

# MINORITY RIGHTS IN BANGLADESH: A COMPARATIVE LEGAL ANALYSIS WITH INDIA, PAKISTAN AND CHINA

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## ABSTRACT

*The objective of this paper is to examine the rights of minorities in Bangladesh's Constitution. The authors argued that Minority Rights should be incorporated especially to that ensure the majority and the minority are on an equal footing. This paper focuses on Bangladesh to illustrate a global problem of Minority groups by comparing it with the states that obtained minority rights in a special manner in their Constitutions and aims to compare it with India, Pakistan, and China. This paper is conducted by using secondary data and the authors of this paper have collected all the data from different sources such books, journals, case laws, case books, newspapers, websites, government regulations, and statutes. The original Constitution of 1972 of Bangladesh exemplified that every person would be treated equally and with dignity and focused on Secularism. Through the cultivation of an understanding and respect for one another, the many subgroups that contain a community should be able to interact with one another and cooperate while yet retaining their distinct identities. Though the Constitution of Bangladesh ensures equality for every citizen, when it comes to the promotion of various cultures, nevertheless, this equality concept could not be followed.*

**Keywords:** Minority Rights, Comparative Study, Constitution, Equality and Secularism

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## INTRODUCTION

India was separated based on the “two-nation” principle in 1947, and with this the Pakistan was established as a Muslim state at the same time. However, a sizable non-Muslim population remained in this Muslim state, particularly in East Bengal (present Bangladesh). After partition, non-Muslims constituted over a quarter of the total number of the population of East Bengal and counted for roughly 14% of Pakistan’s total population. Under East Bengal, the Hindu minority began life amid the new democratic system in an atmosphere of communal hostility, skepticism, and shame<sup>1</sup>.

During the era that followed the country’s declaration of independence, there were many factors at play, including the incorporation of highly discriminatory provisions throughout the constitutional amendments, the influence of anti-secular beliefs held by political leaders and elites, and many others. As a result, they concluded and led them to flee away from Bangladesh. The establishment of Bangladesh in 1971 was unmistakably a win for these factors, and the minority populations saw it as the end of their nightmare. However, the Parliament of Bangladesh declared Islam to be the national religion in 1988, making religious minorities the second most important religion in the country whereas Bangladesh's declaration of independence emphasizes unequivocally that every person would be treated equally and with dignity.

Since World War II, liberal democratic theorists have typically argued that the greatest way to preserve democratic freedom and equality is through the granting of individual political rights and civil freedoms. But recently, some theorists have revived a heritage of liberal democratic philosophy that contends that group-differentiated or minority rights are required for freedom and equality to flourish in multinational (or even multicultural) communities. For instance, regulations requiring the use of bilingual ballots or permitting the usage of minority terminologies in the judicial system contribute to protecting the political and civil rights of minority groups.

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<sup>1</sup> Muhammad Ghulam Kabir, *Minority Politics in Bangladesh*, PL. 1-7 (1980)

It is vital to take particular precautions in order to guarantee that members of minority groups are afforded the same legal protections as the majority of the community. Therefore, protecting the rights of minorities is essential to ensuring that all and every member of society is able to enjoy their human rights fairly. The defense of minority rights requires both tolerance and open communication between different cultural groups. It should be possible for the various groups that include a community to engage in cooperative endeavors and still be able to preserve their own identities if there is an atmosphere of mutual respect and understanding<sup>2</sup>.

This paper comprises a theoretical explanation of the notion of 'Minority' then explains the rights of minorities under international instruments then examines how their rights are protected by Bangladesh's legal framework lastly, it will be compared with international norms and practices.

The authors of this paper will analyze secondary sources for information. In secondary sources, it includes statutory laws, international laws, national and international newspaper articles, journals, commentaries, writers' books, etc.

For legal analysis, the authors focus on a few articles of Bangladesh's constitution and some existing legislations relating to Minority Rights the authors will use the outline of journals and news articles to explain the present condition of Minority Rights in our country and I'll use the international legislation for clear understanding of the international standard and norms of Minority Rights. Several studies, journals, and books have been accomplished on the topic of minority rights in Bangladesh in various sectors including legal aspects.

