many discriminatory laws made through ordinances and enactments. *Table 7* provides examples of these discriminatory instruments and policies that violate the Constitution and international instruments.

## **Religious practices and personal law**

Discrimination against religious minorities takes various forms – a very direct one is restrictions placed on minorities’ practicing their faith. As a recent MRG report (2014: 22) notes, minority religious communities face enormous challenges in practicing their faith because of a range of factors including lack of access to places of worship as well as the threat of violence. A March 2014 survey conducted by the All Pakistan Hindu Rights Movement and reproduced in the MRG report, reported that of the 428 places of worship for Hindus in the country, only 20 were functional. The remaining 95 per cent had reportedly been leased for residential and commercial purposes by the Evacuee Trust Properties Board, an entity set up to manage and look after these properties. Similar problems beset the Sikh community and also Ahmadis who cannot even call their place of worship a mosque. Minorities have also often been prevented from burying their dead and performing other rites. The MRG report (2014: 23) concludes, ‘the restrictions on religious practice and burial can together be seen as part of a broader picture in which customs and traditions that deviate from those of the Muslim majority in Pakistan are being systematically denied.’

Personal laws and their application is another area of discrimination against minorities’ cultural practices. There is no system of civil or common law marriages or marriages being performed and registered according to individuals’ religions. The government also does not have a legal mechanism to register the marriages of Hindus and Sikhs causing women from these religious groups difficulties in inheritance, accessing health services, voting, obtaining passports and buying or selling property as they do not have any legal document to prove their marriage (US State Department, 2014: 3). The main impediment, as a recent report on the matter published by the Community World Service noted, was the difference of opinion between

*... Good practice case study continued ...*

The then President Ghulam Ishaq Khan announced that the ministry will introduce a column on religion in the identity cards on the pretext of this being a genuine demand and because religion is part of a citizen's identity. Taking a thread from this argument, Jammat-e-Islami demanded a separate colour for identity cards for non-Muslims. There is no denying the fact that the government bowed to pressure from religious fundamentalists, opening itself to charges of suppressing minorities and dividing the nation. However, a larger public debate on this issue was largely missed from the ambit of Pakistani social and political life.

The national identity card was first introduced in Pakistan in 1974 during the time of Zulfikar Ali Bhutto. There was no column for religion in the cards at that time. When the changes were introduced the minorities were not even consulted in this regard. Its easy target was religious minorities in the country as many members who would prefer to maintain a silence over their religious practice/preference in the public space, possibly out of concern for security and discrimination. The fear of exclusion for religious minorities became apparent in the protests and newspaper articles that appeared.

Martin Aslam, coordinator of the ecumenical Institute for Justice and Peace commented: 'Now the truth has dawned on us – we are aliens in our own country' (UCAnews.com, 1992b). Father Peter John of the same institute added: 'I have always been a Pakistani first. But now they tell me that I am a Christian and have no rights in Pakistan, because it was made for the Muslims' (UCAnews.com, 1992b). In August 1992, the Human Rights Commission of Pakistan launched a signature campaign against the government's move of introducing a column on religion in the identity cards. Bishop John Joseph, who was later martyred, and founder and Chairperson of NCJP assigned Peter Jacob and Aftab Alexander Mughal to launch a campaign against the government's decision. The campaign was started in September 1992 from the city of Multan in Punjab province.

The campaign soon gained momentum. NCJP organized protests against the decision in different cities in Punjab and Bishop John Joseph condemned the government's move in a press conference in Faisalabad on 17 October 1992. In Toba Tek Singh (a rural habitation 480 km south of Islamabad) Father Boniface Mendes, NCJP's Executive Secretary and members of the local legislature led more than 200 people in a procession wearing black bands and carrying

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community members and religious leaders of the communities – there is provision for a divorce in Catholicism and Hinduism, thus religious circles are not supportive of the state legislating on the matter. But the state too has not taken action to solve this issue (*Dawn*, 2014b, 2015b). The irony as the PILER (2013: 21) report on minorities notes, is that the state has effectively put the onus of reforming personal laws of minorities (that use colonial era laws) on minority Members of Parliament but they are too few to be able to carry the day. Adding to the problem, the report says, ‘is the absence of voice and agency of women – facing a condition of double jeopardy, minority women are marginalized as minority in the wider domain, and kept in the fringe as a weaker sex within the private domain.’

Consequently, whilst for the Muslims there is a marriage registration system at the local level and there is also a system for adjudication of marriage disputes, this is not the case for non-Muslims. Lately, steps have been taken to undo this anomaly by introducing the Hindu Marriage Bill 2014 and the Punjab Registration of Hindu Marriage Bill 2014 (MRG, 2014: 15). These have recently been passed in the national assembly and in the Sindh provincial assembly. Since 1947, members of minority groups have been unable to register their marriages in the absence of a state law. One of the media houses reported: ‘However, in recent years, the problem has stretched beyond national boundaries and developed an extraterritorial focus. The desire to migrate to other countries from Pakistan has made it fundamentally important for Hindus to hold legal documents to prove their marriage. Strict visa regimes and immigration rules have also strengthened the case for a separate law to register Hindu marriage’ (see <http://tribune.com.pk/story/1049971/hindu-marriage-customs-and-the-law/>, news about the bill can also be found at: <http://courtingthelaw.com/2016/06/07/commentary/the-sindh-hindu-marriage-bill-2016-what-about-hindu-pakistanis-of-other-provinces/>).

## **Education and school textbooks**

The extent of damage done to pluralism and diversity in Pakistan is best seen and understood by examining school textbooks which show how the education policy has been used as a tool to encourage, indeed push, through a homogenized national identity. A look at the education policy provides a snapshot of the extent to which majoritarian messages have been pushed at the expense of pluralism, many through the enactment of discriminatory laws and poor practices. In February 1979 the New Education Policy (NEP) was launched under Zia ul Haq as a project to manufacture ‘Good Muslims

*... Good practice case study continued ...*

placards. The group staged a sit-in at the local administrative chiefs office, which was to continue till the column on religion was removed from the identity cards (UCAnews.com, 1992b). Slowly the movement gained currency as it started spreading to different cities. The movement was spontaneous as members of different minority communities joined it. The presence of Hindus alongside Christians was high in Pakistan's southern Sindh province in opposing the government's decision (UCAnews.com, 1992b).

During the campaign different opposition political parties had also come forward to criticize the government's decision. Thus, for instance, Pakistan People's Party leader Benazir Bhutto commented: 'Pakistan is a democracy, not the personal property of religious lobbies' (Baweja, 2013).

The movement by different civil society groups on the issue resulted in positive changes. On 2 November 1992, the provincial assembly of Sindh unanimously passed a resolution opposing the inclusion of a column on religion and declared that such a move would promote sectarianism. A Christian member Saleem Khokhar introduced this motion. Bishop John Joseph registered his protest through a hunger strike. On 8 November 1992, due to the worsening health condition of Bishop John Joseph the government sent the Minister for Minority Affairs, Peter John Sahotra to persuade him to call off his fast unto death. Violence erupted during the minister's visit to the camp where John Joseph was on a hunger strike and he was physically assaulted by protesters enraged over his perceived weak stance against the federal government. However, after several hours of discussions with protesting leaders, Bishop John Joseph agreed to call off his fast. The government reportedly sent a message to Bishop John Joseph that the government would not include a column on religion as demanded by the community.

However, the pressure was still kept on as protesters remained active right till December 1992, when the then Prime Minister Nawaz Sharif at a Christmas dinner assured the Christian leadership that his government would not include a column on religion in national identity cards. It was through the leadership of the Christian community along with support from other religious minority communities and civil society that this campaign was able to achieve success in such a short time.

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**Table 7. Violations of rights  
 (collated from a survey of textbooks/education policies)**

Discrimination	Violation of
Religion, other than Islam, when mentioned, is done in contempt.	<ul style="list-style-type: none"> <li>- Article 20 of the Constitution guarantees freedom of religion.</li> <li>- Universal Declaration on Human Rights (Article 26).</li> <li>- Declaration on Elimination of all Kinds of Intolerance and Discrimination based on Religion or Belief (Article 1).</li> </ul>
<i>A hafiz e Quran</i> (one that has put the <i>Quran</i> to memory) is eligible for 10-20 marks extra for admission to professional courses and in jobs with the Public Service Commission since 1992.	<ul style="list-style-type: none"> <li>- Article 25 of the Constitution guarantees equality to citizens.</li> <li>- Declaration on Elimination of All (Article 26)</li> <li>- Kinds of Intolerance and Discrimination based on Religion or Belief (Article 2).</li> </ul>
Islamic studies (Islamiyat) is compulsory for Muslim students from primary to college; and non-Muslims, though in theory, offered 'ethics', practical considerations and the bias against the study of anything but Islamic Studies, means most non-Muslims succumb and take up Islamic Studies.	<p>Article 22 of the Constitution – 'no person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend any religious worship, if such instruction, ceremony or worship, relates to a religion other than his own.'</p> <p>Declaration on the Rights of Person belonging to national or ethnic, religious or linguistic minorities (Articles 4 and 5).</p>
Subjects other than Islamiyat such as social studies and languages are compulsory for all. They too have 20-40 per cent of their content inspired by Islam.	Article 22(1) guarantees no compulsion to study a religion other than one's own.

Source: National Commission for Justice and Peace (2013:10).

and Good Pakistanis'. NEP stated 'the highest priority would be given to the revision of school curricula with a view to reorganizing the entire content around Islamic thought and giving education an ideological orientation, so that Islamic theology permeates the thinking of the younger generation, and helps them with the necessary conviction and ability to refashion society according to Islamic tenet' (NCJP, 2013: 5). NEP sought 'to rear a new generation wedded to the ideology of Pakistan and Islam' (Zia, 2010: 17). Ispahani (2016: 117) says, 'this decision had far reaching consequences: it quashed the potential for critical thinking in the next generation; encouraged a false narrative of history, and introduced religious bigotry to students at an early age.'

This was followed by a directive by the University Grants Commission to prospective authors in 1981 to 'demonstrate through writing that the basis

*... Good practice case study continued ...*

## **Lessons to be learnt**

During its successful campaign, NCJP as an organization too learnt a few things. At the beginning of its activities, NCJP had understood minorities solely in terms of the Christian population in the country. But through constant engagement with the minorities it came to realize the necessity of engaging with other religious minorities like Hindus and Ahmadis. With its continuous movement and active engagement with all minority groups, the church leadership also engaged with civil society and led a people's protest against the inhuman act of the then government. This collective movement, taking other civil society organizations on board, gave strength to NCJP to further work in society as a major stakeholder in terms of advocacy and lobbying for the rights of religious minorities. This transformation from a religious organization to a leader of civil society based organizations is something that one should be able to practice in different country contexts.

of Pakistan is not founded in racial, linguistic or geographical factors, but rather in the shared experience of a common religion' (Ispahani 2016: 130). This shut out non-Muslims from citizenship and created an adverse climate against them for generations to come. A.H. Nayyar, notes, 'the redesigned curricula created a monolithic image of Pakistan as a Islamic state, and taught students to view only Muslims as Pakistani citizens' (Ispahani, 2016: 131). Then the National Education Policy 1992-2002 enacted during the current government's time made 'teaching of Islam' the primary objective and universal primary education a secondary objective (NCJP, 2013). Later, the 12-year New Education Policy (1998-2014) made education and training citizens to be good practicing Muslims as the main objective of the policy. In 2006, 'Education in Pakistan: A white paper' was introduced which proposed that the major objective of education was 'to inculcate in the child the Muslim value system' (NCJP, 2013: 6).

Islamiyat (Islamic studies) was made compulsory from primary to Class 12 across the country. Children from minority communities do not have the freedom to study their own religion. Although 'ethics' is provided to them as an alternative Islamiyat, it is a poor alternative as it uses an Islamic perspective (NCJP, 2013: 9) and study of Arabic is compulsory for all including non-Muslims in schools. The consequence of these policies as Rubina Saigol notes, has been that 'all official sites for the production of knowledge (have been) put to the service of re-imagining an Islamic nation, in an

exclusionary exercise, which involved the diminution of citizenship of non-Muslims and women citizens' (NCJP, 2013: 7). History writing has also been added to the project of nation building; this is based on seeing Pakistan's identity as ideological Islam. Indophobia was a significant driver behind rewriting of textbooks (Vali Nasr in NCJP, 2013: 6). The uncomfortable presence of 'others' in the country – minorities – has been dealt with by turning them into cameos – the inherently evil Hindu, the trickster and cheat Englishman, the knife wielding butchering Sikh, the moneylender Jew and the back stabbing Bengali (Saigol, 2010:207).

## **Conclusion and recommendations**

Clearly, minorities in Pakistan face multiple deprivations on a range of minority rights. It is notable that these are both in terms of poor implementation of laws and rules defending rights, and also alarmingly, due to the discriminatory laws themselves. The task of protecting minority rights in Pakistan therefore becomes acute and all the more challenging. The role of civil society groups and of the minority groups led by them and of wider liberal and progressive civil society space to influence state actions to re-craft minority rights protection instruments and also to advocate for their better implementation becomes significant. Of course, the state's own weaknesses/omissions resulting in failures to defend minorities – in the face of the rising authority of non-state actors that target minorities both for ideological reasons as well as a political stratagem to widen their constituency among the majority population – means a great deal of the challenge for civil society is in creating an alternative discourse against extremism and for minority, indeed human rights.

### **Recommendations**

Some of our specific recommendations for improving minority rights are:

#### **For state actors**

Reforms which enable improved minority rights in Pakistan must work at various levels:

- Changes are required in the laws to make them less discriminatory. The most obvious here is the one that denies Ahmadis the freedom of religion and effective participation, but there are others too, such as those that privilege Islam over other faiths in blasphemy laws and Muslims

**Good practice case study:**

## **Women in Struggle for Empowerment**

Women in Struggle for Empowerment (WISE) is a women-led organization, determined in its own words to 'bring about a social change in how women and girls are valued in their communities' (<http://www.wise.pk/index.php?menuid=33&pageid=2>). Set up in 2011, WISE is dedicated to protecting and promoting social, political and economic rights for women with a focus on gender, labour, governance and human rights in Pakistan. WISE's aim is to establish a just and violence-free society where women enjoy equity and equal rights along with economic, social and political opportunities. WISE also does work in the field of minority rights. Amplifying minority voices and advocating their human rights is an important part of WISE's work. Being staunch believers in the protection and promotion of rights of religious minorities, WISE has been extending its support to minority communities and individuals in cases of violation of their rights. This makes WISE a rare civil society organization that combines the issues of women's rights along with minority rights advocacy.

### **Some important work/activities**

WISE has been successful in leading several campaigns like creating awareness and providing training for compliance of the law against sexual harassment at the work place. One of its achievements is that since 2011 WISE has been able to create awareness among more than 7,000 people. WISE has conducted seminars and training and catered to people from more than 40 civil society organizations to create awareness about the law against sexual harassment at the work place. Another important area that WISE has engaged in is its continuous movement to ensure women's political representation in the democratic set-up in the country: 'WISE believes that women political empowerment leads to their social and economic uplift' (<http://www.wise.pk/index.php?menuid=33&pageid=2>).

### **Taking up minority issues**

Apart from periodically taking up issues related to women, WISE has been part of larger civil society campaigns for the protection of religious minorities in Pakistan. These include campaigns for separation of religion from state, repeal of blasphemy laws, abolition of

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over minorities in personal laws and in the working of the criminal justice system.

- Related to this is the need for laws and a criminal justice system to be enforced without regard for the actors' religious or ethnic affiliations. This is really about the rule of law, including that perpetrators of violence against minorities are acted against and justice is served. This will require law enforcement agencies strengthening themselves against extremist armed groups. A related point is checking the misuse of laws such as blasphemy laws that provide a handy tool for vested interests to target minorities and weaker sections, often in collusion with state actors.
- Equally, it is important for vulnerable minorities to be provided security against attacks and intimidation, including the confidence that they will be given security.
- Need for opening up the state to all so that the minorities have a sense of belonging and being a part of the state. This will require effective participation of minorities in public life.
- A stronger regime for protecting and promoting minorities' socio-economic interests through programmes and projects for affirmative action (in jobs) and equalizing opportunities in markets.
- Programmes for promoting and valuing greater diversity in public life in school curricula, in state practices and in society. This is to counter the majoritarian imbalance on the lines of religion, culture or language.
- As important as the 'what' to do for minority rights, is the 'how to' part of it. Hence, there is a need for a clear policy focus on the subject; setting up of public institutions (at federal and provincial levels) that promote diversity and minority rights; and a system of concurrent monitoring, documenting and tracking minority rights' performance, including through collecting and reporting data on various counts, disaggregated by religion.

### **For civil society actors**

Apart from state actors and institutions, civil society organizations with an interest in minority rights, need to:

- Establish solidarities across religious and sectarian divides for protecting and promoting minority rights to amplify their voice and spread it

*... Good practice case study continued ...*

discriminatory provisions against minorities in the Constitution of Pakistan, measures against forced conversion of non-Muslim women to Islam, removal of hate speeches and hate material from textbooks and extending legal support to victims of religious intolerance and blasphemy laws. As a consequence, we can see WISE collaborating with others to register the demands of the minority population in the country. Thus, for instance, WISE member Bushra Khaliq was part of the civil society fact-finding mission in the 2009 Gojra attacks targeting Christians. Similarly, in 2012 WISE organized a press conference from the platform of ATA-Pakistan to condemn the murder of an Ahmedi teacher in police custody in Chenabnager. In 2014 WISE also facilitated the case of two Christian brothers accused of blasphemy and provided them psycho-social assistance. It linked the accused with lawyers and the Ministry of Human Rights. WISE has also published articles related to the growing Islamization where on the one hand minorities are being accused and killed and on the other hand, 'the Taliban-types want a full cultural revolution: beards, burqas, 5 daily prayers, no music, no art, no entertainment, and no contact with modernity except for getting its weapons' (Khaliq, 2011).

As part of its campaign against atrocities on minorities, WISE is also working to create awareness among the common people on minority issues. For instance, WISE periodically organizes sessions and provides training to people related to issues faced by minorities like state oppression or negligence in their protection. Generally speaking WISE takes up the question of minorities in the larger civil society movement. Through its continuous participation with large civil society organizations, WISE strengthens the people's movement through demonstrations, rallies and seminars.

## **Lesson to be learnt**

WISE is predominantly a women-led organization that takes up the issue of gender justice. Different struggles are carried out to fight injustices that women face in Pakistan. However, WISE has always seen working on women and gender issues as a part of its larger struggle for oppressed people. This is probably the reason why WISE has actively contributed to the work of different civil society organizations that deal with issues of minorities. WISE shows that it is significant for any civil society organization to go beyond the strictly delineated boundaries of its own activity and be a part of the larger civil society movement.

