

National Unity and Cohesion in Pakistan: A Critical Assessment of the Constitution 1973

Naseem Anthony

Visiting Lecturer, Department of International Relations, Government College
University Faisalabad, Pakistan.

E.mail: naseem2hrd@gmail.com

Ghulam Mustafa

Assistant Professor, Department of International Relations, Government College
University Faisalabad, Pakistan.

E.mail: ghulammustafa@gcuf.edu.pk

Sonia Patras

M.Phil. Pak-Studies, Government College University Faisalabad, Pakistan.

E.mail: ghulammustafa@gcuf.edu.pk

ABSTRACT

Pakistan is a galaxy of religions and a land having rich cultural diversity. Such attributes have fascinated the research scholars, political scientists, and sociologists for studying the elements that, despite of indifferences, have connected the people. Pakistan was a political demanded of a visible Muslim minority of Sub-Continent to have a piece of land where the deprived and oppressed community (Muslim) can enjoy the liberty and freedom of their culture, tradition, and religious rituals. However, when the Pakistan Movement was on its full spring, other small minorities have also joined hands. Furthermore, Quaid's vision for a democratic, tolerant, and inclusive society convinced the other minorities and ethnic groups for opting to live in Pakistan. The constitutional and political history of Pakistan reflects the efforts and energies invested by the decision makers to strengthen the national unity and cohesive bond. The research topic 'National Unity and Cohesion in Pakistan: A Critical Assessment of Constitution 1973' is an attempt to identify the constitutional provisions for ensuring national unity and cohesion. The qualitative method has been deployed in which the researcher studied the material already produced on the same topic and conducted interviews. The primary objective of this endeavour was to assess the constitutional commitments and the political will to ensure implementation. Additionally, the factors that have affected the implementation and disturbed the social fabric of Pakistan contributing to increase marginalization of weak segments of society and excluding some specific groups from the mainstream.

Key Words: Cohesion, Unity, Minorities, Socio-Political, Franchise, Inclusion, Ethno-Linguistic.

Introduction

Pakistan is a land of rich socio-cultural and ethnoreligious diversity that makes the context complicated and complex. The Constitution of Pakistan, 1973, defines Pakistan as a democratic country where the parliament is considered a supreme

body. It is a bitter reality, that Pakistan's powerhouses and decision-making avenues were occupied by the military dictators for a long time by violating the constitution. Democratic political parties were interrupted several times and prevented to perform properly. However, it is also part of our national history that democratic forces agitated against military rulers' tyranny and counter them vigorously; ultimately, the military dictators were forced to kneel (down). Simultaneously, while working on the research topic 'National Unity and Cohesion in Pakistan: A Critical Assessment of the Constitution 1973,' it was revealed that the specific political culture of the land has created a division of majority and minority that gradually excluded them from the mainstream. Likewise, women and other vulnerable groups such as: persons with disabilities and transgender community were also uncared and underserved. Furthermore, the minority groups are not considered the son of the soil and treated as a second-class citizen, consequently, such ideology has affected the social fabric of Pakistan (Khan H. , Constitutional and Political History of Pakistan , 2001).

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Though the religious minorities are in a small number, as 3.76% of the total population, the minority group are vibrant and vocal (Malik D. A., 2018). Several historians and social scientists have produced healthy literature on Pakistani society's composition and appreciated national unity and social cohesion. Qualitative approach for completing this specific assignment has created opportunities for a thorough study to become familiar with diverse opinions regarding the existing political context and resources invested for realizing national unity and social cohesion. During the desk review, it was revealed that several historians and social activists have discussed the discriminatory attitude and typical mindset towards women, religious minorities, and other vulnerable groups, contributing to creating an environment in which they are only permitted for playing their marginal role. The literature already produced on the issue of political participation of under-represented groups from under-served communities supported a lot to comprehend how the political process influences the societal

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attitude and develops typical mindset. In addition to it, during the literature review, the researcher also observed that several discriminatory terminologies and myth were associated with the religious minorities due to their specific job, living standard, indifferences in faith and socio-economic status. The research topic has allowed the researcher to identify those elements that created such a context in which the minority groups are not considered equal citizens of the land. Additionally, to which extent, the constitution of Pakistan, 1973, played a role reserving the discrimination and strengthening the national unity and social cohesion.

