

Non-Muslim Women in Pakistan

Minority within Minority

Yasmin Haider

In the name of God, the God of all the Prophets, the God of all the books, and the God of Day of Judgment!

ONE OF THE ASPECTS of discussing the broad topic of conceiving and evaluating the situation of non-Muslims living as minority in the Muslim states has been allotted to me under the title “The position of the Minority within Minority in Pakistan.” I do not claim to do justice to the topic but can assure you that I put forward my full efforts and abilities.

Before dilating upon the issue, the topic needs analysis. The word *minority*, appearing twice in the topic, is not simply words but are contextual terms embodying different meanings.

The first use of “minority” refers to women not as a statistical “minority” but as an oppressed and weak section of society which is derived from the definition adopted on January 8, 1950 by a sub-committee appointed by the United Nations Human Rights Commission. According to said definition, the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from the rest of the population.¹ For this definition, the Muslims ruling in India, the British in India, and the whites ruling in Africa, although

1. Mishra and Kumar Singh, *Status of Minorities*, 121.

statistically lesser in number are the dominant power and do not fall within the definition of minority.

The second use of “minority” has a popular, general reference to religious minorities excluding the ethnic groups.

The study of the history reveals that women have always been victims and vulnerable creatures in the patriarchal society. Even the birth of a female child led the father and the family to feel shame. In the pre-Islamic period some tribes had the custom of female infanticide, i.e. killing their juvenile girls to save their honour. Though such “Honour killing” is now almost non-existent in society, it is however in practice in various alternatives like cursing her, ignoring her, preferring brother over her, and a bond of mistrust. The patriarchal attitude of society cursed and oppressed the female in all her positions. As a daughter, she is the property of her father, as a sister she is accountable to her brothers, and as wife she is subservient to her husband. In all her positions she is a disadvantaged segment of society. But unluckily, if she is a minority, she is doubly disadvantaged. Her rights are further limited and discarded for being a non-Muslim.

Before I dilate upon the position of women in Pakistan I would like to give a very brief account of the salient features of Pakistani society in which this oppressed section of the society survives. The main features of Pakistani society are the following:

1. Pakistani society is a *multicultural society* inhabited by people of different cultures like Punjabis, Pathans, Baluchis, Kashmiris, Sindhi, and Muhajirs (the migrants from India at the time of partition of the subcontinent in 1947 and their descendants).
2. Pakistan is also a *multi-faith society* having people belonging to different faiths. The total population of Pakistan is about 150 million, out of which 3.1% are religious minorities.

The main religious minorities are:²

1. Christians
2. Hindus
3. Bahais
4. Parsis
5. Ahmadis (legal minority)

2. *Census of Pakistan.*

NON-MUSLIMS IN MUSLIM MAJORITY SOCIETIES

Jews are not found in Pakistan or they are at least out of the demographic scene.

On the socio-economic graph, the position of Christians and Hindus is very low while the Ahmadis, Parsis and Bahais enjoy better economic positions. According to the 1998 census, the literacy rate among the Christians was 34% as compared to national literacy rate of 46.56%. Among minority women the literacy rate is very low and rather hopeless.

LEGAL ASPECTS

The Constitution of Islamic Republic of Pakistan from 1973 discriminates the non-Muslim woman as being non-Muslim. As per *Article 41* of the constitution, the president of Pakistan must be a Muslim. Even the oath of the Prime Minister and the Chief Justice of Pakistan and some other key positions requires indirectly, according to *Article 91*, that they should be Muslims. Insight pertaining to such a provision was recently demonstrated at the oath taking of the Chief Justice of Pakistan. A petition was filed in the Supreme Court by some Muslims stating that since Rana Bhagwan Das is a Hindu, a non-Muslim, he cannot become the Chief Justice of Pakistan.

In the legal framework of Pakistan a person belonging to a minority within a minority is condemned twice as a female as well as a non-Muslim. She is excluded from the mainstream of society along with the male followers of her faith and further excluded as a female within her own minority faith stream.

In Pakistan, even against Islamic doctrine, the Hudood laws have almost been made equally applicable to males and females as well as to non-Muslims and Muslims. But concerning the right of "evidence" non-Muslims as well as women have not been considered trustworthy or reliable witnesses. The Offence of Zina (Enforcement of Hudood) Ordinance 1979 provides in *Section 8*:

(b) at least four Muslim adult male witness, about whom the Court is satisfied having regard to the requirements of tazkiyah al-shuhood that they are truthful persons and abstain from major sins (kabair) give evidence as eye-witnesses of the act of penetration necessary to the offence:

Non-Muslim Women in Pakistan

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.³

Here the first word *Muslim* excludes a non-Muslim woman qua non-Muslim and the word male further excludes her as being female.