- wide thus strengthening the cause. This is being done by many platforms and networks but needs to be strengthened.
- Solidarities on the ground – grassroots CSOs working on minority and associated rights – especially need to collaborate and establish partnerships for a more direct impact on the ground.
  - This grassroots focus will also provide a better voice to minority communities through organizing, networking and advocacy support to enable the groups to build the capacity of minorities and also effectively advocate for improved rights for them.
  - Crucially, better documenting and tracking of outcomes for minorities to fill the gap in data and documentation disaggregated by religious groups and to enable baselines to be established that will allow for outcomes to be tracked over time and evidence gathered for improved advocacy.
  - Better media engagement to put out the evidence and news on minority rights in the public domain enabling debates and discussions.
  - More proactive engagement with international (global such as UN, as well as regional such as SAARC) networks and actors, to create conditions for improved results – capacity, good practice cases, networks and resources.

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## Chapter 6 Sri Lanka

# A Mosaic Under Stress

*Sarita de Fonseka\**

This chapter examines the status of ethnic and religious minority rights in Sri Lanka. This introductory section is followed by three parts, with the first discussing the legal framework and the efficacy of its implementation. The second part provides an analysis of the current status of minorities' right to life and security, right to non-discrimination and equality, right to participation and right to culture and identity. The third part focuses on recommendations and next steps.

A nation with a rich heritage, history and the cultural inheritance of several communities, Sri Lanka has been described as an 'ethno-religious mosaic' (Perera, 2011: 11). Over time, however, instead of unity in diversity, many tensions and conflicts have arisen that have culminated in violence and war, driving deep wedges between ethno-religious groups.

Statistics from the 2012 Census demonstrate that 74.9 per cent of Sri Lanka's population was Sinhala and approximately 15.2 per cent was Tamil (including around 4 per cent Indian Tamils in the estate plantation sector). Moors constituted about 9.2 per cent of the population and Buddhists over 70 per cent while 12.6 per cent were Hindus, 9.7 per cent were Muslims and Christians constituted about 7.4 per cent of the population (Department of Census and Statistics, Sri Lanka, 2012). Due to assimilation with Sinhala and Tamil communities, the Adivasi (Veddah community) is now very small in number and is limited to only a few thousand (Stageborn, 2004).

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Given that they trace their descent to the distant past, Sri Lankan Tamils are a native minority. Indian Tamils were brought to Sri Lanka during the British colonial era to work on estate plantations in the central highlands and a majority of them are members of castes considered low in the Indian caste system. It is important to note that Tamils are largely Hindus or Christians by way of religious affiliations (Ross and Savada, 1988).

The Muslim community is divided into three main sections-- Sri Lankan Moors, Indian Moors and Malays. Sri Lankan Moors trace their ancestry to the time between the 8th and 15th centuries when Arab traders migrated to southern India and Sri Lanka. Indian Moors trace their origins to the colonial period. Malays were originally from South East Asia and came to Sri Lanka during the time of Dutch colonization. In addition, the Bohra and the Khoja migrated from north-western India after 1880 and are very few in number (Ross and Savada, 1988).

Burghers, who make up a very small percentage of the population, are permanent residents who can trace their ancestry back to Europeans. The term was initially used to refer to European nationals living in Sri Lanka during Dutch rule, but subsequently included Portuguese Burghers too (Ross and Savada, 1988).

Sinhala Buddhists are a majority in most parts of the island except for the northern and eastern provinces whereas Muslims are scattered throughout the country with a heavy presence in the east. Tamil Hindus have their largest concentration in the northern province with significant numbers in the eastern province and in Colombo. Sinhalese too are found in significant numbers in the east. Indian Tamils are mostly in the plantation sector and based in the central, Uva and Sabaragamuwa provinces with significant numbers in Colombo too. Christians are concentrated mainly in the coastal belt but are scattered throughout the country.

Sri Lanka is in fact not casteless in that approximately 20 to 30 per cent of its people are victims of caste-based discrimination. The caste-blind policies of the state and all other stakeholders, however, do not effectively deal with discrimination in this sphere. Underprivileged caste groups in minority ethnicities are generally victims of double discrimination (Silva et al., 2009).

Among the Sinhalese, drummers from Welivita, Kinnara from Henawala and Rodi from Kuragala are subject to some forms of discrimination. The Nalavar and Pallar castes of Sri Lankan Tamils in the Jaffna area and

Chakkiliyars and Parayars of the Indian Tamil community are particularly subjected to discrimination (Silva et al., 2009).

According to Jayawardena:

The history of ethnic conflict in Sri Lanka is the history of emergence of consciousness among the majority community, the Sinhala, which defined the Sri Lanka society as Sinhala-Buddhist, thus denying its multi-ethnic character. The growth of this consciousness impinged on the minorities in Sri Lanka to the extent that internal resolution of the problems became impossible... (Jayawardena, 1987).

The end of the three-decade long armed conflict between the state and the separatist Liberation Tigers of Tamil Eelam (LTTE) in 2009 should have ushered in a new era of peace. While the absence of war laid to rest many anxieties and fears that had ravaged the nation, many of the cracks and crevices in the social fabric remained and newer ones have further aggravated the situation. In fact, even after 2009, there was a brutal crackdown on free expression and/or dissent, particularly by minorities, impugning the very foundations of democracy.

Even five years after the end of the war, in 2014 there was a heavy military presence in the north. In January 2014, President Rajapakse claimed that there were 12,000 military personnel in the north, but only two days thereafter the Secretary to the President Lalith Weeratunga claimed the presence of 80,000 military personnel. Further, the then government adopted a practice of acquiring swathes of private land in the northern and eastern provinces for military use under the guise of 'public purpose'. There was also evidence that such acquired property was given out for commercial ventures (Centre for Policy Alternatives, 2015a). Under the new regime, however, a few steps have been taken in the right direction by returning land to its original owners (Centre for Policy Alternatives, 2015b). However, these steps are too few and overdue.

Post-war triumphalism has also prompted a reawakening of ethno-nationalism and identity politics (Keerawella, 2013). There has been a radical increase in anti-Muslim sentiments due to the emergence of certain fascist Sinhala-Buddhist nationalist groups such as the Bodu Bala Sena (BBS) (Gunatilleke, 2015a). The Secretariat for Muslims recorded 284 incidents of threats, attempted attacks, harassment, incitement and provocations directed at Muslims in 2013 (INFOGRAPHIC, 2014).

From about the mid-13th century, Muslims have had a recorded presence in Sri Lanka and the bond between the Muslims and Sinhalese was quite strong at the time of the Portuguese invasion (Haniffa, 2010). When the Portuguese violently expelled Muslims in the coastal areas in order to take over their trade, they were compelled to migrate inland and appeal to the Sinhala kings of the time for protection; they were given land to settle on. Subsequently, at the time of the Dutch invasion, there were well-established coastal and inland Muslim communities in Sri Lanka. Thus, even though the Muslims had been provided protection by the Sinhalese during Portuguese and Dutch rule, during the 1915 riots the entire Muslim community felt threatened by Sinhalese rioters. The foundation for the 1915 riots was primarily based on the construction of a mosque in Gampola in 1907 along the route of a much venerated Buddhist procession. The Muslims in the north and east were badly affected due to the ethnic conflict between the Sinhalese and Tamils as well, with the most affected being northern Muslims. They were ethnically cleansed from LTTE controlled areas as the terrorists ordered them out in October 1990. This resulted in 15,000 Muslims fleeing within the 48-hour deadline. These Muslims are now scattered throughout the island with a heavy concentration in Puttalam district (Haniffa, 2010).

## **The domestic legal framework**

### **The Second Republican Constitution (1978) and a judicial interpretation of its provisions**

The chapter on Fundamental Rights in the Sri Lanka Constitution does not explicitly confer a right to life. However, this has been implicitly recognized by the Supreme Court.<sup>1</sup>

Article 10 of the Constitution says that ‘every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.’ Article 12(1) provides that all persons are equal before the law and are entitled to equal protection by law. Article 12(2) specifically provides that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or on any such ground. Article 12(3) further states that ‘no person...on the grounds of...be subject to any disability, liability, restriction or condition

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1. Sriyani Silva v. Iddamal goda 2 Sri. L. R. 63 (Supreme Court of Sri Lanka, 2003).

with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.’

Article 14(1)(e) states that ‘every citizen is entitled to the freedom, either by himself or in association with others and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.’

Articles 10, 12 and 14 of the Constitution are justiciable. Further, Articles 10 and 12 confer absolute rights. However, Article 14(1)(e) can be restricted by Article 15(7) on the basis of ‘national security, public order and the protection of public health and morality, or for the purpose of securing due recognition and respect for the rights and freedom of others, or of meeting the just requirements of the general welfare of a democratic society.’

Article 9 of the Constitution states that ‘the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).’ As such, even though parity among all religions is technically protected under Article 9, a judicial interpretation of the article has rendered such safeguards almost nugatory as far as the manifestation of minority religious beliefs is concerned.<sup>2</sup>

In ‘Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka Incorporation,’ the petitioners challenged a bill which sought to incorporate an order of nuns of the Roman Catholic church on the grounds that the incorporation of such a body would lead to unethical conversions or proselytism.

In this case the Supreme Court said that (interpreting Articles 10 and 14(1)(e) of the Constitution) although the Constitution allowed a person the right to manifest, observe or practice one’s religion, it did not ensure a fundamental right to propagate religion.

The determination of the Supreme Court in this case (incorporation) was based on the Preamble and Clauses 3 and 5 of the bill. The Preamble states that the organization would provide shelter to orphans, children and

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2. Prohibition of Forceful Conversion, S.C. Special Determination No. 4/2004 (Supreme Court of Sri Lanka, 2004).

the aged. Spreading knowledge about Catholic religion was one of the objects set out in Clause 3, and Clause 5 sought to give authority to the incorporated body to hold and transfer property.

The Supreme Court determined that the bill was inconsistent with Article 9 of the Constitution, which gave Buddhism the foremost place and thus placed limitations on minority religions 'propagating' their faith to members outside their religious communities.

Consequent to the Supreme Court's decision in *Menzingen*, there was a government-led effort to introduce an anti-conversion legislation. After the *Jathika Hela Urumaya* bill was tabled in Parliament, the constitutionality of the bill was challenged in the Supreme Court which held that the term 'allurement' in the bill needed to be narrowed in its scope to explicitly include the words 'for the purpose of converting a person from one religion to another'.

The Constitution of Sri Lanka, through the Directive Principles of State Policy in Article 27(5) provides that the 'state shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the people of Sri Lanka, including racial, religious, linguistic and other groups...' Article 27(6) mandates that 'the State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.' It is noteworthy that even though Article 27 is not justiciable, the Supreme Court in *Bulankulama and Others v. Minister of Industrial Development and Others*<sup>3</sup> held that the Directive Principles of State Policy placed an obligation on the state to ensure the progressive realization of the relevant right. As such, it can be argued that the state is duty-bound to create an environment conducive for empowering those of all faiths to effectively practice their beliefs (National Christian Evangelical Alliance of Sri Lanka 2016: 5).

Chapter 4 of the Constitution read with the 13th and 16th amendments to the Constitution recognizes Sinhala and Tamil as the official languages and English as the link language (Constitution of Sri Lanka, Article 18). Article 19 recognizes Sinhala and Tamil both as national languages. Further, Article 21 entitles a person to be educated through the medium of either of the national languages. Sinhala is the language of administration

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3. *Bulankulama and Others v. Minister of Industrial Development and Others*, 3 Sri. L. R. 243 (Supreme Court of Sri Lanka, 2000).

in all provinces other than in the northern and eastern provinces in which Tamil is the language of administration (Constitution of Sri Lanka, Article 22). Similarly, Sinhala and Tamil are the languages of the courts (Constitution of Sri Lanka, Article 24). All laws and subordinate legislations, orders, proclamations, rules, by-laws, regulations and notifications (other than by a Provincial Council or local authority) are in Sinhala and Tamil (Constitution of Sri Lanka, Article 23). Article 25 states that ‘the State shall provide adequate facilities for the use of the languages provided for in this Chapter.’

### ***The Penal Code***

Chapter 15 of the Penal Code (No.2 of 1883) deals with offences relating to religion and specifically provides, inter alia, in Section 290 that whoever destroys, damages or defiles any place of worship with the intent to insult the religion of any class of persons is guilty of an offence under Section 290. Section 291A provides that whoever utters any word or sound, or makes a gesture in the hearing of a person with the intention of ‘wounding the religious feelings’ of that person is guilty of an offence.

Recently, in an attempt to include a ‘hate speech’ provision in the Penal Code, a bill titled the ‘Penal Code (Amendment) Bill’ was placed on the Order Paper of the Parliament on 11 December 2015 (Sri Lanka Brief, 2015a).

This bill sought to insert a new Section 291C in the Penal Code. The legal effect of the section was purportedly to make provisions to convict and punish persons who caused or instigated acts of violence or hostility which led to religious, racial or communal disharmony between different racial or religious groups. The section sought to be inserted was almost identical to Section 2(1)(h) of the Prevention of Terrorism (Temporary Provisions) Act which had been invoked previously on several occasions targeting members of Tamil and Muslim communities.<sup>4</sup> The Human Rights Commission of Sri Lanka too advised the government to withdraw the proposed amendment and to replace it with a relevant provision of the ICCPR Act (Sri Lanka Brief, 2015b). The editor of a Tamil language newspaper filed a petition in the Supreme Court challenging the constitutionality of the proposed amendment apprehending that it would serve to infringe freedom of speech and

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4. Nallaratnam Singarasa v. Attorney General and Others, S.C. SpL (LA) No. 182/99, SCM1S.09.2006; Tissainayagam case High Court case 2009 – discussed in Kishali Pinto Jayawardena in focus on rights. Retrieved from <http://www.sundaytimes.lk/090913/Columns/focus.html>.



expression, including publication, particularly by members of minority communities (Selvanayagam, 2015). Consequent to this case being filed and the concerns raised by civil society, the government withdrew the amendment.

### ***The International Covenant on Civil and Political Rights Act***

Section 3(1) of the act provides that ‘no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’ The trial of a person accused of committing an offence under Section 3 is to be taken up as a matter of highest priority by the relevant High Court (International Covenant on Civil and Political Rights Act, Sec. 3 [No. 56 of 2007]).

### ***The Prevention of Terrorism Act***

Section 2(1)(h) of the Prevention of Terrorism Act, Section 2(1)(h) (No.48 of 1979) provides that ‘any person by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities of racial or religious groups...shall be guilty of an offence.’

However, this section has been used to target those critical of government policies, particularly its treatment of minorities.<sup>5</sup>

Thus, the constitutional and legal framework that is in place, at least normatively, appears to foster the rights and freedoms of ethnic and religious minorities. Nevertheless, much uncertainty remains about the manifestation of this freedom.

## **The right to life and security**

### **The general trajectory**

The Constitution of Sri Lanka does not explicitly recognize right to life. However, in 2003 the Supreme Court inferred an implied right to life in limited circumstances as gleaned from Article 13(4) of the Constitution which provides that ‘no person shall be punished with death or imprisonment except by order of a competent court made in accordance with procedure

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5. The Democratic Socialist Republic of Sri Lanka v. J.S. Tissainayagam (H.C., 2008).

established by law' (Silva et al., 2009). Such a position was subsequently affirmed by three judgments.<sup>6</sup> However, construed in such a manner, right to life is limited only to the physical right to life and does not encapsulate other aspects of liberty and due process (Guneratne et al., 2014).

As mentioned earlier, the legal and constitutional framework in Sri Lanka is conducive for the protection of minorities from inter alia ethnic and religious violence. However, the trajectory has been one of increasing attacks and threats, especially after the end of the war.

In 2013, there were 241 recorded anti-Muslim attacks. *Figure 1* gives the distribution of 166 location-specific anti-Muslim attacks during 2013. *Figure 2* gives details of the 69 location-specific anti-Christian attacks recorded in 2013. The trend in violence continued with 2014 seeing at least 200 anti-Muslim attacks (*Figure 3*). Location-specific attacks on Christians increased to 88 in 2014 (*Figure 4*).

An analysis of the data from 2013 and 2014 reveals that more than 50 per cent of the attacks on Muslims were non-physical and related to hate speeches and propaganda and more than 50 per cent of the attacks were in fact perpetrated by political actors or political and social movements. More than 25 per cent of the attacks were attributed to the Bodu Bala Sena (Gunatilleke, 2015a: 29).

On the other hand, almost 50 per cent of the attacks on Christians were by unidentified individuals and groups. Buddhist clergy from the locality was thought to be behind most of the intimidation, physical violence and destruction of property. Public officials too, often directly or indirectly, perpetrated attacks against Christians (Gunatilleke, 2015a).

The attacks on Hindu places of worship have not been systematically quantified. R. Sampanthan, the leader of the Tamil National Alliance has, however, repeatedly referred to continuing violations of Hindu places of worship (See Parliamentary Debates, 2013: 325).

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6. Lama Hewage Lal (deceased), Rani Fernando (wife of deceased Lal) and others v. OIC, Minor Offences, Seeduwa Police Station and others, 1 Sri. L. R. 40 (Supreme Court of Sri Lanka, 2005); Kanapathipillai Machchavallan v. OIC, Army Camp, Plantain Point, Trincomalee and others, 1 Sri. L. R. 341, (Supreme Court of Sri Lanka, 2005).

Out of the 328 Divisional Secretary's divisions (DS divisions) in the country, religious violence was recorded in 88 out of which 45 were characterized by low religious diversity and a low concentration of religious minorities (Gunatilleke, 2015a: 34). Nineteen DS divisions were typified by medium religious diversity and a low concentration of religious minorities. Therefore, 72 per cent of the DS divisions in which attacks took place typified these two demographic profiles. Further, violence was apparently less prevalent in DS divisions with a high concentration of a particular ethnic minority but low diversity. Over two-third of the recorded violence in 2013 and 2014 took place in majority Sinhala-Buddhist divisions with either a low concentration of minorities and either low or medium diversity (Gunatilleke, 2015a).

## Specific incidents of violence

### **Grandpass Mosque incident**

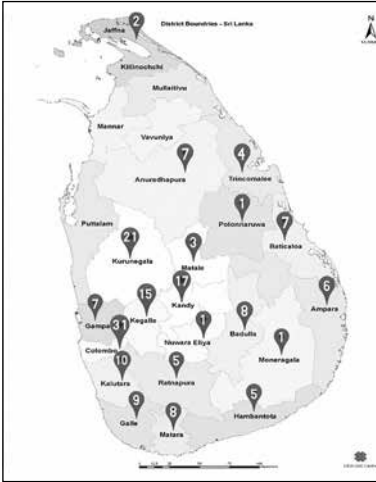
#### ***Background***

The Masjidul Deenul Islam mosque in Colombo's Grandpass area had reached capacity, but due to a Bo tree sacred to the Buddhists having its roots in the adjoining property, it could not be expanded (Wijedasa, 2013). The Urban Development Authority had made plans to acquire the area for development and since the mosque would have to be removed eventually, the Muslims in the area began worshipping in another building that had been converted into a prayer centre.