The father of the nation, Quaid-i-Azam was ambitious to set the foundation of the new state on democratic norms – reflected in the constitutional history of Pakistan. Though, departure from the democratic principles occurred right after the untimely sad demise of Quaid-e-Azam, a theocratic stance was adopted by a Military dictator General Zia-ul-Haq who imposed Martial Law on 5th July 1977 (Moskalenko, 2013). It has fanned sectarianism and promoted religious fundamentalism both amongst Muslims and non-Muslims. The religious minorities are discriminated Religious intolerance, and the baneful sentiments of religious prejudices play havoc with society. There have been grave situations of communal riots in the recent past. Non-Muslims were persecuted on account of religion. With the passage of time, the Non-Muslims have developed a culture of silence which creates dehumanizing conditions in the society. This is a matter of grave concern for all those who want to build a free, humane, healthy, tolerant and a democratic society in Pakistan (Shakir, 1997).

It would not be out of place to mention here that the notorious blanket amendment, namely the Eighth Amendment to the Constitution of 1973, provided strong safeguards to all proceedings, actions, steps, orders, and laws, including Presidential Orders, Ordinances, Regulations promulgated during the military regime. Such gestures or legislative move, instead of strengthening national unity and cohesion, disturbed the social fabric and sowed a seed of hatred. In the beginning of new millennium, the political decision makers showed their commitment to strengthen the social cohesion and introduction of joint electorate is one of them. Later on, the reserved seats in Parliament, and 5% job quota are some of the measures taken by the decision makers for reversing the discrimination and ensuring national unity. Such gestures as mentioned gradually filled the gulf which was created between majority and minority groups and started to reverse the discrimination and compensated the minorities by introducing affirmative measures (Shakir, 1997).

Historical Perspective Electoral Processes

Political process not only invites the voters to choose their representatives simultaneously spurs the citizens to hold opinions on numerous issues. Mode of

election is another component that define the patterns of social attitudes towards different segments of society. The history of Sub-Continent of India fascinates the students of history, political sciences and international relations for the special attributes associated with this part of the world such as: diversity in cultures, languages, traditions, and religion. The rich diversity is really a complicated feature to understand the nature of social cohesion and component of national unity. It can be viewed or assessed in two categories: pre-partition and post-partition.

Pre-Partition Era

When it comes to strengthen national unity and cohesion in a society where the rich ethno-religious and ethno-linguistic diversities exist, mode of election and political representation play a pivotal role. With respect to it, separate Electorate is an arrangement in democratic culture to address the issue of political representation of minorities. Such structure has been established in societies where minorities face identity crises and face discriminatory attitudes. This was why the Muslim minority of the Sub-Continent of India demanded a separate electorate as the joint electorate system failed to justify the due representation of the Muslim minority in a noticeable number. When the design of democracy was introduced in India by the Britishers, engaging the local communities, including small groups having distinct identities, was the primary motive. However, one thing is obvious that the Britishers did not impose the separate electorate system; the Muslim minority made the rulers establish such arrangements as the separate electorate (Sultana, 2016).

Inception of Separate Franchise

As in European countries, there was no concept of a separate nation owing to having a Christian population. Therefore, the same pattern of democracy was practiced in India by the British rulers, considering the land's inhabitants collectively. The Hindus and Muslims, owing to their strong affiliation with their religious identity and consciousness about their religious diversity, created a complicated situation for the rulers. In a democratic structure, every legislative proposal is passed by the approval of 51 percent or more parliament votes. There was a probability to have 100 percent support for the bill or law in such a situation. Therefore, despite having noticeable numbers, the Muslims cannot find any space in the decision-making process around legislative proposals in their own country (Sultana, 2016). At the initial phase of British rule, direct elections were introduced to ensure an inclusive by engaging Indians in the administration, Sir Agha Khan delivered a speech to Viceroy and Governor General Lord Minto and defined that the Muslims are one-fifth and in some states one-fourth of the total population (Khan S. A., 1906). Such huge population of the Muslim minority must be acknowledged as an important stakeholder in the state machinery by giving due

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representation. Sir Agha Khan also argued that such space should not be given to the Muslims of India on the ground of their numerical strength but must consider their political importance keeping in mind that once they had ruled on the land for a long time (Kazimi, 2012).