The Offences Against property (Enforcement of Hudood) Ordinance 1979 comes up with the same conditions in *Section 7*:

(b) at least two Muslim adult male witnesses, other than the victim of the theft, about whom the Court is satisfied, having regard to the requirements of “tazkiyah-al-shuhood,” that they are truthful persons and abstain from major sins (kabair), give evidence as eye-witnesses of the occurrence:

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslim: (...) ⁴

The Prohibition (Enforcement of Hadd) Order 1979 requires at least two Muslim adult male witnesses to prove the case as Hadd, According to *Section 9*:

(b) at least two Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of “tazkiyah al-shuhood,” that they are truthful persons and abstain from major sins (kabair) give evidence of the accused having committed the offence of drinking liable to hadd.⁵

Also, *Section 6* of the Offence of Qazf (Enforcement of Hadd) Ordinance 1979 should be mentioned:

(c) at least two *Muslim* adult male witnesses, other than the victim of the qazf, about whom the Court is satisfied, having regard to the requirements of tazkiyah al-shuhood that they are truthful persons and abstain from major sins (Kabair), give direct evidence of the commission of qazf:

Provided that, if the accused in a non-Muslim, the witnesses may be non-Muslims.⁶

3. *Offence of Zina.*
4. *Offences Against Property.*
5. *Prohibition.*
6. *Offence of Qazf.*

In addition to the conditions and competence of witnesses under Hudood laws or special laws, the law of Evidence (the Qanun-e-Shahadat Order, 1984) while laying down the conditions of competence and number of witnesses in general cases makes two special provisions which exclude non-Muslims and women from the main stream. Reference is made to *Article 3* about who may testify as well as in *Article 17* about competence and number of witnesses:

(...) Provided further that the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Qur'an and Sunnah for a witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available. (...)

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.⁷

A "DOUBLE BLOW" FOR NON-MUSLIM WOMEN

Chapter XVI of Pakistan Penal Code 1860 relating to "Offences Affecting The Human Body" was totally redesigned and substituted with the so-called Islamic law of Qisas-o-Diyat.

It is to be noted that *Article 17* of the Qanun-e-Shahadat, 1984, as referred to above, provides for Islamic law of evidence by which the testimony of non-Muslims as well as of women is not accepted in Qisas. This rule is derived from tradition/Sunnah:

The evidence of the women shall not be accepted in the cases of Hudood and Qisas.⁸

It is to be noted that the said order of the Holy Prophet in respect of evidence from women was contextual. At that time a woman was too

7. *Qanun-e-Shahadat*.

8. *All-Pakistan legal*, 120.

dependent and weak to give truthful evidence without fear and pressure. The bar was being dependent and weak and not being a woman.

Hence, for non-Muslim women the law provides a 'double blow': one for being non-Muslim and the other for being a woman. Hence the minority within minority are disadvantaged and disempowered doubly leaving no hope or scope of equal rights as Pakistani citizens.

The minority within minority is not only condemned in the law-books of Pakistan but is convicted, condemned, and harassed, sometimes as accused and sometimes as victims in criminal cases.

The report of the National Commission on Justice and Peace has provided the details of thirty-five Muslims who were accused of blasphemy, six of whom were women. The commission has also provided the details of incidents of human rights violations in respect of minority women in its 2007 report. Here are details of a few of these events.

Concerning conversions: In 1994 Ms. Carol, a seventh grade Christian girl was alleged of committing blasphemy in Sukhar. She converted to Islam in order to save herself from litigation and other possible sufferings. A similar case is that of Ms. Lakshami from the district Swabi NWFP, who was reported to have converted to Islam in jail. When the then Chief Justice of the Peshawar High Court (N.W.F.P) was visiting the jail, the Chief Judge praised her for converting to Islam. In a number of cases, minority women (Christian, Hindu, and Sikh), including minors who were abducted and converted to Islam through marriage to a Muslim. Contact with their families is made impossible on account of their conversion. The lower courts have generally ignored the circumstances (like detachment from family, the crime involved, and the age of the so called convert) and the need for enabling conditions for free consent.⁹

Concerning abductions: a Hindu girl Pampi Mai (13), daughter of Mangala Ram from Chak, Bahawalpur was abducted by a Muslim family on June 27, 2006. Misari Ludhani, a Hindu father, registered a case that his daughter Neelam Ludhani had been abducted. When the matter came into the Supreme Court, the abducted girl stated that she had embraced Islam and married Amjad of Sukkar out of her free will. The father of the abducted girl stated that he had no objection on her conversion if it was done by her free will, but he was worried about her future.¹⁰ The Supreme

9. "A report on" 2007, 31-32.