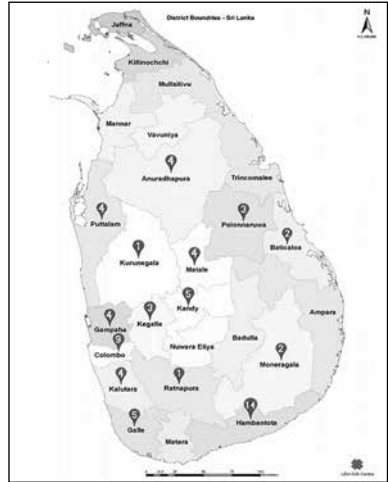
#### ***Violence***

A group from the Sinhala community in the area and some of the Buddhist clergy protested the establishment of the alternative prayer site. The issue was aggravated by fascist groups such as Sinhala Ravaya. Extremist group Ravana Balaya staged two protests against the prayer centre on 9 June and 5 July 2013 (Gunatilleke, 2015a). However, the Ministry of Buddha Sasana and Religious Affairs extended the permit for use of the alternative site. The majority community in the area was mobilized into reacting to such an extension and on 11 August 2013, protestors supposedly linked to the Sinhala Ravaya attacked the prayer centre alleging that it had no authority to function as a place of worship (Farook, 2013). This resulted in communal clashes between the Muslim community and the majority Sinhala-Buddhist community.

**Figure 1. Location-specific Anti-Muslim attacks in 2013**

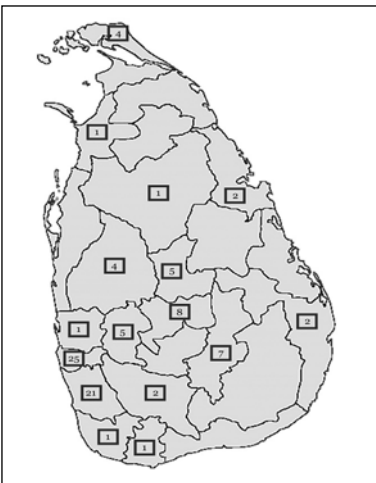


**Figure 2. Location-specific anti-Christian attacks in 2013**



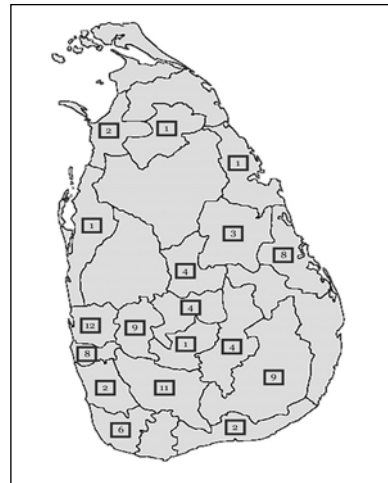
Source: Gunatilleke (2015a).

**Figure 3. Location-specific anti-Muslim attacks in 2014**



Source: Secretariat for Muslims (2015).

**Figure 4. Location-specific anti-Christian attacks in 2014**



Gunatilleke (2015a: 28).

## **Law enforcement**

The authorities did little to prevent the violence and destruction of property. The situation was eventually settled by stopping the UDA acquisition, the Muslims returning to the original mosque and the Bo tree being uprooted to permit expansion (Farook, 2013). The permit for the new prayer centre, however, was revoked (Gunatilleke, 2015a: 30).

## **The Aluthgama riots**

### ***Background***

Ethnic violence targeting Muslims took place on 15 June 2014 in Aluthgama, Dharga town, Valipanna and Beruwela in the south of Sri Lanka. The area has large Muslim and Sinhala communities. This was not the first time that such violence took place in the area as in 2006 also a seemingly trivial dispute over a mobile phone between a Sinhalese and a Muslim had led to violence that resulted in a number of shops in the area being destroyed (Gunatilleke, 2015b: 3; Haniffa et al., 2015).

### ***Violence***

The violence in 2014 was apparently triggered by a dispute between a Buddhist monk and three Muslims in the area. On the day after the violence, a large rally was organized condemning the alleged attack on the Buddhist monk and the General Secretary of BBS made racist remarks against Muslims (Gunatilleke, 2015b: 3; Haniffa et al., 2015). Subsequently large mobs attacked Muslim-owned businesses and homes which resulted in the killing of four persons including three Muslims and over 100 Muslim homes and businesses being destroyed. This riot was described by the Office of the High Commissioner for Human Rights (2014) as ‘one of the worst incidents of sectarian violence in Sri Lanka’s recent history.’

### ***Law Enforcement***

Law enforcement agents failed to prevent or control the violence. Some witnesses claimed that many of the attackers wore boots and helmets which is suggestive that some of the attackers had access to military equipment (Haniffa et al., 2015: 31-32).

## **Anti-Christian attacks in the Southern province**

Twenty-seven attacks against Christians in 2013 and 2014 took place in Galle and Hambantota districts and the police or some public official was

involved either actively or tacitly in as many as 13 of them (Gunatilleke, 2015a: 31-32).

### ***Walasmulla, Hambantota***

The police ordered the Assemblies of God church to discontinue all prayer meetings on 19 March and 6 April 2013. On 10 May 2013 the Hambantota District Secretariat conducted a meeting of religious leaders at which Buddhist monks demanded that all local churches that had not obtained prior state approval be shut down.

### ***Hikkaduwa, Galle***

Five police officers and an officer from the Divisional Secretary's Department went to a building used by the Assemblies of God church and demanded that prayer meetings held at the premises be discontinued immediately. Subsequently, the pastor of the church was summoned to the police station for an inquiry and was verbally abused by two Buddhist monks in the presence of the officer-in-charge who did nothing to reprimand them.

### ***Ratgama, Galle***

Eight police officers and a Buddhist monk entered the Calvary Free church on 26 January 2014 while a prayer meeting was in progress, halted the meeting and directed all participants to report to the police station for an inquiry. Subsequently, the police filed a case against the pastor of the church for breach of peace.

### ***Mamadalla, Hambantota***

The pastor of the Assemblies of God church was requested to appear at the police station for an inquiry on 24 February 2014. At the inquiry, the officer-in-charge of the police station and two Buddhist monks demanded that all religious activities conducted by the church cease as prior approval of the Ministry of Buddha Sasana and Religious Affairs was required to conduct such activities.

### ***Angunukolapalassa, Hambantota***

On 6 June 2014 the pastor of the Assemblies of God church was verbally abused by the officer-in-charge from a nearby police station for conducting prayer meetings on private premises. The officer demanded that the pastor leave the village if he was not willing to discontinue all such religious activities.

### ***Characteristics of violence against Christians***

Thus, an analysis of violence against Christians in recent years demonstrates that it is often low-intensity and continuous to the point of being systemic (Gunatilleke, 2015a).

As such, it is evident that in Sri Lanka, even though the existing legal and policy framework is sufficient to ensure the protection of minority rights, the issue is primarily one of enforcement. Inaction by the police in some cases and the direct and indirect involvement of police and public officials in other cases have been necessary components in the creation of an era where the freedoms of the minorities are impugned. In fact, the state's tacit approval of extremist groups such as the BBS, Sinhala Ravaya and Ravana Balaya is perhaps one of the main reasons why religious attacks have continued in recent years.

Further, the courts too have adopted a rather conservative approach. The lower courts have rarely intervened to protect minorities when there is a violation of their religious freedoms. Often they also fail to acknowledge the religious motivation behind such attacks. Therefore, even though physical violence may be condemned at times, the intolerance of minorities has been tacitly condoned (National Christian Evangelical Alliance of Sri Lanka, 2016: 8).

### **Developments after January 2015**

In January 2015, Maithripala Sirisena was elected as the President of Sri Lanka. Under his leadership, the impunity of extremist groups such as the BBS has reduced.

However, religious intolerance still persists. According to the Secretariat for Muslims, at least 37 religious attacks against the Muslim community took place from January to April 2015 (Secretariat for Muslims, 2015). On 4 April 2015 there was an attempted demolition of a mosque in Kuragala, Ratnapura, which was eventually prevented through the intervention of the police which dealt with a mob of over 100 people supposedly a part of Sinhala Ravaya (Gunatilleke, 2015a: 49).

There has been no progress in the prosecution of offenders of past religious violence, including the perpetrators of the Aluthgama attacks (Gunatilleke, 2015a). However, an arrest warrant was issued in October 2015

against Ven. Galaboda Atta Gnanasara Thera, General Secretary of the BBS for not being present in court in connection with two cases filed against him (Daily News, 2015).

The re-establishment of the Constitutional Council (which was abolished by the previous regime) too is a positive step in the right direction given that it is a mechanism for ensuring independence in key appointments. The Constitutional Council has since appointed members to the bribery, police, public service and human rights commissions (News First, 2015).

In October 2015 UNHRC adopted Resolution 30/1 titled 'Promoting reconciliation, accountability and human rights in Sri Lanka.' This resolution was co-sponsored by the Government of Sri Lanka.

The government is accordingly committed to holding nationwide public consultations on transitional justice mechanisms and for establishing an Office of Missing Persons. However, on 24 May 2016, the Cabinet without consulting the families concerned approved the new Office of Missing Persons. The international Convention for the Protection of All Persons from Enforced Disappearance was ratified on 25 May 2016 in fulfilment of another key promise.

The UN Working Group on Enforced or Involuntary Disappearances, ranks Sri Lanka as having the second highest number of disappearances.

(Sri Lanka Brief, 2016).

In October 2015 Foreign Minister Mangala Samaraweera elaborated on the government's plans to create separate institutions to address the grievances of all stakeholders: a Commission for Truth Justice Reconciliation and Non-recurrence, a judicial mechanism with a special counsel and an Office of Reparations (Tami Guardian, 2015).

Member of Parliament Dr Jayampathy Wickramaratne when addressing Parliament on a resolution for setting up a Constitutional Assembly on 23 February 2016 stated, 'we cannot go back to a situation of conflict. We need to find a solution to the national question. We must get the acceptance of all political parties and the Sinhala, Tamil, Muslim, Hill-country Tamil and other communities for a long-lasting solution' (Wickramaratne, 2016).



Accordingly, on 5 April 2016, Sri Lanka's Parliament converted into a Constitutional Assembly for the first time with the aim of enacting a new constitution (LBO, 2016).

As such, progressive measures are being taken in the right direction but they are very slow.

## **Right to non-discrimination and equality**

Articles 12(1) and 12(2) of the Constitution of Sri Lanka explicitly recognize the right to equality and non-discrimination. Inasmuch as Article 12(1) confers equality on all persons, the right to non-discrimination is conferred only on citizens of the country as per Article 12(2).

The following section deals with some of the economic, social and cultural rights of minorities in Sri Lanka.

### **The right to education**

Since the 1940s, the government's policy on education has sought to eliminate linguistic and socioeconomic inequalities, particularly with the introduction of free primary, secondary and tertiary education (Free Education Act 1945), scholarship programmes, establishing central schools in rural areas and initiating the use of either of the two national languages as the medium of instruction (UNICEF Sri Lanka, 2013). As such, there is relatively high participation in education countrywide and Sri Lanka boasted of a very high literacy rate of 95.6 per cent in 2012 (Central Bank of Sri Lanka, 2014).

The nation's education system is primarily supported by two policies: the Education Sector Development Framework and Programme (ESDFP) 2006-10 and Transforming School Education as the Foundation of a Knowledge Hub 2011-15. The barriers to education and the inequalities in its provision are dealt with to a large extent by these two policies and are supported by the Ministry of Education and the ministries of other related sectors (UNICEF Sri Lanka, 2013).

ESDFP specifically states that 'schools will promote gender integration and mutual respect for boys and girls and emphasize equal rights and equality in all aspects of life and mutual respect for each other.' Issues of gender are addressed through an amendment to the legislation concern-

ing early marriages and the provision of adequate sanitation facilities for girls in programmes on enhancing school infrastructure. Social protection programmes, particularly the Samurdhi Poverty Alleviation programme provides scholarships for the education of eligible children from very poor families (UNICEF Sri Lanka, 2013).

The issues created by conflict which are affecting the education system are also being addressed by the Ministry of Education by repairing infrastructure and establishing psychosocial care units and psychosocial resource centres in all provinces. In addition, assistance is also being provided by the Ministry of Social Services to victims of disasters (UNICEF Sri Lanka, 2013).

Another major ESDFP theme is 'increasing equity in the distribution of resources.' It thus seeks to modify the criteria for allocations so as to provide more resources to districts with greater need (UNICEF Sri Lanka, 2013).

The estate plantation sector, however, has been disadvantaged educationally over the years as it was provided with minimal primary education facilities. Approximately 830 plantation schools were integrated into the national education system consequent to the nationalization of estates in the 1970s. There is continuing dearth of proper infrastructure in secondary schools in the plantation areas, though the Plantation Unit of the Ministry of Education has formulated an action plan to deal with the inequities in education in the sector (UNICEF Sri Lanka, 2013). Dr Devanesan Nesiiah, a former government agent of Jaffna Mannar, Batticaloa (North East of Sri Lanka) who has also served as the Head of the Policy Analysis Unit of the Sri Lanka Institute for Development Administration (SLIDA) and Chair of the Human Rights Commission, Committee of Inquiry into disappearances was of the view that as in other fields, in education too most of those who served the plantation sector were from other sectors and some of them may lack motivation to serve with dedication (personal communication). A variety of scholarships for high-school students from the plantation sector in a range of tertiary disciplines at least for a prescribed period would help remedy the lack of professional skills in the sector in due course. He was of the opinion that since this community has suffered acute discrimination ever since it entered Sri Lanka in the early British period nearly two centuries ago, sustained corrective action by way of reverse discrimination (affirmative action) over several years may be warranted.

Children belonging to the Chakkiliyar and Pallayar castes in the Mahaiyawa area in Kandy too are severely disadvantaged as more often than not they are not admitted to good schools due to prejudices by school authorities, lack of Tamil medium of instruction in most of the good schools in the area and lack of networking capacity and funds (Silva et al., 2009). It is believed that caste has had an impact on access to education in the majority ethnic group as well. The children of Kinnara caste particularly are not taken into schools in the area and in any event much emphasis is not placed on education within the caste as they believe that they will never have a chance at a good job (International Dalit Solidarity Network, 2008). Dr Nesiah was of the view that in these cases too, affirmative action by way of a range of scholarships for a prescribed period may be needed in addition to other corrective measures.

The Veddah community is perhaps among the most disadvantaged given that its children are compelled to learn a history, language and culture that are alien to them. They may be numerically too small to warrant devising special curricula, but extending the proposed affirmative action to them will surely help at least for a limited period.

The higher education system in Sri Lanka has been ethnicized even though the Universal Declaration of Human Rights specifically provides for education based on merit (Universal Declaration of Human Rights, Article 16 [1], 1948). From 1971 a policy of standardization has been adopted ensuring that the number of students qualifying for entrance to university from each language was proportionate to the number of students who sat for the university entrance examination in that language. When it was introduced, a Tamil student had to obtain an aggregate of 250 marks to get into the medical or dental faculties while a Sinhala student would get into the same faculty with 229 marks (Chandraprema, 2012).

It is noteworthy that the proposed budget for 2016 recognizes that there are about 1,360 schools which have been neglected in the recent past without any assistance from the government. The budget seeks to allocate Rs 30,000 million to improve the facilities and quality of such neglected schools. Rs 250 million is proposed to be allocated for upgrading 25 schools in the plantation sector to secondary level (*Daily FT*, 2015).

*Figure 5* gives details about the participation of ethnic minorities in the public and private sectors.

### Profile of a vulnerable minority:

## The Wanniyalaeto community

The concept of human rights should not only be confined to words and discussions, but it should be practiced and implemented. However, the rights of the Adivasi community in Sri Lanka have been severely eroded due to many reasons including the fact that they are not a proper 'ethnic' group. In fact, Adivasis have been excluded from the debate on human rights and ignored from the paradigm of development. This case study maps the situation of Adivasis in Sri Lanka. This profile addresses the historical background of the Wanniyalaeto community, the distinctive features of their culture and identity and how they have been discriminated against throughout history.

### Historical background

The beginning of Sri Lankan history is intrinsically bound with the Wanniyalaeto (Vedda) community (forest people). They were the first dwellers of the island; they came with prince Vijaya who was expelled from India and was the first king in the island. The Veddas are said to be the descendants of Prince Vijaya and his wife Kuveni, who hailed from the indigenous Yakka group (Keerthisinghe, 2011):

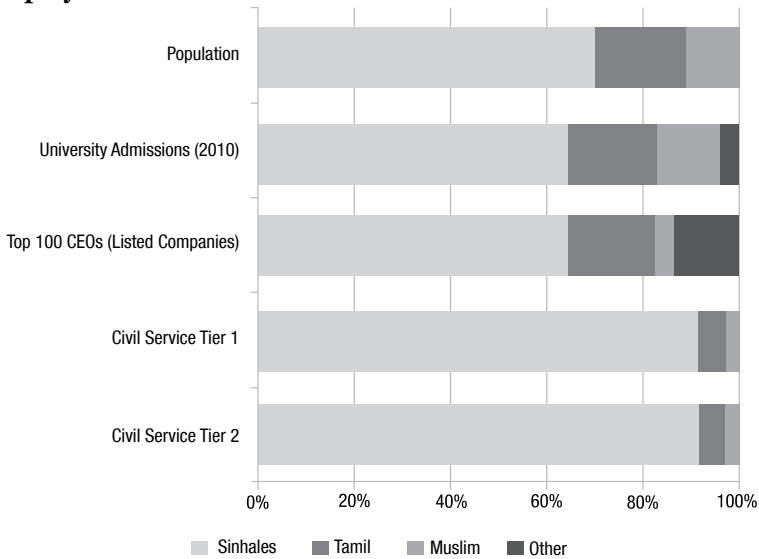
Prince Vijaya and yakkini Kuveni became friends and later they got married. They had a son and a daughter. Years later Prince Vijaya was able to subdue all the yakkas in the country with the help of Kuveni. Even though, Kuveni did not do any evil deeds, Prince Vijaya's friends never forgot what Kuveni did to them and they were ever fearful of Kuveni. They thought that non-human Kuveni could not be trusted. Due to this reason, Prince Vijaya was forced to ask Kuveni to leave. Kuveni left with her two children to Malaya country. (Central mountain part of Sri Lanka). Kuveni's children gave rise to the Vedda community in Lanka.

It is believed that the Wanniyalaeto ('forest-dwellers') can be traced back to Sri Lanka's original Neolithic community, and thus can be dated back to approximately 14,000 BC (<http://www.vedda.org/wanniyalaeto.htm>).