The findings of this study will assist us in determining the causes of the increase in the infringement of the rights of minority groups in Bangladesh and the effectiveness of the country's legal infrastructure. When it comes to

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<sup>2</sup> J. Ringelheim, 'Minority Rights In A Time Of Multiculturalism--The Evolving Scope Of The Framework Convention On The Protection Of National Minorities' (2010) 10 Human Rights Law Review.

Bangladesh's fundamental rights, what should be done to secure minority rights and the protection of minorities' civil liberties by regulation enforcement methods, and the state's commitment to respect the requirements of international treaties to which Bangladesh is a party. It is crucial to portray the idea that all the Minorities should have equal rights, not as a reward for their loyalty, but as a means of ensuring that every member of society is afforded to one basic phase of equality when it comes to exercising their human and fundamental rights.

Gobinda Chandra Mandal in his paper states that an explanation of the term "minority" in its broader context, and then proceeded to investigate the situation of minorities in Bangladesh, including their problems, the infringements committed against them, the aspects and consequences of violations, state obligations, constitutional and legal protection under international law, and other related topics<sup>3</sup>.

Sikder Monoare Murshed talks about the complex composite of Minorities, consisting of religious, ethnic-cultural, linguistic, and sectarian components, and also discusses some Indigenous communities present in Bangladesh based on the human rights dilemma of minorities in Bangladesh<sup>4</sup>.

Zakir Hossain, S.M. Masum Billah & Monjurul Islam in their paper illustrate the state of civic space in the country for seven minority groups: Hindus, Ahmadiya Muslims, indigenous communities, Dalits, linguistic minorities, such as Biharis, the LGBTIQ+ community, and Rohingya refugees, to name a few<sup>5</sup>.

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<sup>3</sup> Gobinda Chandra Mandal, "Rights of the Minorities: The case of Bangladesh" in "Human Rights and Good Governance", (ed) Rahman, Dr. Mizanur, ELCOP (2004)

<sup>4</sup> SIKDER MONOARE MURSHED, "Democracy and Minority Rights in Bangladesh" (2014)

<sup>5</sup> Zakir Hossain, S.M. Masum Billah & Monjurul Islam, "Bangladesh: Civic Space and Minority Rights" (2020)

## **THE MEANING OF MINORITY**

The minority is perceived to be the opposite of the mainstream. It is based in democratic societies on the numerical ratio of a particular position to the population as a whole. However, in international legislation, the word “minority” is referred to as it varies from the dominant faction within the country, which accords rights to cultural, religious, and linguistic minorities on a collective basis.

Minority rights are focused on the aims of shielding minority factions from prejudice, assimilation, aggression, or abuse as a result of their stature that does not imply advantages but acts to ensure proper respect for everyone. Moreover, in the pursuit of their civil and constitutional rights, it works to give rise to all members of the community to a least degree of sameness. These protections are used with the intent to accommodate vulnerable communities.

Some principles in international law specifically express and protect minorities in a specific way. These principles underline that all persons, comprising factors of ethnic, racial, and religious minorities, have similar essential privileges as other people in society and must be able to enjoy those rights without discrimination.

Minority rights are established on the recognition that minorities are disadvantaged and vulnerable in comparison to other groups in society, such as the mainstream population. This is done with the goal of protecting members of minority groups from being subjected to discrimination, assimilation, prosecution, hostility, or abuse as a result of their status. These rights are based on the concept that, in contrast to other groups in society, such as the majority population, members of minorities are vulnerable and suffer from disadvantages. It is vital to keep in mind that minority rights are not advantages; rather, they are a technique of guaranteeing that members of a variety of groups are treated equally as Human regardless of their

status<sup>6</sup>. This is one of the fundamental principles of the international Human Rights concept, and it is why it is important to remember that minority rights are not advantages.

## **THE HISTORY OF MINORITY RIGHTS**

After World War I, the League of Nations adopted the Minority Treaties as the first codification of minority rights in international law. However, after the collapse of the League in 1946, international focus on minority rights was forgotten. Post-Second World War human rights regimes, including the Genocide Convention and the ICCPR, failed to adequately address the protection of minorities.

The Cold War era also relegated minority rights even further behind generalized human rights ideals. But the tone mellowed in the 1980s, giving way to two distinct UN tracks: indigenous peoples and minorities. The ILO's 1989 Convention on Indigenous Peoples was the turning point in the acceptance of group-specific rights.