In United Province, Muslims were the 15 percent of the total population, but under the Act of 1892, the Muslims could not secure even a single seat by exercising the joint franchise. If the Muslims were able to secure any seat or seats, they would not form a reasonable mandate to influence the decision-making process (Mian, 2013). Ultimately, there is no choice for the Muslims to agree with the Hindus' legislative proposal on the cost of the Muslims' interest. Such factors created circumstances for the Muslim community to demand a separate electorate process as having separate representation in local bodies and legislative councils. The complexity of the context and issue of representation in political arenas developed a narrative of Two-Nation Theory. Furthermore, it provided a conducive environment for establishing an exclusive political party in December 1906, namely 'All India Muslim League – AIML' that was later acknowledged as a spokesperson of the Muslims at all fora and strata (Azmatullah, 2014).

Legislative Moves to Strengthen Separate Franchise

Considering the context and political demand of the Muslims, Morley-Minto Reforms introduced separate electorate system in 1909 for the Muslims that had increases the numerical strength of the legislature councils. As per the Morley-Minto Reforms, 1909, 27 out of 60 members were to be elected (Anjum, 2019). Moreover, the Muslim community had 5 reserved seats. Such affirmative measures acknowledged the Muslims as a separate entity and allowed them to decide their representations through separate franchise. This arrangement had not allowed them to choose their representatives but also have an opportunity to exercise their right to vote in general constituencies. Though the Muslims had a fewer share as compare to their population, it had set a landmark in the political history of the Muslims of Sub-Continent of India.

The Lucknow Pact of 1916 is another landmark in which Congress accepted India's Muslims' legitimate rights to have separate electorates. This pact had granted one-third of seats in the central legislative councils. In the provinces, the 'Weightage System' afforded them more seats than their actual population, specifically in those provinces where Muslims got more representation. However, the Muslim representation was reduced: (a) in Bengal to 50 percent from 56 percent, and (b) in Punjab to 40 percent from 55 percent. Later on, Montague Chelmsford Reforms, introduced in 1919, accepted the Lucknow Pact and allowed the Muslims to occupy one-third seats in the central legislative councils. In 1928, in Nehru Report, the Congress deviated from the Lucknow Pact's commitment, which was jointly presented and agreed upon (Khan R. F., 2017).

Separate Electorate Strengthens Separatism

The New Constitution of 1935 provided a space to Muslims in elections of 1937 for occupying 102 Muslim seats out of 482 Muslim seats. The Congress as compared to Muslim League fielded on 58 seats and succeeded to secure 26 seats, while the rest of the seats were won by the local parties. Furthermore, the elections of 1945 to Legislative Assembly (Central), made the AIML won 428 out of 492 seats (Khan R. F., 2017).

In the entire pre-partition era, numerous demands and several pacts were introduced by different political leaders, but the separate franchise was the land for the Muslims of India which was not compromised. The separate electorate system made the Muslims of India getting recognitions as an important stakeholder not only in at the provincial level but also in central legislative assembly. Ultimately, the separate electorate paved a way for demanding a separate homeland.

Post-Partition Era

A separate electorate set the ground for a separate homeland for the Muslim minority of India's Sub-Continent. Yet, Pakistan's Movement later engaged the other minority groups as well.

Quaid's Vision for Equality of Citizenship

On 14th August 1947, Pakistan emerged as land that has converted a minority into a majority. It was the date that changed the destiny of millions of souls. Besides the Muslims, other groups also believed in Jinnah's vision regarding new land – every citizen of the new State would be treated equally, irrespective of his faith, sect, ethnicity, culture, and language, opted for Pakistan. A noticeable population of non-Muslims refused to return to their ancestral home, which were included in Indian territory. As Jinnah's vision of establishing a tolerant, secular, and democratic State, many non-Muslim groups opted to stay in Pakistan (Burke, 2000).