The identity and culture of the Wanniyalaeto Community (headline B)  
The identity of this indigenous group is intrinsically linked to who they are and where they come from. They call themselves Wanniyalaetos or forest dwellers. The word 'Vedda' on the other hand, comes from

... contd. ...

**Figure 5. Minorities in Sri Lanka facing the glass ceiling in employment**



Source: Verite Research (2013).

Tamil representation in university admissions and in CEOs of the top 100 private firms is similar to the population (about 18 per cent). However, in Tier 2 in the public sector this falls to under 6 per cent (with a 16: 1 ratio in favour of Sinhalese over Tamils), and in Tier 1 it is 3 per cent (with an almost 32: 1 ratio in favour of Sinhalese over Tamils) (Verite Research, 2013).

As such, Tamil employees in the public sector are four times as unlikely to climb to Tier 2 and eight times as unlikely to climb to Tier 1 as their Sinhala counterparts (Verite Research, 2013).

With regard to Muslim representation, a 10:1 population ratio between Sinhalese and Muslims, reduces to a 8: 1 ratio in university admissions. However, this becomes a ratio of 16:1 against the Muslims when we look at the CEOs of the top 100 private firms. Therefore, the data poses a challenge to the standard stereotyping of the Muslim population as being more successful in business than in education, a notion which has given rise to many conflicts in recent times (Verite Research, 2013).

*...Profile of a vulnerable minority continued ...*

the Sinhala word *vidina* which means one who shoots and is not the identity that this community is desirous of bearing (Leonard, 2015). Whilst outsiders have portrayed the Veddas as a primitive group which is rough and uncivilized in appearance and language, living primarily in the wild, the Veddas themselves do not choose to identify themselves in this manner (<http://vedda.org/3-identity.htm>).

Modern ideas of real estate are not known to the Wanniyalaetos who believe that they and their ancestor-spirits belong to the Wanni forest which they inhabit and are called on to protect. They only recognize natural landmarks and therefore the concept of acreage is not known to them (<http://vedda.org/3-identity.htm>). The people do not own any possessions nor seek to acquire any.

In Vedda culture, the wife is considered the most valuable possession. Monogamous unions are the norm. This ensures gender equality in the community. Fidelity between the spouses is strictly upheld and infidelity could result in being sentenced to death (Leonard, 2015). Following the death of the husband, the husband's brother can marry the widow (Veddads of Sri Lanka).

The original language spoken by these people does not exist now and only a few words have survived which are used in everyday conversations. Their dialect constitutes a combination of old and modern Sinhala as well as non-Aryan speech (Veddads of Sri Lanka).

### **Discrimination of the Wanniyalaeto Community**

As per Census reports, the Wanniyalaeto population was about 4,510 in 1921 which dropped to 2,361 in 1946. Though a separate count has not been made since 1963, a 1978 study identified about 6,000 Wanniyalaetos in Anuradhapura district alone (<http://vedda.org/3-identity.htm>).

Even though initially the Sinhalese considered the Wanniyalaeto community as equal to the dominant Govigama caste, subsequently this perception changed due to Buddhism playing a pivotal role in the lives of a majority of the Sinhalese who censured the Veddas community for hunting animals.

For centuries this indigenous community was discriminated against due to successive immigration and colonization. Thus, the

*... contd. ...*

## **The right to employment**

Protection from discrimination in employment is guaranteed in the public sector through the chapter on Fundamental Rights in the Constitution which is against executive and administrative action. There are no laws dealing with discrimination in employment and occupation in the private sector. Further, the legislative framework does not envisage equal pay for equal work across public and private sectors (LST Review, 2011).

Even though employment laws are not discriminatory, the ground reality is that given the highly politicized nature of society often the youth rely on political favours and influential contacts rather than merit alone (Ministry of Youth Affairs, 2007). Youth unrest in the north and south is primarily due to frustrations and disappointment with policies and programmes that they perceive as discriminatory (Mayer, 2004; Thangarajah, 2002). Further, obtaining jobs in the public sector is often arduous for ethnic minorities as the primary language in this sector is Sinhala. Tamils of Indian origin and Muslims too are not well-represented in the public sector even in areas in which they are concentrated (LST Review, 2011). Further exclusion and marginalization take place in estate and rural areas due to a dearth of qualified teachers, educational institutions and poor infrastructure. As such, given their need for some form of income, the youth in these areas have a tendency to take any job that they find but there is a significant gap between their aspirations and the work that they are compelled to engage in (Ministry of Youth Affairs, 2007).

The people of the Mahaiyawa caste in Kandy have had limited access to education and capital. Hence, they have had very limited success in securing proper employment or establishing businesses in towns. They have been compelled to continue working for generations in the Kandy Municipal Council as sanitary workers or have the option of carrying heavy loads (*natami*), repair shoes, drive three-wheelers and sometimes get involved in prostitution. Women in these groups are particularly vulnerable to double and treble discrimination based on ethnicity, caste and gender and are often compelled to seek employment as maids in the Middle East (Silva et al., 2009).

Influential positions in Jaffna are held by the land-owning Vellâlar caste. The lowest strata of the Jaffna caste system is referred to as 'Panchamar', consisting of Vannâr (*dhobi* or washerman), Ampattar (barber), Pallar (leather workers and landless labourers), Nalavar (toddy tappers)

*...Profile of a vulnerable minority continued ...*

Wanniyalaetos have been faced with the dilemma of either merging with other cultures and losing their unique identity, or returning to the forest environment. Over the years, many have integrated into Sinhala and Tamil societies in Sri Lanka's north-central, Uva and eastern areas (<http://www.vedda.org/wanniyalaeto.htm>).

The Wanniyalaeto community has been denied respect, dignity, human rights and cultural uniqueness, primarily due to the sentiments of the migrants as far back as 5th century BC; they viewed the Vedda community as untamed spirits of the wild disguised as human beings (<http://www.vedda.org/wanniyalaeto.htm>). Their collective custodianship of hunting grounds has not been recognized and neither have they been consulted on matters pertaining to their daily existence <http://www.vedda.org/wanniyalaeto.htm>)

making them perhaps the most marginalized group in Sri Lanka. The failure to recognize their own criteria for self-determination has accelerated their disappearance as a distinct culture and denied them participation in the democratic decision-making process (<http://vedda.org/3-identity.htm>).

Prior to colonial rule the Vedda community was the main supplier of honey and cotton to the nation. However, this practice was destroyed through colonization (Obeyesekere, 2002). Hunting too was restricted through mainstream laws which has kept the Veddas in a precarious situation. This discourages education of Vedda children as well. Being one of the main cultural marker of any community, a particular community has to have the ability to use its language. However, Veddas' use of their language has been discouraged due to essential interaction with the state and other surrounding Sinhala and Tamil communities. Most of the Veddas have converted to Sinhalese and Tamils by taking Sinhala and Tamil names (<http://www.vedda.org/wanniyalaeto.htm>).

Since 1931 the Adivasis have not been able to manage their own affairs in their areas of historic habitation (<https://www.hitpages.com/doc/5403041645723648/4/>). Instead they have fallen under the state administrative structure which has resulted in their rights being severely infringed upon. During the 1930s and 1940s, irrigation and farming colonies were launched in Polonnaruwa and Mahiyangana regions (<https://www.hitpages.com/doc/5403041645723648/4/>). These projects led to a large exodus of Sinhala and Tamil people to

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and Parayar (sanitary labourers and funeral drummers) who are accorded untouchable status in Jaffna's caste hierarchy (Silva et al., 2009).

## **The right to health**

The right to health is not recognized explicitly by the Constitution of Sri Lanka either as a Fundamental Right or as a Directive Principle of State Policy. In the landmark case of Sanjeeewa, Attorney-at-Law (on Behalf of Gerald Mervin Perera) v. Suraweera, Officer-in-Charge, Police Station, Wattala and Others the court made a reference to the right to health. However, there has been no explicit recognition of the right either as an international law obligation or as a domestic legal requirement.

As per estimates of the World Health Organization, the country's expenditure on health was approximately 3.2 per cent of GDP (US\$ 89 per head) in 2012. Despite such relatively low investments, the people's health status has improved with the mortality rate for children under-5 falling from 98 per 1,000 live births to 9.6 per 1,000 live births and life expectancy increasing from about 60 years in 1960 to 74 years in 2012. These figures are similar to the more developed countries in Asia who in fact spend more than twice as much on healthcare (*The Economist*, 2014).

The reason for such success is attributed to the free government-provided healthcare for all citizens of the country (*The Economist*, 2014). As in the case of free education, free healthcare has a long history dating back to pre-independence years. The credit for this mostly goes to left and liberal minded social and political activists in the first half of the 20th century.

As per the statistics for 2011, Sri Lanka had 7.8 physicians for 10,000 population and 33 beds for every 10,000 people (Central Bank of Sri Lanka, 2014: Table 14:12). Even though such figures are among the best in South Asia, there is ample room for improvement. The public health sector affords limited access to specialist treatment and has inadequate capacity. The more complex surgical procedures can only be done at the national hospital of Sri Lanka in Colombo, and very few other hospitals in key cities and the waiting lists for such services are usually very long. Even though there is no overt discrimination in the provision of healthcare, there is a huge disparity in the facilities available in urban and rural areas and the infrastructure in the north and east of the country is heavily affected by the extended civil war (*The Economist*, 2014).

*...Profile of a vulnerable minority continued ...*

the area, thus shutting out the Veddas from their ancestral land. As hunting is the most preferred means of livelihood of the Veddas, the shrinking of land has kept them in a precarious position. Hunting was not only their livelihood but was bound with their identity as well. Thus, restricting them access to their land for hunting severely damaged their identity and livelihood options (<https://www.hitpages.com/doc/5403041645723648/4/>).

Gal Oya and Mahaweli projects further restricted Veddas' access to their ancestral land. The Accelerated Mahaweli Development scheme was launched in 1977 under which vast tracts of traditional Wanniyalaeto hunting land was identified for proposed benefits for other communities. Equitable compensation was not handed out to the displaced indigenous inhabitants; in fact compensation for them was not even considered (<https://www.hitpages.com/doc/5403041645723648/4/>).

The Mahaweli Development scheme forced the Wanniyalaetos to leave their homes and forsake their lifestyle of hunting and gathering food. Those who continued to hunt were considered poachers or trespassers. The Madura Oya National Park was guarded to prevent the Wanniyalaetos from returning to their homes. Instead, they were expected to assume the role of rice-cultivators overnight (<http://www.vedda.org/wanniyalaeto.htm>).

In 2007, the Wild Life Department arrested four Veddas who had entered into the Maduraoya forest reserve to collect honey from bees. They were released on bail after being produced before the Mahiyanganaya court (Hettiarachchi, 2007).

Since the creation of this park, the overall living standards of the Wanniyalaeto community have deteriorated dramatically. The park is open to tourists but not to the indigenous population of the area. Sometimes tourists are brought to the doorstep of the Wanniyalaeto community, only to exhibit them as the last of the Veddas.

The obstructions in livelihood and lifestyle severely affected the Veda community and discouraged their identity and culture. While they have been uprooted from their ancestral land and identities, Adivasi children have been discriminated in schools, which forces them to drop out and give up their education (<https://www.hitpages.com/doc/5403041645723648/4/>).

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National health services in the plantation sector are very difficult to access and on-estate health services are not up to national standards. Patients often die on the way to hospital as the distance is very long. Pregnant women are at times compelled to travel in lorries used to transport tea leaves in order to get to the nearest hospital; they sometimes give birth while in the lorries, endangering their lives and those of the new-born babies. There is also a severe dearth of qualified personnel and effective drugs. The reproductive health rights of women are a matter of concern given that there are credible allegations of involuntary sterilization of women in the estate sector (LST Review, 2011).

In a study undertaken by the Ministry of Healthcare in 2007 in three national hospitals -- Anuradhapura, Nuwara Eliya and Hambantota -- it was found that no significant discrimination had been reported in terms of ethnicity, religion, social class, age, political beliefs etc., each demonstrating a satisfactory ratio above 95 per cent. Yet 7.4 per cent and 12.9 per cent of those studied reported that the discrimination was on the basis of a language barrier and lack of a relationship with the health staff respectively (Ministry of Healthcare and Nutrition, 2008).

Discrimination on grounds of language was primarily seen in the Nuwara Eliya district where 19.7 per cent of the patients shared the same experience. Most of the complaints of this nature were made by the Tamil speaking estate plantation community; 2.7 per cent of those who got treated in Hambantota too shared the same experiences and most complaints were made by the Tamil speaking Muslim community. Among the factors complained of, the rudeness of nurses and minor staff and passing of hints due to ethnicity, took precedence (Ministry of Healthcare and Nutrition, 2008).

It is noteworthy that there is a clear shift in policy with the new government proposing a spend of Rs 210 billion on education and health, primarily towards capital expenditure, which is an increase of over 120 per cent over the expenditure in the previous year (Verite Research, 2015) (*also see Figure 6*).

## **The right to secure land tenure**

Most Sinhalese are governed by the general law except those who come under the Kandyan law. The minorities in the country too come under the general law but they are also governed by their personal laws, that is, The-sawalamai law for Tamils living in the northern province and Muslim law

*...Profile of a vulnerable minority continued ...*

While ethnic assimilation exists with regard to every minority group in the country, the Veddas are the most vulnerable as their capacity to survive in the modern world is very low as compared to the other minority ethnic groups.

Their inferior social positioning has led the Veddas to a position which prevents them from participating in representative democracy. Since this community does not have any representatives in the Sri Lankan Parliament, which is basically built on an ethno-religious vote base, the Veddas do not have any voice in decision making. Thus, these people have been completely excluded from the decision making process in Sri Lanka. When competing interests arose between the Wanniyalaetos and mainstream farming and trading communities in the area, the Wanniyalaetos were left voiceless in the decision of the mainstream communities (<http://vedda.org/2-causes.htm>).

The International Labour Organization concluded a study in 1992, which stated that a large number of those belonging to the resettled Wanniyalaeto community were economically, socially and politically underprivileged. Further, this community lacked the requisite skills to assimilate themselves with the other settlers and to take up other means of earning a livelihood. Thus, the other settlers monopolized political and economic decision making and opportunities while the Wanniyalaeto community was discriminated against (<http://www.vedda.org/wanniyalaeto.htm>).

In fact, since 1974 successive governments have pledged to allocate a sanctuary of 1,800 acres to them to pursue their traditional way of life but this has not been implemented. This area is only about 1 per cent of the area of the park (<http://www.vedda.org/wanniyalaeto.htm>).

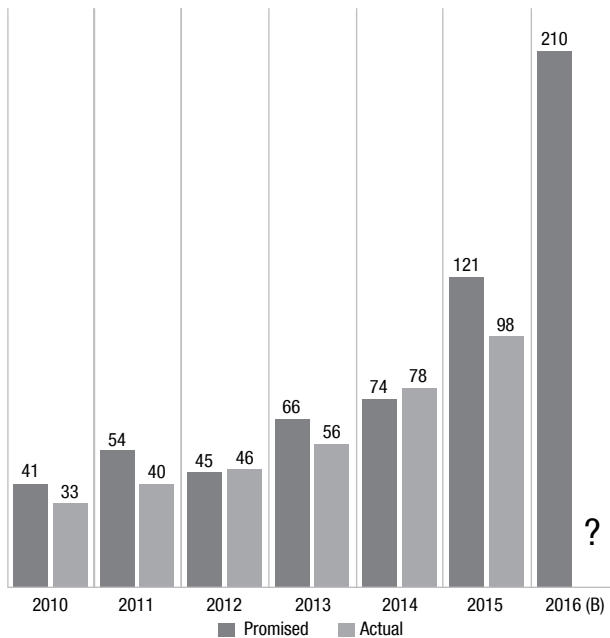
It is important to note that there is no dialogue between Wanniyalaeto leaders and government officials. Furthermore, Sri Lanka has not ratified conventions such as the ILO Convention No.169 on Indigenous and Tribal Peoples. This minimizes the possibility of intervention in recognizing the Wanniyalaeto community as a distinct group of people to be protected.

## **Conclusion**

The Wanniyalaeto community has been alienated from its language, land, culture and livelihood options. Hence, it has been indirectly forced to assimilate into the mainstream by adopting a culture, lan-

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**Figure 6. Promised and actual spend on education and health in Sri Lanka**



Source: Budget speeches - various years (P-provisional, B-budgeted).

for Muslims. However, during the years of conflict, neither the general nor the personal laws were sufficient to safeguard the property rights of the minorities. Both the state and the LTTE forcibly acquired private land for their purposes while some in the minority groups lost their land through abandonment as they were compelled to flee to safety.

The patriarchal Thesawalamai law recognizes the need for women's ownership of land (mostly inherited via dowry) for the security of their future. This law was initially considered advantageous for women as women were not gainfully employed at the time when it was codified. However, this law prevents women from having free control over their own property. While a married woman can sell or mortgage movable property, immovable property can only be mortgaged or sold with the consent of her husband, even though the husband need not consult his wife when selling or mortgaging his inheritance or acquired property. As such, regardless of how educated and qualified a woman may be and no matter how many investments she deals with at a professional level, she is unable to do so with her personal

*...Profile of a vulnerable minority continued ...*

guage, law and education which is alien to them. By preventing access to their ancestral land thanks to development projects which do not consider culture and people, the Wanniyalaetos have been left in a vulnerable situation where they do not have livelihood options. For a particular community land is not only material existence but also a subjective link to their lives and lifestyles. The Wanniyalaetos have thus not only lost their land but they have also lost their culture and identity.

There is a need for an Island-wide Census of Wanniyalaetos. They also need to be helped to convene a national gathering and to form a socio-political organization that can be consulted on matters pertaining to their current and future welfare. They should collectively decide for themselves if they wish to sustain a distinctive identity or whether they wish to progressively merge with Sinhalese and Tamil communities. Whatever their decision, they should be consulted in formulating an affirmative action programme to stop their further isolation and descent into becoming a depressed underclass of the Sri Lankan population.

investments in immovable property without the written consent of her husband (Thambiah, 2009).

In the case of Muslim law, in general circumstances (though not all) women are allotted half the share of inheritance available to men who have the same relationship to the deceased (Hussain).

Discrimination is also suffered by the Kinnara caste, even though they belong to the majority Sinhala ethnicity as their rights and access to land are limited (UNICEF Sri Lanka, 2013).

One of the primary issues with land rights of minorities in Sri Lanka has been the seizure of land in the north and east of the country designated high security zones, the existence of which has continued despite heavy criticism even after the conclusion of the war. The acquisition of this land has resulted in the army engaging in several business ventures such as restaurants, hotels, airline services, power plants, agriculture and selling produce, negatively affecting the economy of several Tamils who have lost their properties. A UN survey demonstrates that out of 138,651 families that were

resettled in the north, only 9 per cent had found permanent employment. Further, it is also reported that land seizures have been affected in fishing areas by removing the names of residents from government records such as voters' registries and using other such coercive measures against residents who are not able to provide titles to the land occupied by them. Such land grab has particularly disadvantaged women who lack documentation to prove the title of property in the names of their dead or missing male relatives (Williams, 2014). As per the North East Secretariat for Human Rights, about 70,000 people have been displaced as approximately one-third of the total area of the Jaffna district has been taken over for high security zones. In Trincomalee, 102 sq. km of land was taken over for a high security zone in 2006 displacing around 15,000 people (Minority Rights Group International, 2011).