Subsequent key milestones were the UN Declaration on Minority Rights in 1992 and the 2007 Declaration on Indigenous Peoples. Indigenous peoples had rights to complete self-governance but no external self-determination. This emerging body of law responds to a growing tolerance of cultural difference within nation-states.

## **CONCEPT OF MINORITY RIGHTS AS HUMAN RIGHTS**

Minority rights are established on the recognition that minorities are disadvantaged and vulnerable in comparison to other groups in society, such as the mainstream population. This is done with the goal of protecting members of minority groups from being subjected to discrimination,

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<sup>6</sup> Boshko Stankovski, 'Implications of Kosovo Independence for The Doctrine of Constitutional Self-Determination' (2013) 10 European Yearbook of Minority Issues Online.

assimilation, prosecution, hostility, or abuse as a result of their status. These rights are based on the concept that, in contrast to other groups in society, such as the majority population, members of minorities are vulnerable and suffer from disadvantages. It is vital to keep in mind that minority rights are not advantages; rather, they are a technique of guaranteeing that members of a variety of groups are treated equally as Human regardless of their status<sup>7</sup>. This is one of the fundamental principles of the international Human Rights concept, and it is why it is important to remember that minority rights are not advantages. It is the goal of these rights to bring about at least some degree of equality for all people who are contributing members of society, as well as to safeguard vulnerable populations. It is because of the intention to protect specific widespread aspects of the identity of humans from the practice of sovereign power that international human rights law has been vested upon minorities. This is because international human rights law does so. It does so on the basis of the belief that cultural, religious and linguistic equivalences are vital to what it means to exist as a human, and that these equivalences should be protected as such.

## **THE STATE OF MINORITIES IN INTERNATIONAL LAW**

As a result of the establishment of the United Nations, the concept of human rights and the fundamental freedoms of individuals have come to serve as a shield for marginalized groups. Even though the initial draft of the Universal Declaration of Human Rights suggested enshrining minority educational, religious, and cultural institutions' rights and minority-language protection and other minority-related protections, minority rights are not expressly included in the document. Because of political opposition from a number of states, these clauses were not included in the final version that was approved by the General Assembly of the United Nations in 1948<sup>8</sup>.

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<sup>7</sup> Boshko Stankovski, 'Implications Of Kosovo Independence For The Doctrine Of Constitutional Self-Determination' (2013) 10 *European Yearbook of Minority Issues* Online.

<sup>8</sup> Peter Hilpold, 'UN Standard-Setting In The Field Of Minority Rights' (2007) 14 *International Journal on Minority and Group Rights*

However, by guaranteeing freedom of expression, freedom of religion, rights to cultural and political participation, and equality rights to “everyone,” this declaration ensures that members of minority groups will be granted equal citizenship. Moreover, this declaration ensures that equal citizenship will be granted. The International Covenant on Civil and Political Rights (ICCPR), which went into effect in 1976 and specifically mentions minority groups, was not explicitly included in the United Nations Charter of the Universal Declaration of Human Rights; however, it later maintained its solidarity with the Universal Declaration. The ICCPR came into force in 1976 and specifically mentions minority groups. This is despite the fact that minorities were not explicitly excluded from the Universal Declaration of Human Rights. The line with the Covenant's specified purpose of enshrining a broad range of civil and political rights by mentioning “recognition of the inherent dignity and inalienable rights of all members of the human family”. This is in line with the purpose of the Covenant to enshrine a broad range of civil and political rights. Article 27 of the ICCPR states that members of national, religious, or linguistic minorities “shall not be denied the right to enjoy their own culture, to profess and practice their religion, or to use their language in community with other members of their party” thus this article of ICCPR safeguards common interests in situations where they are the edge of the risk, such as at the time of a majority tries to enforce its artistic, spiritual, and linguistic moralities and desires on a faction of whose components carry opposing views. Because these rights cover religious, cultural, and linguistic activities of Minorities only.

## **MINORITY RIGHTS UNDER INTERNATIONAL LAW**

It is vital to take particular precautions in order to guarantee that members of minority groups are afforded the same legal protections as the majority of the community. Therefore, protecting the rights of minorities is essential to ensuring that all and every member of society is able to enjoy their human rights fairly. The defense of minority rights requires both tolerance and open communication between different cultural groups. It should be possible for



the various groups that include a community to engage in cooperative endeavors and still be able to preserve their own identities if there is an atmosphere of mutual respect and understanding<sup>9</sup>.