It is acknowledged universally that the political process is the process that defines the norms of a society and reflects that how the cultures enjoy their diversities. To be more exacts, the right of franchise determines a society's character and the sovereign State. But suppose an embargo is imposed exercising this specific right. In that case, a citizen's basic human right is negated and violated, but the concept of good governance is also ruthlessly mutilated. Such context weakened the cohesive bond between the social groups and disturbed the idea of national unity (Abid, 2013).

Additionally, a society that does not accord the right of vote free of any entanglements from all its rulers cannot claim or deserve to be termed as having a just and democratic character that ensures national unity and social cohesion. The violation of this fundamental human right becomes a matter of grave concern for

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all those, within or beyond the State. When constitutional guarantees protect the rights, it becomes fundamental which mandatory for all the State's organs to respect and fulfill (Anthony D. G., 2020).

Non-Democratic Moves and Context of Social Cohesion

Unfortunately, a long period of our national history is covered under martial law rules. Therefore, the concept of fundamental rights has been a dream for the Pakistani nation. The new State of Pakistan, founded on August 14, 1947, got its first Constitution in 1956 - an indifferent lapse of 9 years after that. A military dictator annulled this Constitution through a Martial Law Proclamation of October 1958. The second Constitution was promulgated on March 1, 1962. This Constitution was abrogated on March 25, 1969, under a new Martial Law Administrator. The Provisional Constitution Order was issued on March 31, 1969, which was based on the 1962 Constitution. After that, a new Chief Martial Law Administrator promulgated the Legal Framework Order of 1970. The martial law was lifted in April 1972 and an Interim constitution of 1972 was brought in the field (Sheikh, 2010).

Thereafter, under a new exercise, the Constitution of 1973 was framed, which came into force on August 14, 1973. On July 5, 1977, a severe invasion was made by another military ruler Gen. Zia ul Haq. In his martial law proclamation, "the Constitution of the Islamic Republic of Pakistan shall remain in abeyance." The Martial Law Administrator, who was ironically also acting as the President of the country, issued MLA 1, Order 1 of 1981 in the name of Provisional Constitution Order 1981 on March 24, 1981. The martial law imposed on July 5, 1977, was formally withdrawn on December 30, 1985. It may, however, be mentioned that by that time, massive amendments had been affected by the said President, which effaced and mutilated the basic spirit and provisions of the 1973 Constitution, this was in short, the constitutional history which practically appears as history full of martial law rules for the Pakistani Nation that not only disturbed the national unity and social cohesion but also defamed our nation internationally (Khan H. , A History of the Judiciary in Pakistan, 2017).

However, it may be mentioned that till 1985, the right of franchise remained intact in all the Constitutions and Constitutional Orders. This right was neither abridged nor subjected to any classification. Therefore, the principle - "the will of the people of Pakistan to establish an order wherein the State shall exercise its powers and authority through its chosen representative" as prescribed in the preambles of 1956, 1962 Constitutions and the original Constitution of 1973 was not disturbed. No qualification was associated to the exercise of this fundamental right of a citizen (Rais, 2017).

Gen. Zia ul Haq, the military ruler, vides President's Order 14 of 1985 amended the provision of the 1973 Constitution relating to the right of franchise to

change the concept of running the business of the State through the elected representatives of the people. The people were classified on religious grounds. The people's fundamental right of the franchise was abridged by imposing an apartheid mode of separate franchise on the Pakistani Nation – in general and Non-Muslims (Niaz, 2010).

Impacts of Separate Election on Social Cohesion

In the constitutional amendment, the electoral lists have divided the nation into Muslim and Non-Muslims citizens. The Muslim citizens cannot vote for Non-Muslims, Non-Muslim citizens cannot vote for their Muslim compatriots as the electoral constituencies stand separated on religious grounds. At the time of the general elections, two nations live in Pakistan as they cannot vote for each other. The principle of adult franchise free from any classification that could be found in the ethos of Pakistan's constitutional history stood debased (Bangash, 2015).

The State of Pakistan has applied an apartheid mode of the separate franchise on its nation in five general elections, i.e., in 1985, 1988, 1990, 1993, and 1997. The Non-Muslim citizens of Pakistan are no more part of the mainstream of national life. They have been rendered as second-class citizens and thus marginalized (Jasam, 2014).