During the tenure of the previous government, 818 acres of land in Sampur was sought to be vested with the Board of Investments by using a special gazette notification, but this land has now been taken back by the government and returned to the original owners (*Lankasri News*, 2015). President Maithripala Sirisena also recently distributed ownership deeds for 613 acres of land in Kilinochchi and Mullaitivu districts to their original owners and to the relevant institutions; this land was previously utilized by the military (Wimalaweera, 2015). A further 1,013 acres of land in Jaffna in the northern province has also been released (Sri Lanka Brief, 2015c).

The new government's approach to the resettlement of communities with low incomes in Colombo too is noteworthy as communities will be relocated only if acquiring the land that they are living on is absolutely essential and the practice of issuing an agreement which is only in Sinhala is rescinded. The Urban Development Authority is now also taking steps to address the concerns of those relocated to high-rise apartments under the previous regime (CPA Lanka, 2015).

## **Right to participation**

Minority parties have played a key role in Sri Lankan politics, particularly in the last two decades with the doing away of the first-past-the-post system and the introduction of the proportional representation electoral system. The Ceylon Workers Congress, which is a representative of the Indian Tamil community and the Sri Lanka Muslim Congress have, to an extent, been in a position to make and break governments in the recent past by enabling the formation of coalition governments. The leaderships of the parties have

been in a position to negotiate with the ruling party on policies of concern to them and also secure key ministerial portfolios (Minority Rights Group, 2011). But this does not mean that the minority communities enjoy more protection.

The first-past-the-post system was disadvantageous to non-territorial minorities because there was no way they could secure a seat by winning a particular electorate. Therefore, the proportional representation system along with preferential voting enabled voters from dispersed minorities to maximize the chances of a few candidates from minority political parties winning (Uyangoda, 2015).

Even though Sri Lanka was the first country in Asia to afford women the right to franchise in 1931 and then elected the first female Prime Minister in the world in 1960, several decades later she is still struggling to garner an equal or even numerically significant representation for women in politics. The percentage of women in Parliament has not gone above 6.5 per cent since independence in 1948 and is currently only 5.8 per cent (Daily FT, 2015; Jayasinghe, 2015). This is largely on account of the patriarchal nature of Sri Lankan politics.

Women's representation in provincial councils too has not exceeded 6 per cent, with it being even worse in local authorities (in the range of about 1-2 per cent) (Daily FT, 2015 ; Jayasinghe, 2015). The approval of cabinet ministers, however, has been obtained to amend the Local Authorities (Special Provisions) Act No. 21 of 2012 to allocate 25 per cent representation to women in provincial councils and local governments (Colombo Page, 2015).

However, this would potentially yield feasible results only in the event that both the first-past-the-post and proportional representation systems are adopted, the specific modalities of which would have to be carefully worked out.

Currently, Sri Lanka is in the process of introducing further electoral reforms after considering the interests of all stakeholders.

### ***The 13th Amendment***

The 13th amendment to the Constitution was made in 1987 with a view to devolving some powers vested in the centre among the nine provinces, thus purporting to increase the avenues for participation.



During the peak of the ethnic conflict, India and Sri Lanka came to an agreement under which the Government of Sri Lanka agreed to devolve a certain degree of political power to the provinces in the country. This was done to undermine the movement for secession while providing an avenue of power sharing taking into account the needs of minority communities.

The members of the Council and the Chief Minister are elected by the people of the province and the Council can legislate over matters set out in the provincial list. Each province has a Governor appointed by the President, holding office in accordance with Article 4(b) during the pleasure of the President.

Under Article 154G, the Provincial Council can make statutes according to the special procedure laid out with respect to matters on the Provincial Council list. Parliament has exclusive powers to legislate over matters in the reserved list. The subject matter in the concurrent list can be legislated upon by both Parliament and provincial councils, but in practice it is the will of the Parliament that prevails.

It is important to note that a Provincial Council can make a statute which applies only within its provincial limits. Moreover, the power to make statutes is subject to other provisions in the Constitution. When making a statute on a matter in the concurrent list, the Provincial Council is expected to carry out such consultations with Parliament as it may consider necessary in the circumstances of each case. However, with regard to the Parliament legislating on matters in the concurrent list, there is no express requirement that these should be subject to the other provisions of the Constitution. But it is provided that the Parliament may carry out such consultations with all provincial councils as it may consider appropriate in the circumstances of each case.

Further, as per Article 154G(6), a statute made by a Provincial Council may be void if it is inconsistent with a law passed by Parliament which was enacted following the provisions of paragraphs (2), (3), (4) and (5) of Article 154G.

A Provincial Council is also entitled to legislate on a matter on the Provincial Council list even though there may be a law enacted by Parliament prior to the commencement of the 13th amendment. In such a situation, the statute in its long title must describe that it is inconsistent with that law. If

Good practice case study:

## **Civil society activism for the minority rights of the estate plantation community**

During the early part of the 19th century, the British brought upcountry Tamil estate workers from South India to Sri Lanka to work on British tea plantations. They make up 4.2 per cent of the current Sri Lankan population (CPA, 2015). Even though the community has been living in the country for about 200 years it has been neglected in policies. Though the estate workers play a pivotal role in contributing towards the national economy, their living conditions are deplorable and they have a very low standard of living. According to Oldenziel, 'in Sri Lanka, the vast majority of tea estate workers are "Tea Tamils" who are isolated even within their own community as the indigenous Sri Lankan Tamils consider them to be second class citizens' (SOMO, ProFound, Indian Committee of the Netherlands, 2006). Initially when this community was brought to Sri Lanka its members were not granted citizenship and the subsequent nationalist movement prevented the governments that were in power from changing the situation. A clear example of this is the Ceylon Citizenship Act of 1948, which did not recognize upcountry Tamil estate workers as Sri Lankan citizens despite the fact that they had lived in the country for so long (CPA, 2015). On the introduction of the first Citizenship Act in 1948, a person could claim citizenship if he/she had two out of three immediate ancestors in the immediate paternal line born in the country or in case of birth after a fixed date such a person would be eligible if the father was a citizen at the time of the applicant's birth. Such criteria almost automatically excluded the eligibility of this community from applying for citizenship (Jayawardena, 2015).

The issue of citizenship was shelved for years, which led to rising restlessness among the youth in the plantation community. In response a three-month prayer campaign was organized by the Ceylon Workers Congress on 12 January 1986 where workers prayed from 7.00 am to 12 noon and then returned to work with the hope that their workload would be reduced. It was not a strike and neither was it to be viewed as such, but rather a non-violent intervention to seek spiritual guidance for facing their hardships. Consequent to this campaign, the government passed the Grant of Citizenship to Stateless Persons Act 1986 (Jayawardena, 2015).

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such a statute is passed by the Provincial Council and receives the assent of the Governor, the statute will be in force in the province and the parliamentary law which was passed before the commencement of the 13th amendment will be suspended in that province. However, the situation is different when it comes to laws passed by Parliament after the commencement of the 13th amendment.

Therefore, the 13th amendment to the Constitution at least notionally confers some degree of participation to the minorities in matters which concern them but is far from ideal given the degree of power retained by the centre.

## Right to culture and identity

Article 14(1)(f) of the Constitution confers on every citizen the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language. Article 27(10) further provides that the 'State shall assist the development of the cultures and the languages of the people.'

A recognition of the language and culture of a particular group is a first step in validating its identity.

Consequent to the growing support for the *swabasha* movement in the 1940s, the Sri Lanka Freedom Party manifesto claimed '...it is most essential that Sinhalese and Tamil be adopted as Official Languages immediately so that the people of this country may cease to be aliens in their own land...'

However, in 1956 with the passage of the Official Languages Act No. 33 of 1956, Sinhala was established as the official language island-wide, replacing English and giving no status of parity to Tamil. Consequently, with an increase in political pressure, the Tamil Language (Special Provisions) Act No. 28 of 1958 was passed and in or around 1966, the act was implemented when Tamil came to be used as the language of administration in the northern and eastern provinces.

Thereafter, in 1987, with the passing of the 13th amendment to the Constitution, a legal basis for parity between Sinhala and Tamil was established at least notionally as Tamil was also declared an official language. English was declared to be the link language.

*... Good practice case study continued ...*

This community lived for decades without state provision of social services, until this issue was addressed to a very limited extent under the government of J.R. Jayawardana. Nevertheless, large inequalities exist in their access to and utilization of basic human needs such as health services, as these workers are largely dependent on the estate's management for their basic needs – housing, health, and education (Jayawardana, 2013). They also receive poor pay as compared to labourers in other sectors and the labour laws prevalent in the country are not helpful in enhancing their living conditions. This has led to dilapidated housing with limited access to utilities, alcoholism, high incidence of illnesses, low spending on education and high levels of indebtedness. Further, though it is evident that the housing, health and transportation facilities have significantly improved over the past decade these estate worker communities have not been able to benefit from these developments.

Further, these estate workers are not the owners of the small, dilapidated houses built in rows in uncomfortably close quarters on the estates that they work in as housing is under the control of the management. These line-rooms, which were supposed to be temporary shelters, have now become their permanent abode. The estate management has not taken measures to rectify this situation (CPA, 2015).

Individual houses do not have their own addresses. As a result, important correspondence is not delivered to those who ought to receive it. The mail is sent to the estate head office and the management distributes it at its own convenience. This land does not come under the purview of the Pradeshiya Sabha Act, as the estates are private land. Further, as an estate also owns the roads, addresses cannot be provided by the local authorities (CPA, 2015).

Funded by the Australian High Commission, the Centre for Policy Alternatives (CPA) in partnership with the Uva Shakthi Foundation ventured to address some of the pressing issues that these communities face. According to Lionel Guruge, Senior Researcher attached to CPA, CPA had been 100 per cent successful in obtaining valid postal addresses for most of the estate workers residing within the Passara region in Uva province (about 3,500 families) and for about 1,500 families in Maskeliya (personal communication). A unique feature of this programme in Mocawatte is the support and collaboration of the estate management, which enabled CPA to complete the work within just 3 months whereas in other areas it took around at least 6 or 7 months.

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Article 22 of the Constitution, through the 16th amendment, introduced provisions relating to the language of administration being available in both Sinhala and Tamil.

As such, recognizing previous discriminatory language policies, Chapter 4 of the Constitution and the 13th and 16th amendments provide for extensive solutions.

As per Articles 18 and 19 of the Constitution, both Sinhala and Tamil are the official and national languages of Sri Lanka. Further, Article 22 specifically stipulates that in the northern and eastern provinces Tamil shall be the language of administration.

The Constitution of Sri Lanka of 1978 provides that all laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English and the Parliament is to determine at the stage of enactment as to which text shall prevail in the event of any inconsistency between the texts (Constitution of Sri Lanka, Article 23[1]).

In practice, it is usually the Sinhala version that prevails. Even though such a provision has been complied with in respect of the laws enacted after 1978 the status remains the same as far as the legislations prior to that are concerned.

Even though provided for by both the Republican constitutions, such provisions have not been practically implemented with the entire gamut of more than 250 laws passed before the 1972 Constitution including the Penal Code, Civil Procedure Code, Evidence Ordinance, Motor Traffic Act and Industrial Disputes Act not having been published as stipulated by law, even more than 30 years after being provided for.

Even though some of the legislations enacted before 1972 have been translated into Sinhala and/or Tamil, since the translations have not been published in the gazette, they remain unofficial and without any force or effect in law.

*... Good practice case study continued ...*

Thus the right to safely receive one's correspondence, a basic living condition taken for granted by most in the rest of the country, has now been ensured to estate workers. Secure mail collection boxes have also been set up in 20 localities. Further, working with the Passara Pradeshiya Sabhawa, the road names were chosen and bi-lingual signage provided for 40 of the estate by-roads. Mobile clinics were also set up to facilitate the application process for about 300 national identity cards; most of the applicants were students who were due to sit for government exams (Citizens Lanka, 2014). Language societies too have been established in several estates and about 30 villages in the DS Divisions of Lunugala and Passara.

The success of this project has inspired the Uva Shakthi Foundation to commence another project in order to serve approximately 15,000 families and other civil society organizations such as the World Vision Sri Lanka (which extended support to CPA) have expressed an interest in launching a much broader project targeting 35,000 families of the plantation community.

Lionel Guruge elaborated on some of the strategies adopted by CPA in this effort:

- A detailed analysis of the hardships faced by the estate plantation community was obtained at the grassroots level by speaking to individuals, families and representatives of the community.
- Having identified some of the key issues as not having street names, house addresses and national identity cards, the community was educated on the importance of having these for their empowerment and were made to understand that it was a basic right that they were entitled to and that these would also help in upholding their dignity.
- Necessary information including details of the area and families was collated.
- All necessary stakeholders including the estate management, village heads, post office, police and local authorities were consulted.
- They understood that communication was key as it was imperative that none of the stakeholders erroneously feel they that would lose out.

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In 1991, the Official Languages Commission was set up to advise the government on matters of language policy, to monitor compliance particularly of public authorities, to educate state officials and to investigate complaints arising from alleged violations of the law.

The Ministry of National Languages and Social Integration was established in 2010 to address matters relating to the formation and implementation of the national languages policy and to promote social integration and ethnic affairs. In 2014, the ministry undertook several activities including conversational workshops to educate police officers and members of the local and provincial administration on the importance of implementing the official language policy, investigation programmes regarding the implementation of the official language policy in bilingual divisional secretariats and other divisional secretariats, establishing bilingual facilitation cells in district secretariats and divisional secretariats, the bilingualization of the public service and the establishment of provincial centres (Ministry of National Languages and Social Integration, 2014).

The ministry has also engaged in the provision of mobile services for civic documentation to provide equal opportunities for vulnerable groups as citizens of the country by fulfilling its requirements of civic documentation. A wide range of free services were provided at a one stop shop and at ease (for example, stamps which are needed to obtain national identity cards and the fees for birth, marriage and death certificates are provided free of charge). These mobile services were mainly available in the northern, eastern and estate plantation sectors (Ministry of National Languages and Social Integration, 2014). However, a lot more needs to be done by way of creating parity in terms of language rights.

## **Identity: Examples of severely marginalized groups**

### ***The Wanniyalaeto Community***

The identity of this indigenous people's group is intrinsically linked with who they are and where they come from.

Due to assimilation into Sinhala and Tamil communities for the sake of survival, the Wanniyalaeto have not been able to preserve their original language except for only a few words (Veddas of Sri Lanka).

As per Census reports, Wanniyalaeto population was about 4,510 in 1921 which dropped to 2,361 in 1946. Though a separate count has not

*... Good practice case study continued ...*

- The community was then involved in formulating names for the streets in order to facilitate a sense of ownership.
- Thereafter, particular addresses for each family were formulated and taken to the Grama Niladhari for the necessary stamp of approval. This was undertaken together with the post office. Further, CBOs and CSOs in the area were also involved in the process.
- Once all approvals had been obtained, the information was published in the gazette and all relevant stakeholders informed.

Some of the challenges faced in the implementation of the project:

- Resistance from estate management – It preferred the old system as this was a way in which it exercised more control over the workers. The estate management was also fearful that with time the line room families would claim legal ownership to the houses. However, the CPA team managed to explain the ground reality and persuade the management that it was in the interests of all concerned.
- As new names of roads/villages were formulated in Tamil, the adjoining Sinhala villagers were uneasy as the villagers feared the word ‘puram’ (which is a Tamil word for place or area). The CPA team allayed such fears by convincing them that the word merely meant ‘area or place’ and nothing more. The team also visited the nearby temples and explained the real purpose of the project, that is, it was not for creating a type of Tamil dominance over the area.
- Ignorance and lack of knowledge among the estate community regarding the basic right of having a permanent, separate address for each family. The CPA team educated and motivated them on the value of having such an address. This was vital as without their active participation and interest in the project it could not have become a reality.

been made since 1963, a 1978 study identified about 6,000 Wanniyalaetos in the Anuradhapura district alone (For details see <http://www.vedda.org/3-identity.htm>).

Their collective custodianship over hunting and gathering ranges have not been taken cognizance of and this community is usually not consulted



in matters pertaining to decisions that affect their day-to-day existence (For details see <http://www.vedda.org/3-identity.htm>), making them perhaps the most marginalized group in Sri Lanka.

The perceived inferior social status of the Wanniyalaeto and the failure to recognize their own criteria of self-determination has caused their extinction as a distinct culture and denied them participation in the democratic decision-making process.

Since this community is numerically insignificant in every parliamentary electorate, it does not have any representatives in Parliament and does not have any voice in decision making.

### ***The Estate Plantation Community***

Hill-country Tamils were brought by the British at the beginning of the 20th century from south India to work on British plantations; they now form about 4.2 per cent of Sri Lanka's population ([www.mysrilanka.com](http://www.mysrilanka.com)).

These people have suffered discrimination by the Sinhala majority as well as Sri Lankan Tamils. The Census identifies them as a different ethnic group termed Indian Tamil, even though most of them were not born in India nor have they ever been to India. Due to their origin as indentured labour, long period of statelessness and continued depressed socioeconomic status, the term Indian Tamil has acquired a derogatory connotation and by and large the community prefers to be referred to as Hill-country Tamils. Moreover, many former estate workers and their descendants who have moved out of the plantation areas have classified themselves as Sri Lankan Tamils in their Census classifications.

As a majority of them descended from indentured labour brought from India in the early 1900s and they were not granted citizenship status, for decades they lived without state provision of social services. On the introduction of the first Citizenship Act in 1948, a person could claim citizenship if he had two out of three immediate ancestors in the immediate paternal line born in the country or in case of a birth after the fixed date such a person would be eligible if the father was a citizen at the time of the applicant's birth. Such criteria almost automatically excluded the eligibility of this community from applying for citizenship. Eventually as a result of a campaign by the community, particularly the April 1984 strike action and the January 1986 prayer campaign, the Grant of Citizenship to Stateless Persons Act 1986 was passed

and Sri Lankan citizenship was granted to 469,000 persons and any other persons of Indian origin who were stateless but legally resident in the country (Jayawardena and Kurian, 2015). However, P.P. Deveraj argues that even though *de jure* citizenship was granted, several in the community continued not to enjoy *de facto* citizenship, with difficulty in even obtaining national identity cards, resulting in being excluded from voters' lists.