The Universal Declaration of Human Rights, for instance, does not specifically mention the rights of minorities anywhere in the document. A preliminary copy of the proclamation included suggestions for the maintenance of educational, religious, and cultural institutions serving minority groups, in addition to language maintenance for minority groups. As a result of political opposition from a great number of states, these components were not included in the final version that has been approved by the General Assembly of the United Nations in 1948<sup>10</sup>. In spite of the fact that it says nothing about protecting minorities, the declaration inherently guarantees equal citizenship for members of minorities by granting “everyone” the rights to freedom of expression, freedom of religion, rights of cultural and political participation, and equality rights. This is true despite the fact that it does not say anything about protecting minorities.

The International Covenant on Civil and Political Rights (ICCPR), which came into effect in 1976, makes explicit mention of minorities, in contrast to the Universal Declaration of Human Rights, which does not. However, the ICCPR does so in the context of a focus on the rights of the individual. This is in line with the declared objective of the Covenant, which is to enshrine a wide variety of civil and political rights in “respect of the inherent dignity and inalienable rights of all human family members.”

Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which was written at the request of the Sub-Commission, states

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<sup>9</sup> J. Ringelheim, 'Minority Rights In A Time Of Multiculturalism--The Evolving Scope Of The Framework Convention On The Protection Of National Minorities' (2010) 10 Human Rights Law Review.

<sup>10</sup> 'Universal Declaration Of Human Rights: Adopted And Proclaimed By UN General Assembly Resolution 217 A (III) Of 10 December 1948 Text: UN Document A/810, P. 71 (1948)' (2008) 27 Refugee Survey Quarterly.

that people who belong to racial, religious, or linguistic minorities “shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their language.”<sup>11</sup>

## **MINORITIES RIGHT UNDER CONSTITUTION IN BANGLADESH, INDIA, PAKISTAN, CHINA**

### **Bangladesh**

Bangladesh's constitution makes no mention of minorities and makes no special provisions for their protection. In the eyes of the law, everyone in the state is treated equally<sup>12</sup>. The Fundamental Rights in Bangladesh's Constitution range from Article 26 to Article 47A. The principle of equality is addressed in Articles 27 through 31. The general guide is laid down in Article 27. Other articles go into more profound information about it.

In support of article 27, article 28 stipulates that discrimination is prohibited solely based on religion, race, caste, sex, or place of birth. While ensuring equal opportunity in public employment, Article 29 is limited to the abovementioned grounds. This egalitarian concept cannot be adhered to when it comes to the dissemination of cultural information.

In Article 23, the state is urged to take measures that will contribute to the protection of Bangladesh's cultural traditions and legacy in order to fulfill its obligations under the article. In the same article, the ability of Bangladeshis to contribute to and participate in the enrichment of national culture is guaranteed. Despite this, Bangladesh's national culture is sadly identifiable by the cultural practices of the country's Muslim majority, Bangali.

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<sup>11</sup> 'International Covenant On Civil And Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) At 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, Entered Into Force Mar. 23, 1976' (2005) 24 Refugee Survey Quarterly.

<sup>12</sup> Constitution of the People's Republic of Bangladesh: “All citizens are equal before law and are entitled equal protection of law.” (Article 27).

Special provisions need to be put in place to ensure that any backward sections of the population are adequately represented in the Republic's service and to make laws to ensure that appointments are reserved for persons of a particular religion and/or denomination in the event that the office is linked to the affairs of any particular religious or denominational institution.

## India

The minority is a concept that dates back to the Vedic period. Indian civilization was split up into four varnas by the caste system<sup>13</sup>. The Shudras were oppressed by the upper castes, who made up most of the population. Thus, the Shudras were India's concept of the minority in ancient times. India has an extended narrative of incursions and business, which has significantly altered Indian society's demographics, and as a result, there are various minority groups living in India. Hinduism 79.8 percent, Islam 14.2 percent, Christianity 2.3 percent, Sikhism 1.7 percent, Buddhism 0.7 percent, Jainism 0.4 percent, Zoroastrianism 57,300 [following to 2011 Census], Judaism approximately 4,000 Other minorities and indigenous groups include Dalits 'scheduled castes' 16.6 percent, Adivasis' 8.6 percent Anglo-Indians, and Andaman Islanders following the 2011 census<sup>14</sup>.