Efforts for Joint Electorate

In its original form, the Constitution 1973, of the Islamic Republic of Pakistan, as promulgated by Article 265, did not provide elections to the National Assembly and the Provincial Assemblies based on the separate electorate. Thus, no separate seats were reserved for the minorities under articles 51 and 106. The provisions for reservation of separate seats for minorities and the election to the Muslim and non-Muslim seats on the basis of separate electorates by direct vote in accordance with the law were made by President's Order No. 14 of 1985 (Jacob, 2010).

The concept of the election based on separate electorate by direct vote, having thus been enshrined in the Constitution, neither a person belonging to a minority community could thereafter be permitted to contest elections against a Muslim seat both in the National Assembly and the Provincial Assemblies, nor could be cast his vote for a Muslim candidate contesting against such a seat. Such a person is entitled only to vote for the seats reserved for non-Muslim in the National and Provincial Assemblies.

The separate electorate was proved an apartheid model that excluded the minority groups. Several stakeholders submitted their petitions by utilizing Public Interest Litigation (PIL) and challenged such apartheid mode of the separate electorate in Pakistan. Advocate Neem Shakir, Advocate Abid Hassan Manto, and church leadership are worth mentioning in this regard. Catholic Church, Church of Pakistan, and National Council of Churches (NCC) conducted several press

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conferences, staged rallies, and token hunger strikes to demand equal citizenship right (Malik S. , 2021).

A Breakthrough

The supporters of the Joint electorate from the Muslim majority argued that Pakistan is an ideological state. The principle of a separate electorate is inherent in its ethos and thus on one can be permitted to raise any objection with regard thereto.

However, the court rejected such an argument on 25th September 1993. This order proved a big breakthrough against religious fundamentalism and obscurantism spread during General Zia ul Haq's martial law period. The Christians felt as if they were breaking the constraints of social oppression. The situation created by this order practically changed the political complexion and ushered in an era that started removing military rule debris in the country (C.M. Petition No. 587-L of 1993 In C.P.N. 1147-L of 1993, 1993).

It may be mentioned here that based on the order of Chief justice of the Supreme Court of Pakistan, the Awami Jamhoori Party was also successful in fielding two Christian's candidates, namely Naeem Shakir and Pervez Bhatti in PP-126 and PS-90. Despite the positive gesture by Supreme Court, the Election Commission did not honor it.

Eventually, the public pressure on the decision-makers made them accept the demand of the general masses and introduced a jointed electorate in 2001. Such move as a joint electorate celebrated at a wider level by the minority communities and the majority groups.

Conclusion

Pakistan is a great country. the constituent elements of its greatness are its strategic location, its geography, weather, landscape, rivers, minerals, produce, production, and, above all, its dedicated, committed, patriotic and resilient citizens. A nation that had accommodated one million refugees at the time of its creation, has been through two wars with India besides small skirmishes, has accommodated half a million Biharis from Bangladesh, has hosted three million Afghan refugees, faced natural disasters with courage and fortitude, and has fought terrorism with determination and resolve, could not be anything but a great nation.

The research study would dispel misgivings and doubts about the electoral process in general and joint electorate system specifics created by those who in favour of separation and affecting the social cohesion and national unity of Pakistan.

Pakistan, after the result, received a well-functioning judiciary, strong mechanism of civil service, and military. On the other hand, the legislative bodies or system were very feeble at the time of its independence. With passage of time,

the strong hold of the civil service and military and their domination in most of the state affairs; disrupted the evolution of democratic political process resultantly legislative organ of the state became weakened. The Judicial arm, with few exceptions plodded along approving the authoritative part of the military and the civil service until the early twenty-first century.

The ground of boycott was established by renowned Hindu and Christian activists and associations by organizing country wide activities for creating people awareness about the equal rights movement. To strengthen the case ECOSOC (economic social council) submitted a case with the office of the commission of human rights at Geneva that had already played its vital role in this regard. Separate electoral system was being delimited in 5 staged local bodies elections during Musharraf Regime.