Dr Devanesan Nesiah (personal communication) was of the opinion that an affirmative action programme sustained over several years was needed including improved education, health, housing and other facilities in the plantation areas, as well as a guaranteed minimum quota in at least public sector employment, public sector training institutions and admissions to state universities. Unlike the Wanniyalaeto, the Indian/Hill-country Tamils are already politically organized and their leaders could further engage in designing appropriate affirmative action programmes.

## Conclusion

Among the key findings that emerge from this discussion is the notion that even though there are no major impediments in the legal and constitutional frameworks for the protection of ethnic and religious minority rights in Sri Lanka, there appears to be a fundamental issue in the practical implementation of the laws, which are already in place.

On the conclusion of the three-decade long ethnic conflict and the resulting triumphalism, there has been a resurgence of ethno-nationalism and identity politics giving rise to the empowerment of fascist movements, which have attacked both the Muslim and Christian communities. Sri Lanka has demonstrated an increase in hostility towards some minorities, though in 2015 there appeared to have been some improvements.

## Recommendations for State actors

In as much as it is evident that the primary concern is one of implementation, it is of essence that proper mechanisms are in place in order to monitor the progress of the various international treaties that have been ratified by Sri Lanka. Law enforcement agencies too must be empowered to act in accordance with the law and to bring offenders to task without exception. It is essential that the government formulates an objective plan to reform the incapacity and apathy of the police and other state officials. Further, devel-

opment initiatives must create and empower grassroots level employment, particularly in the north and the east.

Formulating programmes to deal with judicial sensitization towards issues that concern minorities must be made after discussions with the Judicial Service Commission and the Judges Training Institute (Gunatilleke, 2015a: 56). Steps must also be taken to take positive affirmative action for the empowerment of ethnic and religious minorities who have been marginalized in terms of access to their rights.

Speedy action in terms of Constitution making and accountability, in accordance with international obligations, particularly the latest UN resolution which Sri Lanka co-sponsored is also recommended.

The government must also take steps to repeal the draconian Prevention of Terrorism Act and introduce an act bearing in mind its international treaty obligations. Steps must be taken immediately to release political prisoners and detainees. Transparent principles, processes and time tables need to be formulated for the return of military-occupied land or payment of compensation.

It is imperative that the government adopts a policy of affirmative action, particularly in the areas of university admissions, political representation and public and private sector employment with a view to empowering the minorities. The specific modalities may vary but ought to be considered and implemented.

Local authorities must be encouraged to improve the living and working conditions of labourers and sanitary workers by adopting improved technologies, safety measures and developing career paths which go beyond caste and ethnic factors.

## **Recommendations for Civil Society**

Given the almost alarming increase in the social hostility index, it is imperative that civil society works towards an attitudinal shift in society, particularly in areas with low ethnic and religious diversity and low concentrations of minorities, which are perhaps more prone to violence. Working with government institutions and monitoring the provisions and progress of the rights of minorities too must be a key focus.

It is also important that awareness is created about the importance of power sharing and the link between accountability and true reconciliation.

Civil society organizations working with 'lower caste' communities should share their experiences across the ethnic divide. It may also be useful to share experiences with Dalit activists in the rest of South Asia.

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## **Annexure 1**

# **The Question of Data on Minorities in South Asia**

Any serious attempt to document and track performance for minorities - and provide a 'report card' on how states perform on the count - must be able to measure outcomes for minorities and state 'efforts' for the group, year on year, using standardized tables, for the range of minority rights. These include life and security, socio-economic rights, participation and identity and culture.

A survey of the different countries (See Table: The Question of Data on Minorities in South Asia) reveals, data availability throughout the region, is a serious problem. And where data is available, that disaggregated by minority groups is even more scarce, thus styming any attempt at producing comparative tables. Most official data, even where they are available, is not on a yearly basis. Most countries have decennial Census – Afghanistan is the exception. And some other data on 'socio-economic' outcomes – incomes, poverty, employment, education, health, and such like - are usually available. These are neither available on a year on year basis (or periodically), nor disaggregated by minority groups. And if official data disaggregated by minority groups is scanty for socio-economic rights, that on life and security, participation and identity and culture is even more so.

The challenge is further compounded for us, given our framework using minority rights, is premised on the notion that states are duty bearers, hence it is wholly the state's task to provide for minorities. To be able to capture how states perform, we want to report not only thematic outcomes (the goals), but also state's efforts at providing the rights equitably to all minorities. Effort could take many form – laws and institutions put in place; programmes and schemes devised; resources set aside and used up; human resource deployed; reform measures implemented, and so on. Not all are amenable to capture as yearly outputs, but an effective minority rights tracking system, must be able to capture some of these elements of state effort, besides the resultant outcomes.

This is something we want to be able to do, given the potential spin offs of systematic documentation and reporting to advocacy for minority rights protection and promotion. In the absence of strong evidence and objective data, governments often easily shrug off accusations, when they are made. This hard data aspect of the report, is important to any enterprise of minority rights protection and promotion. Over time, and across the South Asia region, we want to be able to access and systematically collate data where they are available and contribute to creating datasets, where they aren't.

**Table 1. The Question of Data on Minorities in South Asia**

Country	State of data availability – official	Official data sets
Afghanistan	There is no comprehensive report on the status of minorities in Afghanistan. Accessing data on different political, social and economic indicators related to minorities is a challenge. Government and international agencies' statistics are not disaggregated for ethnic and religious groups. This makes the task of analysing the conditions and status of minorities difficult. Media reports and secondary sources are other sources. (p2)	<ul style="list-style-type: none"> <li>- No Census of population. Hence even demographic data is, for most part, guesstimates.</li> <li>- No disaggregated data</li> </ul>
Bangladesh	There are a range of data sources - the decennial Census, National Living Standards Survey, Demographic and Health Survey, Labour Force Survey and Human Development Report. However there continues to be a lack of disaggregated data by religious and ethnic groups. (p11-12)	<ul style="list-style-type: none"> <li>- National Census</li> <li>- National Living Standards Survey</li> <li>- Demographic and Health Survey,</li> <li>- Labour Force Survey</li> <li>- Human Development Report</li> </ul>
India	<p>Standardized data is available at macro level for demography, socio-economic outcomes, and violence. However as with other cases, this is not disaggregated by religious groups, although detailed disaggregated data is available for Scheduled Caste (SCs) and Scheduled Tribes (ST), the other marginalized groups.</p> <p>Violence: The National Crimes Records Bureau (NCRB), the principal official source of data on crimes and violence in the country, and whose annual reports provide a large amount of useful data, does not report those disaggregated by religious groups (except for two categories – 'prison population', and 'police representation'. Central Government announced recently that it was putting an end to reporting these data too).</p> <p>Socio-economic and related data: Here too, data disaggregated by religious or ethnic groups is not available. Two rounds of a national sample survey (NSS 61<sup>st</sup> and 68<sup>th</sup>) provide the only available disaggregated data by religious groups, one for employment and another for poverty. As does another sample survey (NFHD-III) on health indicator. Sachar report, 2006 (an official fact finding report on conditions of Muslims) collected some original data on Muslim representation in the public sector, and Kunder report, 2011 (on assessing the working of post Sachar programmes) followed up on that. Even these are limited, and the former is confined to Muslims only, of all religious groups.</p> <p>- The 2011 decennial census has collected religion data too. Unfortunately, 2011 Census religion data is only being released in fits and starts. Only recently literacy data by religious was released.</p>	<ul style="list-style-type: none"> <li>Census 2011</li> <li>National Sample Survey, 61<sup>st</sup> (2004-05) and 68<sup>th</sup> round (2011-12)</li> <li>National Family Health Survey, 2007-08</li> <li>Sachar report, 2006</li> <li>Kunder report, 2011</li> <li>- National Crimes Record Bureau. Data</li> </ul>

... contd. ...

... Table 1 contid. ...

Country	State of data availability – official	Official data sets
Nepal	Although Nepal's is the best-case scenario, in terms of availability of data for minorities. A major challenge was the difficulty in obtaining caste/ethnicity-and gender-disaggregated data on the various indicators considered. Lack of standardized data on violence did not allow for a systematic study in comparative terms. The biggest limitation, however, is the absence of almost any kind of data on Christians. (p6)	<ul style="list-style-type: none"> <li>- Decennial Census</li> <li>- Poverty headcount ratio</li> <li>- Nepal Demographic Health Survey (2011)</li> <li>- Nepal HDR 2014</li> <li>- Multidimensional Exclusion Index (WB)</li> </ul>
Pakistan	<p>No official data – no mention in chapter.</p> <p>Violence: US commission for IFR, Human Rights commission of Pakistan (non-profit)</p> <p>Socio economic: Lahore institute</p>	
Sri Lanka	<ul style="list-style-type: none"> <li>-High commissioner for human rights</li> <li>- CSOs (SL Muslim congress, secretariat for Muslims, Socio economic and participation:</li> <li>- Secondary material/ academic papers, official reports</li> </ul>	



## **Annexure 2**

### **Data on Minorities in Nepal**

Nepal's is a model case, where a great deal of data, especially on socio-economic rights, is available officially, and that disaggregated by minority groups. In the case of Nepal, these include religious and ethnic minorities, as well as dalits and janjatis. We hope to facilitate the creation, in the rest of the region, of this degree of data sophistication. Here we present some data tables on socio-economic outcomes, by different groups.

Table series 1: Socio-Economic Status of minority groups (Janajatis/Dalits/Madhesis/Muslims)

Table 2: Percentage of usually active population for more than six months in the past year, Census 2011

Table 3: State of Participation of the Broader Social Groups in Judiciary in 2013

Table 4: Caste/Ethnic Representation in the Army (January 2016)

Table 5: Public Service Commission Data: 2009/10-2010/11 and 2011/12\*

Table 6: International Conventions Signed, Ratified and Acceded by Nepal

Table 7: International Conventions Signed, Ratified and Acceded by Nepal

Table 8: Agreements between the Government of Nepal and the agitating Janajatis and Madhesis

**Table 1A. Socio-Economic Status of Janajatis**

Group Indicators	Hill Janajati		Other Hill Janajati <sup>1</sup>		Tarai Janajati		All Janajati		Nepal Average		Source	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		Total
Economic Status												
Human Development Index (HDI)		0.509 <sup>2</sup>			0.473			0.482 <sup>3</sup>			0.490	National Human Development Report (NHDR) 2014 <sup>4</sup>
Poverty Incidence 2011 ● Poverty Head Count Ratio		28.3			25.9						25.2	National Human Development Report (NHDR) 2014
Per capita income (\$)		1051.0 <sup>5</sup>			822.0			1779.0 <sup>6</sup>			1160.0	National Human Development Report (NHDR) 2014
Multidimensional Exclusion Index (MEI) <sup>7</sup>		0.25 <sup>8</sup>		0.39	0.29			0.31 <sup>9</sup>			0.26	Bennett and Parajuli, 2013 <sup>10</sup>
Employment Status ● Employed		92.7 <sup>11</sup>		93.1	88.7						91.2	Central Department of Sociology/Anthropology (CDSA), 2014 <sup>12</sup>
Employment in Agricultural Sector (15 years +)	57.3	75.7	64.9	80.5	61.3	80.8			57.1	77.9	66.6	Central Department of Sociology/Anthropology (CDSA), 2014
Employment in Non-Agricultural Sector (15 years +)	42.7	24.3	35.1	19.5	38.7	19.2			42.9	22.1	33.4	Central Department of Sociology/Anthropology (CDSA), 2014
Employment in Elementary Job <sup>15</sup>	7.0	6.4	7.4	6.3	16.2	16.0			11.1	9.9	10.5	Central Department of Sociology/Anthropology (CDSA), 2014

... contid. ...

... Table 1A contd. ...

Group Indicators	Hill Janajati		Other Hill Janajati <sup>1</sup>		Tarai Janajati		All Janajati		Nepal Average		Source		
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		Total	
<b>Educational Status</b>													
Literacy rate (15-49 years)		68.99		62.24		80.1		66.9		71.7	48.78	56.5	National Human Development Report, 2014 <sup>17</sup>
Per cent of Net Enrolment Rate (NER) <sup>18</sup>													
● Lower secondary (6-8)	-	-	-	-	-	-	-	-	-	-	-	-	96.2
● Basic Level (1-8)	-	-	-	-	-	-	-	-	-	-	-	-	74.6
	-	-	-	-	-	-	-	-	-	-	-	-	87.6
Gross Enrolment Rate <sup>20</sup>													
Basic Level(1 -8)	111.5	113.4	112.5 <sup>19</sup>	112.8	110.8	114.3	112.5			102.2	101.8	102.0	Central Department of Sociology/Anthropology(CDSA), 2014
Secondary Level (9-12)	95.5	97.4	96.5 <sup>22</sup>	85.7	85.0	74.2	79.5			99.1	88.9	94.0	Central Department of Sociology/Anthropology(CDSA), 2014
Tertiary Level (Graduated and Above)	6.8	5.2	6.0 <sup>23</sup>	3.1	4.7	1.7	3.1			10.1	5.5	7.7	Central Department of Sociology/Anthropology(CDSA), 2014
<b>Health Status</b>													
Life Expectancy			70.12	69.44			72.26			67	70.9	69	Nepal Human Development Report (NHDR), 2014

... contd. ...



... Table 1A contd. ...

Group Indicators	Hill Janajati		Other Hill Janajati <sup>1</sup>		Tarai Janajati		All Janajati		Nepal Average		Source	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		Total
Mean of Antenatal Care visit during pregnancy		3.4 <sup>24</sup>	3.1	3.5							3.6	Central Department of Sociology/Anthropology(CDSA), 2014
Per cent of at least four or more antenatal care visit		48.8 <sup>25</sup>	44.5	51.2							50.1	Central Department of Sociology/Anthropology(CDSA), 2014
Child Delivery at Health-care Facility		32.9	28.7	29.7							35.3	Central Department of Sociology/Anthropology(CDSA), 2014
Women Faced Problems Accessing Health Care Services		72.9	76.3	80.0							72.0	Central Department of Sociology/Anthropology(CDSA), 2014
Delivered by Skilled Birth Attendant (SBA)		28.9		28.4							36.0	Pandey et al., 2013 <sup>26</sup>
Knowledge about safe Abortion		48.6		56.3							58.8	Pandey et al., 2013
Nutritional Status [BMIF < 18.5]		8.4		25.9							18.2	Pandey et al., 2013
Maternal Mortality (per 100,000 live births)											207	Nepal Millennium Development Goals Progress Report (NMDGPR), 2013 <sup>28</sup>

... contd. ...

**Footnotes**

- 1 Highly Excluded Hill Janajatis
- 2 Excluding Newar
- 3 Excluding Newar
- 4 Nepal Human Development Report (NHDR), *Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential* (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 5 Per capita income of all Hill Janajatis includes Newars.
- 6 This is the per capita income of all Janajatis including Newar. However, the per capita income of all Janajatis excluding Newar is USD 844.
- 7 MEI measures the status of social exclusion/deprivation in health, income, education and empowerment related indices. The income exclusion is measured by the consumption-based poverty indicator, health exclusion is measured by three indicators: child malnutrition, access to clean drinking water, and deprivation in sanitation facility; and finally education exclusion is measured by share of out-of-school children in the basic schooling-age-group.
- 8 The MEI has categorised Hill Janajatis into two categories hill Janajatis and highly excluded hill Janajatis.
- 9 Newars are excluded from the Janajati category while measuring the MEI values of the total Janajati group.
- 10 Bennett, Lynn and Parajuli, Dilip, *The Nepal Multidimensional Index: Making smaller Social Groups Visible and Providing a Baseline for Tracking Results on Social Inclusion* (Lazimpat, Kathmandu: Himal Books, 2011).
- 11 Excluding Newar.
- 12 Central Department of Sociology/Anthropology, *Poverty and Exclusion in Nepal: Further Analysis of Recent Surveys and Census* (Kathmandu: Central Department of Sociology/Anthropology, Tribhuvan University, 2014). This report also excludes Newars from Hill Janajatis in the analysis and analyses the Newars as a separate category.
- 13 Excluding Newars.
- 14 Excluding Newars.
- 15 This sector primarily involves the simple and routine tasks which may require the hand-held tools and considerable physical efforts (including unskilled agricultural workers as well).
- 16 Excluding Newars.
- 17 Nepal Human Development Report (NHDR), *Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential* (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 18 The net enrolment rate (NER) is defined as the enrolment of the official age group for a given level of education expressed as a percentage of the corresponding population

- 19 Department of Education, 'Education Flash Report', (Kathmandu: Ministry of Education, 2014-15)
- 20 The ratio of the total number of students enrolled in a school at a given level of education, irrespective of their age, to the total number of children in the age group specified for that level of education.
- 21 Excluding Newars.
- 22 Excluding Newars.
- 23 Excluding Newars.
- 24 Excluding Newars.
- 25 Excluding Newars.
- 26 Pandey JP, Dhakal MR, Karki S, Poudel P, Pradhan MS, 'Maternal and child health in Nepal: the effects of caste, ethnicity, and regional identity: further analysis of the 2011 Nepal demographic and health survey', (Calverton, Maryland: Nepal Ministry of Health and Population, New ERA, and ICF International; 2013).
- 27 Body Mass Index (BMI) is expressed as the ratio of weight in Kilograms to the square of height in meters ( $\text{kg}/\text{m}^2$ )
- 28 National Millennium Development Goals Progress Report (NMDGPR) 2013, (National Planning Commission, United Nations Development Program, Kathmandu: 2013).

**Table 1B. Socio-Economic Status of Dalits**

Group Indicators	Hill Dalit		Terai Dalit		Total Dalit		Nepal Average			Sources
	Male	Female	Male	Female	Male	Female	Male	Female	Total	
<b>Economic Status</b>										
Human Development Index (HDI)		0.446			0.400		0.434			National Human Development Report, 2014 <sup>1</sup>
Poverty Incidence 2011 ● Poverty Head Count Ratio		43.6			38.2				25.2	Nepal Living Standards Survey, 2011 <sup>2</sup>
Per capita income (\$)		805.0			616.0		755.0		1160.0	Nepal Human Development Report (NHDR) 2014
Multidimensional Exclusion Index (MEI)		0.42			0.43		0.42		0.26	Bennett and Parajuli, 2013
Employment Status		90.5			87.4				91.2	Central Department of Sociology/Anthropology (CDSA), 2014 <sup>3</sup>
Percentage of Employment in Agricultural Sector	54.7	82.1	64.1	78.9	69.4			57.1	77.9	Central Department of Sociology/Anthropology (CDSA), 2014
Employment in Non-Agricultural Sector	45.3	17.9	35.9	21.1	30.6			42.9	22.1	Central Department of Sociology/Anthropology (CDSA), 2014
Employment in Elementary Job	12.2	11.6	41.0	46.3	42.9			11.1	9.9	Central Department of Sociology/Anthropology (CDSA), 2014
Educational Status										
Adult Literacy rate		61.9			34.6		52.3		48.8	Nepal Human Development Report (NHDR) 2014 <sup>4</sup>
Per cent of Net Enrollment Rate (NER)										

... contd. ...