The Indian Constitution contains several clauses that protect the rights of minority groups and India is one of the countries that early recognized minority communities in its constitution. Article 14<sup>15</sup> The Constitution provides for a comprehensive spectrum of privileges to safeguard and protect minorities, including equality before the law, which states that everyone is equal before the law. There will not be a single intolerance based on religion, race, caste, sex, or place of birth, according to Article

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<sup>13</sup> F. Max Müller, *The Sacred Books of The East* (Motilal Banarsidass 1977).

<sup>14</sup> India- World Directory of Minorities & Indigenous Peoples' (Minority Rights Group, 2022) <<https://minorityrights.org/country/India/>> accessed 8 May 2022.

<sup>15</sup> *The Constitution of India* (Article 14).

15<sup>16</sup>. In public employment, Article 16<sup>17</sup> discusses equal chances for everybody.

They maintain the Doctrine of Basic Structure of Preamble of the Indian Constitution, where it has been indicated that India is a secular state expected to be neutral and impartial toward all religions<sup>18</sup>. Article 25<sup>19</sup> ensures that all citizens have the freedom to profess their preferred faith and spread it. It can be assumed that this article guarantees that the state will never subjugate religious minorities. Article 26<sup>20</sup> gives religious minorities a sense of security because they can build and operate religious or charitable institutions and administer their religious affairs without government intrusion, subject to certain constraints. Following the secularist philosophy, Article 27<sup>21</sup> states that the state will never coerce any person to pay any tariffs to promote or preserve any religion or religious institution.

Article 347<sup>22</sup> stipulates if a considerable proportion of a state's population requests that any of the languages pronounced by them be acknowledged by the state, the President has the power to order that language be formally acknowledged in that state for any purpose he specifies. Both religious and linguistic minorities have cultural and educational rights under Article 30<sup>23</sup> of the Constitution. All spiritual and linguistic minorities have the right to create and run educational institutions of their choice, according to Article 30(1). In assisting educational institutions, Article 30(2) states a minority-owned educational institution cannot be penalized by the state because of its religious or linguistic affiliations.

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<sup>16</sup> *The Constitution of India* (Article 15).

<sup>17</sup> *The Constitution of India* (Article 16).

<sup>18</sup> R. C Johari, *Indian Government and Politics* (Wisdom Press 2011).

<sup>19</sup> *The Constitution of India* (Article 25).

<sup>20</sup> *The Constitution of India* (Article 26).

<sup>21</sup> *The Constitution of India* (Article 27).

<sup>22</sup> *The Constitution of India* (Article 347).

<sup>23</sup> *The Constitution of India* (Article 30).

## Pakistan

According to the national census of 1998, 96.28 percentage of the total population is Muslim in Pakistan<sup>24</sup>. The huge preponderance of Muslims in this country practice Sunni Islam and follow the Hanafi school of thinking. 3.72 percent of the overall population are non-Muslims: Christians (1.59 percent, 1998 Census), Ahmadis (0.22 percent, 1998 Census), Hindus (1.6 percent, 1998 Census), Shias, Ismailis, Bohras, and Parsis are among the religious minority<sup>25</sup>. In 2017, a census was done, although the complete results have yet to be disclosed. The initial version of Pakistan's Constitution, which was ratified in 1956, included provisions that discriminated against members of religious minorities. These provisions were later strengthened by amendments to the Constitution in 1962 and 1973.

The constitution of Pakistan reckoned that “all citizens are equal before the law and are entitled to equal protection of the law”<sup>26</sup>. Article 5 states that “adequate provision shall be made for minorities to profess and practice their religions and develop their cultures freely.” Article 33 says that it is the obligation of a state to restrain citizens from harboring parochial, racial, tribal, sectarian, and provincial prejudices.