10. "A report on" 2007, 33.

Court exercising its parental jurisdiction ordered that the groom's father should deposit 15 lakh as a bank guarantee, a house, and a share of Amjad's business should also be transferred to Neelam for her future security. She was permitted by the court to live with her husband and meet with her parents in the presence of her husband and father in-law.¹¹

As per a report of the All Pakistan Minority Alliance (APMA), twenty-five Hindu girls were forced to convert to Islam in Sindh. Ms. Maria Samar John was abducted and married to Ghaffar when she was 17 years old. He forcibly converted her to Islam and beat her for refusing to say the Muslim prayers. She was locked in the house and abused by her husband and his family. She escaped with her infant son and was granted a divorce.

A case was registered against Nusrat Jahan, an Ahmadi woman, under blasphemy law for writing an article in a magazine.¹²

MINORITY (WOMEN) IN THE MINORITY (NON-MUSLIMS) SITUATION

It is very important to note that the personal laws pertaining to minorities as protected, date from the united India, before the creation of Pakistan, such as: The Succession Act 1925; The Christian Marriage Act 1872; The Births, Deaths and Marriages Registration Act 1886; The Divorce Act 1869; Indian (Non-Domiciled parties) Divorce Rules 1927; The Parsi Marriage and Divorce Act 1936; The Hindu Widows Marriage Act 1856; The Hindu Marriage Disabilities Removal Act 1946; The Hindu Married Womans Rights to separate Residence and Maintenance Act 1946; The Anand Marriage Act 1909; Buddhist Law 1909; and, The Arya Marriage Validation Act 1937.

The interesting and rather alarming aspect of these laws is that they were enacted by the British government on demand of the minorities in India before partition. The analysis and evaluation of these laws on Human Rights standards reveal that with the socio-economic development, these laws have become the main source for violations of the rights of minorities and specifically for the rights of their women i.e the "minority within minority." The strict laws for marriage and divorce are also cause for the conversion of minorities to Islam which has a very liberal and flexible

11. "A report on" 2006.

12. "A report on" 2007, 35-38.

approach to such laws. Feeling and admitting the gravity and sensitivity of the issue, the National Commission for Justice and Peace recommended their repeal by opining as follows:

The main problem with these laws is their antiquity. These laws promulgated in pre-independence period, before the human rights standards were set, are redundant and source of human rights violations.¹³

Minority women are not only subjected to discrimination and disapproval by mainstream and Muslim laws but are also subjected to domestic violence as well as being subdued and humiliated by the customs, laws, and the patriarchal attitude of the followers of their own faith. They are victims of the violence of their own males. They are subjected to forced marriages. The result is conversion to Islam. They have to do dirty work as sweepers and low paid domestic workers in their locality. The domestic violence is wide spread. They are denied their right of succession to the property as well as free choice in marriage and separation.

However they are also socially condemned by Muslim society at large e.g. Muslims do not mix or socialize with them. Muslims do not dine or sit with them at the same table. They offer them food in separate dishes. Muslims do not allow them to work as cooks, but will hire them only for the dirty work of cleaning toilets or sweeping floors.

RECOMMENDATIONS

In view of this situation I recommend the following:

1. Inter-faith dialogues and inter-faith activities should be initiated at grass root level.
2. Socio-economic support:
 - a. Social activities to be organized with main stream society.
 - b. Women should be empowered through education, better employment and representation in government and local bodies. A quota should be reserved for women within minority quotas in all the electoral bodies and in employment.
3. Women should be encouraged to seek higher education so that they can get better jobs and come out of low paid jobs.

13. "A report on" 2007, 55.

NON-MUSLIMS IN MUSLIM MAJORITY SOCIETIES

4. Minorities may be exempted from the application of Islamic laws which create discrimination.
5. The minority laws which are the source of human rights violations should be reviewed to bring them in line with human rights standards.

SAMPLE