... Table 1B cont'd. ...

Group Indicators	Hill Dalit		Tarai Dalit		Total Dalit		Nepal Average		Sources	
	Male	Female	Male	Female	Male	Female	Male	Female		
● Primary	-	-	-	-	-	-	-	-	Education Flash Report 2014/015 <sup>5</sup>	
● Lower secondary (6-10)	-	-	-	-	-	-	-	-		
● Basic Level(1-80)	-	-	-	-	-	-	-	-		
<b>Gross Enrollment Rate</b>										
● Basic Level(1-8)	108.2	112.2	110.2	64.3	70.1		202.2	101.8	102.0	Central Department of Sociology/Anthropology(CDSA), 2014
● Tertiary Level (Graduated and Above)	57.8	47.6	52.5	19.6	30.8		99.1	88.9	94.0	Central Department of Sociology/Anthropology(CDSA), 2014
● Secondary Level (9-12)	1.8	0.7	1.2	0.3	1.2		10.1	5.5	7.7	Central Department of Sociology/Anthropology (CDSA), 2014
<b>Health Status</b>										
Life Expectancy			65.7		70.5			67	69.0	Nepal Human Development Report (NHDR) 2014
Mean of Antenatal Care Visit During pregnancy			3.3		2.6				3.6	Central Department of Sociology/Anthropology(CDSA), 2014
Per cent of at least four or more antenatal care visit			48.6		23.2				50.1	Central Department of Sociology/Anthropology(CDSA), 2014
Child Delivery at Health-care Facility			29.2		21.8				35.3	Central Department of Sociology/Anthropology(CDSA), 2014
Women Faced Problems Accessing Health-Care Services			79.2		85.3				72.0	Central Department of Sociology/Anthropology(CDSA), 2014

... cont'd. ...

... Table 1B cont'd. ...

Group Indicators	Hill Dalit		Tarai Dalit		Total Dalit		Nepal Average		Sources	
	Male	Female	Male	Female	Male	Female	Male	Female		Total
Delivered by SBA									36.0	Pandey et al., 2013 <sup>6</sup>
Knowledge about safe Abortion									58.8	Pandey et al., 2013
Nutritional Status [BMI<18.5]									18.2	Pandey et al., 2013
Maternal Mortality (per 100,000 live births)									273.0	Nepal Millennium Development Goals Progress Report (NMDGPR) 2013

#### Footnotes

1. Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
2. Central Bureau of Statistics (CBS), 'Nepal Living Standards Survey 2010/11', (Kathmandu: National Planning Commission, 2011)
3. Central Department of Sociology/Anthropology, Poverty and Exclusion in Nepal: Further Analysis of Recent Surveys and Census (Kathmandu: Central Department of Sociology/Anthropology, Tribhuvan University, 2014. This report excludes Newars from the Hill Janajati and deals with Newars as a separate category.
4. Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
5. Department of Education, 'Education Flash Report', (Kathmandu: Ministry of Education, 2014-15)
6. Pandey JP, Dhakal MR, Karki S, Poudel P., Pradhan M. S., 'Maternal and child health in Nepal: the effects of caste, ethnicity, and regional identity: further analysis of the 2011 Nepal demographic and health survey', (Calverton, Maryland: Nepal Ministry of Health and Population, New ERA, and ICF International; 2013).

**Table 1C. Socio-Economic Status of Madhesis**

Group Indicators	Tarai Caste Groups		Tarai Brahman/Rajput		Tarai Janajati		Other Tarai Caste Group		Tarai Dalits		Nepal Average		Sources
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Total	
<b>Economic Status</b>													
Human Development Index (HDI)					0.536							0.490	Nepal Human Development Report (NHDR) 2014 <sup>1</sup>
Poverty Incidence 2011													
● Poverty Head Count Ratio					18.6							25.2	Nepal Human Development Report (NHDR) 2014
Per capita income (\$)			744.0		937.0							1160.0	Nepal Human Development Report (NHDR) 2014
Multidimensional Exclusion Index (MEI)					0.12							0.26	Bennett and Parajuli, 2013 <sup>2</sup>
Employment Status													
● Employed			92.5		87.1							91.2	Central Department of Sociology/Anthropology (CDSA), 2014 <sup>3</sup>
Employment in Agricultural Sector	59.7	76.8	64.6		39.6		80.8	78.0	64.1	78.9	57.1	66.6	Central Department of Sociology/Anthropology (CDSA), 2014

... contd. ...

... Table 1C. contd. ...

Group Indicators	Tarai Caste Groups		Tarai Brahman/Rajput		Tarai Janajati		Other Tarai Caste Group		Tarai Dalits		Nepal Average		Sources	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Total		
Employment in Non-Agricultural Sector	40.3	23.2	35.4	38.7	19.2	30.2	39.0	22.0	34.1	35.9	21.1	30.6	33.4	Central Department of Sociology/Anthropology (CDSA), 2014
Employment in Elementary Job <sup>4</sup>	13.5	16.4	14.3	16.2	16.0	16.2	13.8	16.4	14.6	41.0	46.3	42.9	10.5	Central Department of Sociology/Anthropology (CDSA), 2014
<b>Educational Status</b>														
Adult Literacy rate			54.8			80.1			53.9			34.6	56.5	Nepal Human Development Report (NHDR) 2014 <sup>5</sup>
Per cent of Net Enrollment Rate (NER)														
● Primary				-	-	-				-	-	-	96.2	Education
● Lower secondary (6-8)				-	-	-				-	-	-	74.6	Flash Report
● Basic Level (1-8)				-	-	-				-	-	-	87.6	2014/015 <sup>6</sup>
Gross Enrollment Rate														
Basic Level (1-8)	90.7	83.0	87.0	110.8	114.3	112.5	90.4	82.2	86.4	75.6	64.3	70.1	102.0	Central Department of Sociology/Anthropology (CDSA), 2014

... contd. ...



... Table 1C contd. ...

Group Indicators	Tarai Caste Groups		Tarai Brahman/Rajput		Tarai Janajati		Other Tarai Caste Group		Tarai Dalits		Nepal Average		Sources					
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Total						
Secondary Level (9-12)	94.8	63.5	161.3	145.1	153.5	85.0	74.2	79.5	90.5	57.9	75.2	40.8	19.6	30.8	88.9	94.0	Central Department of Sociology/Anthropology (CDSA), 2014	
Tertiary Level (Graduated and Above)	11.5	4.4	33.2	20.7	27.3	4.7	1.7	3.1	9.8	3.0	6.7	2.1	0.3	1.2	5.5	7.7	Central Department of Sociology/Anthropology (CDSA), 2014	
<b>Health Status</b>																		
Life Expectancy					74.1			72.3			72.4			70.5	70.9	69.0	67.0	Nepal Human Development Report (NHDR) 2014 <sup>7</sup>
Mean of Antenatal Care visit during pregnancy					3.4			3.5			3.3			2.6		3.6		Central Department of Sociology/Anthropology (CDSA), 2014
Per cent of at least four or more antenatal care visit					42.7			51.2			35.9			23.2		50.1		Central Department of Sociology/Anthropology (CDSA), 2014
Child Delivery at Health-care Facility					51.6			29.7			37.9			21.8		35.3		Central Department of Sociology/Anthropology (CDSA), 2014

... contd. ...

... Table 1C contd. ...

Group Indicators	Tarai Caste Groups		Tarai Brahman/Rajput		Tarai Janajati		Other Tarai Caste Group		Tarai Dalits		Nepal Average		Sources
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Total	
Women Faced Problems Accessing Health Care Services		69.6				80.0		71.7			85.3		Central Department of Sociology/Anthropology (CDSA), 2014
Delivered by SBA						28.4		39.4			22.3		Pandey et al., 2013 <sup>6</sup>
Knowledge about safe Abortion						58.3		65.4			57.4		Pandey et al., 2013
Nutritional Status [BMI<18.5]						25.9		32.6			44.7		Pandey et al., 2013

### Footnotes

- 1 Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 2 Bennett, Lynn and Parajuli, Dilip, The Nepal Multidimensional Index: Making smaller Social Groups Visible and Providing a Baseline for Tracking Results on Social Inclusion (Lazimpat, Kathmandu: Himal Books, 2011).
- 3 Central Department of Sociology/Anthropology, Poverty and Exclusion in Nepal: Further Analysis of Recent Surveys and Census (Kathmandu: Central Department of Sociology/Anthropology, Tribhuvan University, 2014).
- 4 This sector primarily involves the simple and routine tasks, which may require hand-held tools and considerable physical effort (including unskilled agricultural workers).
- 5 Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 6 Department of Education, 'Education Flash Report', (Kathmandu: Ministry of Education, 2014-15)
- 7 Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 8 Pandey JP, Dhakal MR, Karki S, Poudel P, Pradhan MS., 'Maternal and child health in Nepal: the effects of caste, ethnicity, and regional identity: further analysis of the 2011 Nepal demographic and health survey', (Calverton, Maryland: Nepal Ministry of Health and Population, New ERA, and ICF International; 2013).

**Table 1D. Socio-Economic Status of Muslims**

Group Indicators	Muslims			Nepal Average			Sources
	Male	Female	Total	Male	Female	Total	
<b>Economic Status</b>							
Human Development Index (HDI)			0.422			0.490	Nepal Human Development Report (NHDR)2014 <sup>1</sup>
Poverty Incidence 2011			20.2			25.2	Nepal Living Standards Survey,2011 <sup>2</sup>
● Poverty Head Count Ratio			695.0			1160.0	Nepal Human Development Report (NHDR)2014
Per capita income (\$)			0.37			0.26	Bennett and Parajuli, 2013 <sup>3</sup>
Multidimensional Exclusion Index (MEI)			91.7			91.2	Central Department of Sociology/Anthropology(CDSA), 2014 <sup>4</sup>
● Employment							
Employment in Agricultural Sector	51	73.8	57.8	57.1	77.9	66.6	Central Department of Sociology/Anthropology(CDSA), 2014
Employment in Non-Agricultural	49	26.2	42.2	42.9	22.1	33.4	Central Department of Sociology/Anthropology(CDSA), 2014
Employment in Elementary Job	16.6	22.7	18.4	11.1	9.9	10.5	Central Department of Sociology/Anthropology(CDSA), 2014
<b>Educational Status</b>							
Adult Literacy Rate			43.6	71.7	48.8	56.5	Nepal Human Development Report (NHDR)2014
<b>Per cent of Gross Enrollment Rate</b>							
Basic Level(1-8)	73.0	62.4	67.9	102.2	101.8	102.0	Central Department of Sociology/Anthropology(CDSA), 2014
Secondary Level (9-12)	42.8	21.8	32.6	99.1	88.9	94.0	Central Department of Sociology/Anthropology(CDSA), 2014
Tertiary Level (Graduated and Above)	3.0	1.0	2.0	10.1	5.5	7.7	Central Department of Sociology/Anthropology(CDSA), 2014
Health Status							
Life Expectancy			70.5	70.9	67.0	69.0	Nepal Human Development Report (NHDR)2014 <sup>5</sup>
Mean of Antenatal Care Visit During pregnancy			3.0			3.6	Central Department of Sociology/Anthropology(CDSA), 2014
Per cent of at least four or more antenatal care visit			34.8			50.1	Central Department of Sociology/Anthropology(CDSA), 2014
Child Delivery at Health-care Facility			32.3			35.3	Central Department of Sociology/Anthropology(CDSA), 2014

... contd. ...

... Table 1D contd. ...

Group Indicators	Muslims		Nepal Average			Sources	
	Male	Female	Total	Male	Female		Total
Women Faced Problems Accessing Health-care Services			86.3			72.0	Central Department of Sociology/Anthropology(CDSA), 2014
Delivered by SBA			33.0			36.0	Pandey et al., 2013 <sup>6</sup>
Knowledge about safe Abortion			61.7			56.8	Pandey et al., 2013
Nutritional Status [BMI<18.5]			36.6			18.2	Pandey et al., 2013
Maternal Mortality (per 100,000 live births)			318.0				National Millennium Development Goals Progress Report (MDGPR) 2013

**Footnotes**

- 1 Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 2 Central Bureau of Statistics (CBS), 'Nepal Living Standards Survey 2010/11', (Kathmandu: National Planning Commission, 2011)
- 3 Bennett, Lynn and Parajuli, Dilip. The Nepal Multidimensional Index: Making smaller Social Groups Visible and Providing a Baseline for Tracking Results on Social Inclusion (Lazimpat, Kathmandu: Himal Books, 2011).
- 4 Central Department of Sociology/Anthropology, Poverty and Exclusion in Nepal: Further Analysis of Recent Surveys and Census (Kathmandu: Central Department of Sociology/Anthropology, Tribhuvan University, 2014).
- 5 Nepal Human Development Report (NHDR), Nepal Human Development Report 2014, Beyond Geography Unlocking Human Potential (Kathmandu: Government of Nepal, National Planning Commission, and UNDP, 2014).
- 6 Pandey JP, Dhakal MR, Karki S, Poudel P, Pradhan MS, 'Maternal and child health in Nepal: the effects of caste, ethnicity, and regional identity: further analysis of the 2011 Nepal demographic and health survey', (Calverton, Maryland: Nepal Ministry of Health and Population, New ERA, and ICF International; 2013).

**Table 2. Percentage of usually active population for more than six months in the past year, Census 2011<sup>1</sup>**

Social Group	Army	Managing and Professional Work	Technicians and Associate Professionals	Office Assistance	Service and Sale Workers	Skilled agriculture forestry and fishery workers	Craft and related trades workers	Plant and machine operators and assemblers	Elementary Occupation <sup>2</sup>	Not Stated
Mountain Janajati	0.075	6.946	1.736	1.272	10.802	65.516	4.908	1.401	5.808	1.537
Hill Janajati	0.268	4.969	1.932	1.251	8.311	64.387	8.334	2.597	6.212	1.738
Hill Caste	0.408	9.261	3.275	1.938	9.569	63.387	3.798	1.849	4.810	1.704
Hill Dalit	0.132	1.300	0.566	0.548	3.706	62.858	16.448	1.840	11.153	1.449
Tarai Janajati	0.096	2.305	1.160	0.837	4.705	60.242	10.410	2.845	15.609	1.790
Tarai Caste	0.096	4.091	1.907	0.871	11.275	55.701	7.554	1.866	13.588	3.049
Tarai Dalit	0.056	0.758	0.493	0.470	3.277	38.853	8.781	2.313	41.171	3.826
Muslims*	0.040	1.610	0.870	0.530	10.110	46.060	17.470	2.490	17.400	3.410
Others	0.041	1.737	0.925	0.562	10.374	45.464	17.628	2.528	17.331	3.410

**Footnotes**

1. These are individuals aged 10 years and above.
  2. Simple and routine tasks which may require the hand-held tools and considerable physical efforts (including unskilled agricultural workers as well).
- \* Muslims is also included in Others but to make it visible in the table it is presented separately.

**Table 3. State of Participation of the Broader Social Groups in Judiciary in 2013**

	Judge	%	Gazetted	%	Non- gazetted	%	Other services	%	Total	%
Caste/Ethnic Group	Behun/Chhetri	203	738	87.6	1667	82.1	1201	66.6	3809	77.6
	OBC (Madhes)	4	14	1.7	82	4	138	7.7	238	4.8
	Dalit	1	4	0.4	32	1.6	60	3.3	97	2
	Janajati	22	78	9.3	228	11.2	383	21.3	711	14.5
	Others	3	8	1	22	1.1	20	1.1	53	1.1
	Total	233	842	100	2031	100	1802	100	4908	100
Religious groups	Hindu	229	824	99.6	1947	98.7	1610	97.1	4610	98.3
	Muslim	2	2	0.2	9	0.5	19	1.1	32	0.7
	Others	1	2	0.2	16	0.8	29	1.8	48	1
Total	232	828	100	1972	100	1658	100	4690	100	
Gender	Male	226	782	92.9	1724	84.9	1496	83	4228	86.1
	Female	7	60	7.1	307	15.1	306	17	680	13.9
Total	233	842	100	2031	100	1802	100	4908	100	

Source: Nepal Judicial Academy, 2013. Gender Equality and Social Inclusion Analysis of the Nepali Judiciary, Lalitpur, Nepal.

Note: The classification of the social groups is different from the other statistical tables and the pattern followed throughout the paper. The Other Backward Castes, in the table, include 24 different sub-ethnic groups of the Tara region and does not include the Brahman and Chhetri of Tara.