However, some parts of the Constitution contain clauses that directly contradict these obligations. To begin, article 2 states that “Islam shall be the State religion of Pakistan,” and article 31 states that it is the responsibility of the government to promote the path of life in Islamic way. Both of these articles can be found in the Constitution of Pakistan. Article 41(2) declares that “no person shall be qualified for election as President unless he is a Muslim.” Article 227 (1) states that “all existing laws shall be brought into conformity with the Injunctions of Islam as laid down in the

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<sup>24</sup> Pakistan- World Directory of Minorities & Indigenous Peoples' (Minority Rights Group, 2022) <<https://minorityrights.org/country/Pakistan/>> accessed 8 May 2022.

<sup>25</sup> Ibid

<sup>26</sup> *The Constitution of the Islamic Republic of Pakistan* (Article 25 (1) )

Holy Qur'an and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions".

Moreover, Article 20 of the Constitution, where it has been mentioned that "every religious denomination and sect thereof shall have the right to establish, maintain, and manage its religious institutions" and that "every religious denomination and sect thereof shall have the right to profess, practice, and propagate his religion", is "subject to law, public order, and morality", It consequently operates counter to both the law and actual practice.

## **China**

The fourth national census of China found that 91.96 percent of the population connects to the Han ethnic group, while 8.04 percent of the population goes to other ethnic groups. Below are some important areas in which the Constitution fights for the rights of all minority. Article 4 of the Constitution states that all minority groups are equal and there would be no discrimination or oppression against any ethnic group. The latter would also give the minority the right to use and improve their languages, as well as some characteristics and manners. China authorizes regional autonomy in areas with high concentrations of minority communities. It also provided for the proportional representation of the minority in the state parliamentary, including the National People's Congress. The Constitution also provides for the freedom of faith.

## **CONSISTENCY OF CONSTITUTIONAL PROTECTION OF MINORITIES WITH THE INTERNATIONAL LAW**

Bangladesh, as a signatory party state that has ratified the covenant ICCPR, has the legal obligation to carry out the provisions on its soil. States also have a responsibility under current international law to obtain reasonable legislative and other mechanisms to safeguard the minority rights to exist, which must be a necessary precursor for other rights. The right to identify is frequently regarded as encompassing all minority rights and while

commenting on Article 27, the UN Human Rights Council stated that states have a responsibility to take affirmative actions to protect minorities' identities. The preamble of Bangladesh's Constitution, also states that it shall be a fundamental goal of the state to realize a socialist society, free of exploitation, through the democratic process, a society in which the rule of law, fundamental human rights, and freedom, equality, and political, economic, and social justice will be guaranteed for its all citizens. However, When someone reads the opening part of the preamble, Article 2A<sup>27</sup>, Article 3<sup>28</sup>, and Article 7B<sup>29</sup> which directly have a bar to amend such provisions, all of these lovely clauses become penniless and inexpressive. All of these anti-minority provisions were absent from Bangladesh's original, glorious constitution.

## **COMPARISON WITH BANGLADESH'S CONSTITUTION**

Pakistan's leaders emphasized the importance of a democratic government in the countrys' independence and partition in 1947. It was later discovered that religious minorities in Pakistan, including Hindus, Christians, and Buddhists, were subjected to abuse and humiliation. The political party Awami League made victory in the elections in Bangladesh, later, the state's final formation in 1971 caused a minor shift in the minor religion community's position. Bangladesh's parliament has compromised the

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<sup>27</sup> Constitution of the People's Republic of Bangladesh, "The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions".(Article 2A)

<sup>28</sup> Constitution of the People's Republic of Bangladesh, "The state language of the Republic is Bangla". (Article 3)

<sup>29</sup> Constitution of the People's Republic of Bangladesh, "Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of Part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amenable by way of insertion, modification, substitution, repeal or by any other means". (Article 7B)

ideals of secularism espoused by Sheikh Abdullah in 1972 through several constitutional revisions. Religious minority groups such as Hinduism, Buddhism, and Christianity have experienced significant population declines since their independence. According to Bangladesh's 2011 National Census Report, Muslims account for 90.4 percent of the population, while Hindus account for 8.5 percent, Buddhism for 0.6 percent, Christianity for 0.3 percent, and others for 0.2 percent<sup>30</sup>.