In January 2002 first ever think tank of Musharraf Regime head by General Naqvi proposed general elections on the basis of joint system which afterwards got the shape that reserved seats for religious minorities would remain there and be fulfilled with proportionate population.

Till 2018, three general elections were being conducted on the basis of joint franchise and voters belonging to that of religious minorities were satisfied after testifying the system. Musharraf regime had ever been trying to take its credit but the fact that it was formulated as a result of local moves and international scenario that every citizen should have equal right to elect and be elected as public representative.

Joint elections were so good and appealing to political workers to the extent that it was mutually agreed to continue and support it by PPP and PML in charter of democracy in 2006. National commission for justice and peace (NCJP) was leading the move from two whole years and was aimed at eliminating religious discrimination from organs of state and rules. So, it is agreed upon it as a temporary solution and relief with a notion and aspiration to get equal rights for all citizens and amend the situation as much as can be.

Today we have come to the verge that political workers and thinkers belonging to Christians and those of scheduled castes (Dallat, Hindus) have started to ponder over and analyzing dual voting system. In present age members of parliament and those of upper house coming from reserved religious minorities seats are being criticized on getting the position mere by selection not election.

If for instance this notion gets some ideological acceptance by non-political mind-set, some take it as a sigh of relief and delightful political career. Reserved seats for women have the same criteria as that of religious minorities and with somewhat same posture but nobody has ever objected or even proposed to change the set of election process for women. A big concern was emerged that 'how one can get assumed representation from equal population of both the gender ratio, it would create more division between the two.'

In broader sense any such adventure would deteriorate the current political set up, need of the day is to empower democracy and practice democratic practices if

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it gets so much power and stability there would be no need of reserving seats for women or even religious minorities.

The so-called election or selection by the very method or process became talk of the town and even some leaders belonging to that of religious minorities found it feasible to use the notion in order to cover their own indifferences. It is evident even witnessed and experienced that minorities representatives had been avoiding to answer and justify the use of development funds before any public forum or court of law.

Separate electoral system not only put them on margin but also defamed them and one of the main points to escape from accountability is to discuss personalities instead of responsibilities of legislators. Most of the time such debates aimed at concluding for positive and thematic result-oriented discussions get tilted to blame game and mutual character assassination. This type of unhealthy and superfluous discussions has resulted in huge set back to development agenda/ policy. But nearly a reason of amusement to beholders.

It has been observed that during and after any untoward incidents like Kasur, five percent quota or any of rights of religious minorities Kamran Michael or Shahbaz Bhatti was being pierced sarcastically which can't be justified.

Aforementioned arguments have been in use by some of the critics of contemporary system or personalities but relying mainly on illogical grounds. Today in the age of internet, email, WhatsApp these notions can't be fruitful in misleading and getting people in dark for ample time period.

Now we have come to the verge that we have to reanalyze the contemporary electoral, political and social set up and get all the stake holders prepared in order to prove themselves to be a part of team achieving goals of social equity/cohesion and harmony. Prosperity of minorities and that of Pakistan are inter related. in this cause some points should be kept in mind. (1) Joint electoral system revived the dignity and honour of voters belonging to religious minorities, so each and every suggestion or move to end up this will be un democratic and illogical. In the meantime, the result seats, increase in their number, representation in upper house (Senate) would proves the basics of political representation. The time has come that we should focus on legal, legislative and specially reforms in education system rather than limiting in mere political representation. And economical and social justice should be our first and foremost objective. Employment and educational quota should be implemented in letter and spirit. (2) Members of national and provincial assemblies have to work within their own mainstream political parties rather than establishing Tonga parties. This will prove themselves more effective in reforms in order to get equal rights for all. Political parties invoke democratic process of conducting intra party elections and nominate candidate of religious minorities and women. This process of nomination should take place at least one year before the general elections. True democratic and real representation of people along with eliminating the use of black money and wealth

earned by corruption. (3) Elected members of labor, women, farmer and religious minorities reserved seats be elected via direct voting in local bodies elections at sub district and district level. Ballot paper can also be added in this regard. This can result in bringing real public representatives instead of blue-eyed ones of establishment, administration and those of police.

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