**Table 4. Caste/Ethnic Representation in the Army<sup>1</sup> (January 2016)**

Caste/Ethnicity	Representation (in percentage)	Remarks
Mountain Janajati	0.13	
Hill Janajati	26.89	Largest group is Magar (7.65 per cent) followed by Newar (6.07 per cent) while the smallest is Thami (0.01 per cent).
Tarai Janajati	4.95	Largest group is Tharu with 3.23 per cent
Hill Dalit	4.81	
Tarai Caste	1.07	Caste categorisation not clear
Tarai Dalit	0.16	
Muslim	0.03	
Chhetri	43.12	
Bahun	8.72	
Thakuri	3.52	

*Note: The caste categorisation used is from Sharma, Pitamber, Some Aspects of Social Demography: Census 2011 update (Social Science Baha and Himal Books, Kathmandu, 2014).*

*The caste categorisation provided by the Nepal Army in many cases is not clear. For example, it lumps Mandal and Gangai together. However, Gangai fall under Tarai Janajati while Mandal is not given in Sharma's categorisation. Similarly, Lohar is a caste group in Tarai while Tatma is Tarai Dalit. Tatma is not listed in Sharma's work.*

**Footnote**

1 Retrieved from: <http://www.nepalarmy.mil.np/inclusiveness.php> on 27th January 2016

**Table 5. Public Service Commission Data: 2009/10-2010/11 and 2011/12\***

FY	Total Applicants		Total Applicants by Gender		Reserved Seats for Women				Recommended women									
	Numbers		Male	Female														
2009-10	300463		160500	139963				495		86								
				300463														
2010-11	251651		141344	110307				367		114								
				251651														
2011-12	271,577		157792	113785				398		352								
				271,577														
Advertised Positions and numbers (Inclusive)-2009/10, 2010/11, 2011/12																		
FY	Janajati		Madhesis		Dalit		Person with Disability		Backward		Total							
	09-10	11-12	10-11	11-12	09-10	10-11	11-12	09-10	10-11	11-12	09-10	10-11	11-12					
Required candidate	368	286	341	319	285	142	119	145	64	45	76	43	34	38	1431	1086	1283	
Applicants	22196	39507	25743	13734	26482	18193	4155	8098	6013	2106	NA	2823	2830	NA	2832	100923	84227	111,562
Recommended	59	94	280	36	76	212	10	99	9	14	40	6	14	30	120	329	1030	

Source: PSC Annual Report 2009-10; 2010-11 cited in Awasthi and Adhikari, 2012 and PSC annual Report 2011-12

\*Note: There is lack of disaggregated data in both open competition and competition in reservation for minorities. The Public Service Commission has disaggregated data only for the reserved categories. This data, however, does not provide a clear picture of exact participation of minorities, including women, in the civil services because of overlapping categories in terms of caste/ethnicity and gender (women). Women can also apply under the categories of Janajatis, Madhesis, Dalit and persons with disability. Similarly, a person with disability can fall under any of these categories. Moreover, everyone can also apply in the open competition section



**Table 6. International Conventions Signed, Ratified and Acceded by Nepal**

S.N.	Name of the Instrument	Signature	Ratification Accession (a)
1	Slavery Convention of 1926, 25 September 1926 as amended (23 October 1953)		7 Jan 1963 a
2	Amendments to the Slavery Convention (1926), 1963		7 Jan 1963 a
3	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 7 September 1956		7 Jan 1963 a
4	Convention on the Political Rights of Women, 20 December 1952		26 Apr 1966 a
5	Convention on the Prevention and Punishment of the Crime of the Genocide, New York, 9 December 1948.		17 Jan 1969 a
6	International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966		30 Jan 1971 a <sup>1</sup>
7	International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973		12 July 1977 a
8	Convention on the Rights of the Child, 20 November 1989	26 Jan 1990	14 Sep 1990
9	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000.	8 Sep 2000	3 Jan 2007a
10	Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979	5 Feb 1991	22 Apr 1991
11	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6 Oct 1999	18 Dec 2001	15 June 2007
12	International Covenant on Civil and Political Rights, 16 December 1966		14 May 1991 a
13	International Covenant on Economic, Social and Cultural Rights, 16 December 1966		14 May 1991 a
14	Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966		14 May 1991 a <sup>2</sup>
15	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, New York, 15 December 1989		4 Mar 1998 a
16	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984		14 May 1991a <sup>3</sup>
17	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 Dec 2002	Not signed	
18	International Convention against Apartheid in Sports, 10 December 1985.	24 June 1986	14 May 1991 a
19	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others including, 21 March 1950 Final Protocol, 1950		10 Dec. 2002 a
20	Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Not signed	Not ratified
21	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000	8 Sep 2000	6 Jan 2006a
22	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 Dec 1990	Not signed	Not ratified
23	Convention on the Rights of Persons with Disabilities, 13 December 2006	3 Jan 2008	27 Dec 2009

... cont'd. ...

... Table 6 contd. ...

S.N.	Name of the instrument	Signature	Ratification Accession (a)
24	Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006	3 Jan 2008	7 May 2010
25	International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006	Not signed	Not ratified
26	Rome Statute of the International Criminal Court, 17 July 1998	Not signed	Not ratified
27	Convention relating to the Status of Refugees, 28 July 1951	Not signed	Not ratified
28	Convention relating to the Status of Stateless Persons, 28 September 1954	Not signed	Not ratified
29	Convention on the Reduction of Statelessness, 30 August 1961	Not signed	Not ratified
30	Protocol relating to the Status of Refugees, 31 January 1967	Not signed	Not ratified
31	Convention on the Safety of United Nations and Associated Personnel, 9 December 1994		8 Sept 2000 a
32	Forced Labour Convention, 1930 (No. 29)		3 Jan 2002
33	Abolition of Forced Labour Convention, 1957 (No. 105)		30 Aug 2007
34	Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)		Not ratified
35	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)		11 Nov 1996
36	Equal Remuneration Convention, 1951 (No. 100)		10 June 1976
37	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)		19 Sep 1974
38	Minimum Age Convention, 1973 (No. 138)		30 May 1997
39	Worst Forms of Child Labour Convention, 1999 (No. 182)		3 Jan 2002
40	Indigenous and Tribal Peoples Convention, 1989 (No. 169)		22 Aug 2007
41	Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 19 December 2011 (Not yet in force)	Not signed	Not ratified

Source: *Human Rights Treaty Monitoring Coordination Committee (HRTMCC) and Informal Sector Service Centre (INSEC) (2012). Kalamki, Sjuchar.*

*Nepal has NOT made the necessary declaration under Article 14 to which would recognise the competence of Committee on Elimination of Racial*

*Discrimination (CERD) to consider individual complaints.*

*ii This allows for the Human Rights Committee (the treaty monitoring body of the ICCPR) to receive individual complaints.*

*iii Nepal has NOT made the necessary declaration under a) article 22 which would recognise the competence of Common Admission Test (CAT) to consider individual complaints Nor b) article 28 which would recognise the competence of CAT to undertake enquiries.*

**Table 7. Agreements between the Government of Nepal and the agitating Janajatis and Madhesis**

S.N.	Issue	Maolists' 22-point Demand August 7, 2007	Agreement between Government-Janajati (August 7, 2007)	Agreement between Government-MJF (August 30, 2007)
1	Democratisation Integration	<ul style="list-style-type: none"> <li>Democratise the NA forming Security Council and integrate the NA and People's Liberation Army (PLA) soon.</li> </ul>	<p>While nominating candidates for the first-past-the-post electoral system for the CA election, candidacy shall be ensured of proportional representation of all castes and Janajati</p> <ul style="list-style-type: none"> <li>All political parties' election shall arrange to ensure representation of each of the listed indigenous Janajati communities in the election (#2).</li> </ul> <p>The Government of Nepal and SPA shall ensure at least one representative of Janajati group (#3).</p> <ul style="list-style-type: none"> <li>All groups, genders, communities, castes and ethnicities shall be represented in political parties in order to ensure inclusive participation and proportional representation in all bodies and all levels of the state (#8).</li> </ul> <ul style="list-style-type: none"> <li>The commitments on legal and policy shall be ensured inclusive and proportional representation of all genders, classes, regions and communities, including indigenous Janajati in all bodies and levels of state (#9).</li> </ul> <ul style="list-style-type: none"> <li>While making important decisions regarding various groups, regions, genders and communities, including indigenous Janajati, advice and consultation shall be taken of concerned above-mentioned actors (#10).</li> </ul> <ul style="list-style-type: none"> <li>UN Declaration on the Rights of Indigenous Peoples shall be adopted (#11).</li> </ul> <ul style="list-style-type: none"> <li>Nepal Federation of Indigenous Nationalities (NEFIN), Indigenous Nationalities Joint Struggle Committee and National Indigenous Women's Federation request all indigenous communities in the country to unite for the success of the upcoming CA election (#20).</li> </ul>	<ul style="list-style-type: none"> <li>State would ensure 'balanced' and 'proportional' representation of marginalised communities that would include Madhesi, indigenous/nationalities, disabled, minorities and Muslims in all State structures (#4).</li> <li>Both parties shall committee for impartial, peaceful and fearless environment for CA election (#17)</li> <li>Ministry for Information and Communication shall appoint Madhesi Journalists in all government media, TV, radio, press commissions at body and level.(#18)</li> <li>All necessary policy and legislation shall be formed for the inclusion of Madhesi, Janajati/nationalities, Dalits, Women, etc. in all commissions, bodies and levels of the state (#20).</li> </ul>
2	Election system Inclusion	<ul style="list-style-type: none"> <li>Organise around table conference to ensure proportionate representation of all class, caste, region, Madhesi, women, Dalits, minority communities, etc. for CA election.</li> </ul>	<p>While nominating candidates for the first-past-the-post electoral system for the CA election, candidacy shall be ensured of proportional representation of all castes and Janajati</p> <ul style="list-style-type: none"> <li>All political parties' election shall arrange to ensure representation of each of the listed indigenous Janajati communities in the election (#2).</li> </ul> <p>The Government of Nepal and SPA shall ensure at least one representative of Janajati group (#3).</p> <ul style="list-style-type: none"> <li>All groups, genders, communities, castes and ethnicities shall be represented in political parties in order to ensure inclusive participation and proportional representation in all bodies and all levels of the state (#8).</li> </ul> <ul style="list-style-type: none"> <li>The commitments on legal and policy shall be ensured inclusive and proportional representation of all genders, classes, regions and communities, including indigenous Janajati in all bodies and levels of state (#9).</li> </ul> <ul style="list-style-type: none"> <li>While making important decisions regarding various groups, regions, genders and communities, including indigenous Janajati, advice and consultation shall be taken of concerned above-mentioned actors (#10).</li> </ul> <ul style="list-style-type: none"> <li>UN Declaration on the Rights of Indigenous Peoples shall be adopted (#11).</li> </ul> <ul style="list-style-type: none"> <li>Nepal Federation of Indigenous Nationalities (NEFIN), Indigenous Nationalities Joint Struggle Committee and National Indigenous Women's Federation request all indigenous communities in the country to unite for the success of the upcoming CA election (#20).</li> </ul>	<ul style="list-style-type: none"> <li>State would ensure 'balanced' and 'proportional' representation of marginalised communities that would include Madhesi, indigenous/nationalities, disabled, minorities and Muslims in all State structures (#4).</li> <li>Both parties shall committee for impartial, peaceful and fearless environment for CA election (#17)</li> <li>Ministry for Information and Communication shall appoint Madhesi Journalists in all government media, TV, radio, press commissions at body and level.(#18)</li> <li>All necessary policy and legislation shall be formed for the inclusion of Madhesi, Janajati/nationalities, Dalits, Women, etc. in all commissions, bodies and levels of the state (#20).</li> </ul>

... contid. ...

... Table 7 contid. ...

S.N.	Issue	Maoist's 22-point Demand August 7, 2007	Agreement between Government-Janajati (August 7, 2007)	Agreement between Government-MJF (August 30, 2007)
3	Minimum program	<ul style="list-style-type: none"> <li>To end the present conventional monarchy, conduct the government on the basis of consensus following common minimum program.</li> </ul>		
4	Local bodies	<ul style="list-style-type: none"> <li>Local bodies shall be constituted on consensus for the CA election.</li> </ul>		
5	Appointment	<ul style="list-style-type: none"> <li>Appoint/nominate ambassadors, university officials, commissioners at National Human Rights Commission (NHRC) and Commission for the Investigation of Abuse Authority.</li> </ul>		<ul style="list-style-type: none"> <li>All commissions, political appointees, foreign services, and education sectors including others shall be appointed ensuring proportionate representation (#8).</li> </ul>
6	Relief to victims	<ul style="list-style-type: none"> <li>Stern actions shall be taken against the offenders responsible for killings after signing CPA and ensure relief to the victims of death.</li> </ul>		<ul style="list-style-type: none"> <li>The Interim Government (IG) shall provide compensation to the families of all those killed during the Madhesi movement (#1).</li> <li>Provide medical treatment to injured, disabled, and others during Madhes Movement (#2).</li> </ul>
7	Prisoners of conscience	<ul style="list-style-type: none"> <li>Withdrawal of cases filed against Maoists and release all those who are still in the jails in Nepal and India.</li> </ul>		<ul style="list-style-type: none"> <li>Cases filed against the MJF leaders and the cadres shall be withdrawn (#3).</li> </ul>
8	Relief fund to injuries	<ul style="list-style-type: none"> <li>Provide one hundred thousand Nepalese currency as compensation to the martyrs' families of the people's war. Provide medical treatment completely to the injured/victims.</li> </ul>	<ul style="list-style-type: none"> <li>Nepalis who died in the helicopter crash in Ghunsa, Taplejung shall be provided one million Nepalese currency each as relief and compensation to their families (#15).</li> <li>The country shall honour the renowned geographer Dr. Harika Gurung (#17).</li> </ul>	
9	Fact-finding mission	<ul style="list-style-type: none"> <li>Constitute a high-level commission to investigate the cases of disappearances of the People's War and recommend to offenders for the action.</li> </ul>		<ul style="list-style-type: none"> <li>Form an investigation commission to find out whereabouts of Jitendra Shah, the president of Madhesi Youth Forum of valley and publicize him.</li> </ul>

... contid. ...

... Table 7 contd. ...

S.N.	Issue	Maolist's 22-point Demand August 7, 2007	Agreement between Government-Janajati (August 7, 2007)	Agreement between Government-MJF (August 30, 2007)
10	PLA camps/ weapons	<ul style="list-style-type: none"> <li>Manage the PLA cantonments with special government initiation.</li> </ul>		<ul style="list-style-type: none"> <li>The process of returning the properties and personal arms seized by the Maoists is continuing and those seized arms to be handed over to the respective owners (#15).</li> </ul>
11	Allowances to PLA	<ul style="list-style-type: none"> <li>Implement the cabinet decision to provide NPR 3000 allowance per month to the PLA</li> </ul>		
12	Basic human rights	<ul style="list-style-type: none"> <li>Formulate legal and executive steps to implement rights to education, health, employment, and food as basic fundamental rights respecting the CPA and IC.</li> </ul>	<ul style="list-style-type: none"> <li>The CA shall give recognition to locally spoken mother tongues along with ensuring linguistic rights of its citizens (#6).</li> <li>Arrangements shall be made for the public to seek and receive information on matters of public importance, including from the CA in their respective mother tongues (#7).</li> <li>Convention 169 of the International Labour Organization shall be ratified and adopted (#12).</li> <li>UN Declaration on the Rights of Indigenous Peoples shall be adopted (#13).</li> <li>In the course of gender mainstreaming, emphasis shall be laid upon participation of women from indigenous Janajati, Dalit and Madhesi groups (#13).</li> <li>The country shall preserve traditional knowledge, skills, and practices and technology of indigenous (#16).</li> </ul>	<ul style="list-style-type: none"> <li>National recognition shall be provided to Madhesi dress, language, and culture (#7).</li> <li>Mother tongue and Nepali language shall be used in government and English in international transactions as trilingual policy (#11).</li> <li>All forms of discrimination on the bases of caste, language, gender, religion, culture, national and social origin, politico-ideology shall be abolished (#10).</li> <li>To resolve Dalits issues: (a) Manage stern legal action against ethnic discrimination and untouchability; (b) Administer effective implementations to free and compulsory primary education to Dalits; (c) Manage education, special employment opportunity and reservation; and (d) manage alternative means of livelihood to landless Dalits (# 12).</li> <li>Resolve the citizenship problem by resending team to villages to distribute the citizenship to the deprived people (#13).</li> <li>Government shall adopt a balanced and judicial distribution policy while allotting the state's revenue and income in Madhes and remote areas (#14).</li> </ul>

... contd. ...

... Table 7 contd. ...

S.N.	Issue	Maoist's 22-point Demand August 7, 2007	Agreement between Government-Janajati (August 7, 2007)	Agreement between Government-MJF (August 30, 2007)
13	Repeal feudal land-ownership	<ul style="list-style-type: none"> <li>Constitute a high-level commission to implement scientific land-reforms policy respecting CPA</li> </ul>		<ul style="list-style-type: none"> <li>Set up an industrial force to ensure security to industries (#16).</li> <li>Realise the ethnic, linguistic, and religious rights of the minorities following UN and international human rights norms (#21).</li> <li>Announce public holidays on important festivals of the Muslim community (#9).</li> <li>Decides to withdraw all protests/movement being organized by MJF.</li> </ul>
14	Action against corruption	<ul style="list-style-type: none"> <li>Form a special body to take stern action against civil servants who have earned massive property by illegal means.</li> </ul>		
15	State Restructuring Commission	<ul style="list-style-type: none"> <li>Constitute a high-level state restructuring commission to formulate autonomous federal government to work for forward-looking federalism with ethnic/national and regional right to self-determination.</li> </ul>	<ul style="list-style-type: none"> <li>A state restructuring commission comprising all Janajati, Madhesi women, Dalits and eminent experts shall be formed to a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness (#4).</li> <li>A commission for indigenous Janajati shall be formed (#5).</li> </ul>	<ul style="list-style-type: none"> <li>Immediately form state restructuring commission and include experts on the provision of inclusiveness (#5).</li> <li>Manage autonomous province based on federal system of government with indivisibility of Nepal's sovereignty, national unity, integrity for restructuring the nation (#6).</li> </ul>
16	Foreign agreement	<ul style="list-style-type: none"> <li>Not to sign any long-term important agreement including sharing of water resources before CA election.</li> </ul>		

... contd. ...

... Table 7 contd. ...

S.N.	Issue	Maoist's 22-point Demand August 7, 2007	Agreement between Government-Janajati (August 7, 2007)	Agreement between Government-MJF (August 30, 2007)
17	Demands of agitating groups	<ul style="list-style-type: none"> <li>Fulfill the rightful demands of peasant, labourer, student, Dalit, woman, service-holder, caste/ethnic/Madhesi, industrialist, businessperson, journalist, including masses for CA election.</li> </ul>	<ul style="list-style-type: none"> <li>Effective measures shall be taken on the problems being face by Kamaiyas(bonded labourers) (#18).</li> <li>The demands raised by various groups and communities shall be addressed (#19).</li> </ul>	
18	Complete action	<ul style="list-style-type: none"> <li>Complete implementation of the CPA agreed between the CPN (Maoist) and the Government of Nepal.</li> </ul>		

Source: Conflict Study Center, 2007. Retrieved from: [http://www.cscenter.org.np/uploads/publication/110627102233\\_Situation%20Update%2048%20Maoists%202-point%20demands.pdf](http://www.cscenter.org.np/uploads/publication/110627102233_Situation%20Update%2048%20Maoists%202-point%20demands.pdf) on 21<sup>st</sup> February 2016.

# SOUTH ASIA STATE OF MINORITIES REPORT 2016

Mapping the Terrain

South Asia's minorities – religious, ethnic, linguistic and gender are among the poorest and most vulnerable sections in the region; they are also victims of most conflicts and violence and atrocities by state and non-state actors. And yet, there is no South Asia regional instrument for minority rights' protection, and no effective forum for peaceful dialogue on minority rights between countries.

**South Asia State of Minorities Report 2016: Mapping the Terrain** seeks to provide a regional overview on minority rights' precepts and practices in the region, offering a set of country-specific and region-wide recommendations. The report presents six country chapters – Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka (dealing with Bhutan and Maldives in the Introduction) reporting on the condition of minorities, profiles of select marginalized groups and good practice case studies to profile successful campaigns and interventions for rights' protection and promotion.

**The South Asia State of Minorities Report** is planned as a tool for advocacy. It is hoped that the periodic reports on outcomes for minorities and the quality of state provisioning for them, will spur public debate on the subject in the region and create the conditions for state parties and the SAARC to agree to give serious consideration to issues of minorities and how to deliver for them. The purpose of the project is really about promoting citizenship, a central challenge of the 'deepening democracy' agenda in the region.

The idea of Report was born with the South Asia State of Minorities Report Collective, a small group of minority and human rights researchers and activists from across South Asia, deciding to come together to produce a periodic people's report, to systematically document and track the condition of minorities in the region and their access to rights guaranteed by international minority and human rights instruments. The Collective hopes to carry on the work, drawing more allies in, to expand the circle seeking to promote peace and justice in South Asia.