Bangladesh's constitution makes no special mention of minorities in the country and therefore, have no particular provisions for their protection. However, In the eyes of the law, everyone in the state is treated equally. The Fundamental Rights in Bangladesh's Constitution range from Article 26 to Article 47A. The principle of equality is addressed in Articles 27 through 31. The general principle is laid down in Article 27. Other articles go into deeper information about it. Article 28 furthers article 27 by prohibiting discrimination based on religion, race, caste, sex, or place of birth. While ensuring equality of opportunity in public employment, Article 29 is limited to the same aforementioned grounds.

When it comes to the promotion of culture, this egalitarian concept could not be followed. Article 23 facilitates the state in a way to uphold policies that will aid in the preservation of Bangladesh's cultural traditions and heritage. The ability of Bangladeshis to participate in the enhancement of nationwide culture is safeguarded in the same article, but unfortunately, Bangladesh's national culture which is constitutionally recognized is Bangladeshi Muslim culture, other religious minorities have no constitutional recognition of promoting and improving their own language, literature, or artworks.

The honorable High court of Bangladesh insert the secular principle dignified in the Preamble of Bangladesh's Constitution<sup>31</sup>. Further, in 2011

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<sup>30</sup> Bangladesh- World Directory of Minorities & Indigenous Peoples' (Minority Rights Group, 2022) <<https://minorityrights.org/country/Bangladesh/>> accessed 10 May 2022.

<sup>31</sup> *Bangladesh Italian Marble Works Limited vs Government of Bangladesh*.



a constitutional modification was passed, by stating that to have rebuilt the state's nature as secular<sup>32</sup>. On the other hand, Islam will continue to serve as the republic's official religion.

The Vested Property Act, which was passed in 1972, was Bangladesh's most repressive statute against the country's religious minority, mainly Hindus. Because of this statute, the government was required to assume ownership of the property of individuals who left their places and moved to another location.

Despite the fact that it was abolished in 1974<sup>33</sup>. Moreover, in certain situations it is claimed that this law is nonetheless being utilized by local and political societies to grab the lands of Hindu people. Similar paces can be seen in Pakistan's Constitution. When it comes to the promotion of culture, an egalitarian concept could not be followed. Even though Pakistan's government has mixed views about the existence of religious, linguistic, and ethnic minorities, the country's population that is diverse has two types: religious minorities and ethnic and linguistic minorities.

The 1973 Constitution of the Islamic Republic of Pakistan uses the word "minority" in two places but does not define it. It is asserted by successive federal governments that there are no aboriginal inhabitants of Pakistan who speak their own language or belong to any ethnolinguistic group. Apart from the Constitution, there have also been other acts legislated in Pakistan that provide grounds for discriminating against Pakistan's various religious minority groups. Because of the rule of President General Zia Ul Haq, who was President of Pakistan from 1977 to 1988, there was little effort at reconciling the civil and criminal laws of Pakistan with Sharia law. This had the result of passing legislation that restricts non-Muslims from their freedoms.

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<sup>32</sup> M Jashim Ali Chowdhury, *'Amendment Power In Bangladesh: Arguments For Revival Of Constitutional Referendum'*.

<sup>33</sup> The Enemy Property (continuance of Emergency provision) (Repeal) Act, 1974

For example, Hudood laws were introduced in 1979, and in 1980 religiously guided punishments (e.g., hanging, amputations, and others) were reserved for an assortment of violations of Sharia law. These infringements were committing alcoholic drinks, robbery, prostitution, adultery, and giving false evidence. In addition, in 1980, punishments of religious mandates (such as hanging, amputations, and other forms of physical punishment) were allocated.

The Sharia Court system in Pakistan has significantly reduced the Superior Courts' jurisdiction and functions as a "super-legislature" in that it can require instant modification of national legislation and its judgements are binding on both high and subordinate courts<sup>34</sup>. People who do not pursue the interpretation of the state of Shariah law are discriminated against under this legal system by definition. Though Pakistan's Constitution recognizes Minority rights but does not comply with the core notion of Minor groups and their rights.

On the other hand, China recognized Minority Rights in their constitution henceforward because China is an authoritarian regime, The Western discourse on human rights in China usually holds the belief that China's statute protecting minority rights must be an elaborate hoax. On the other hand, China developed an "ethnic law" in the 1980s and 1990s that outlines the rights and preferences that minorities cherish<sup>35</sup>.

At the same time, ethnic law in the People's Republic of China is insufficient to provide the expected spectrum of minority rights asserted by them, and few rights are occurring demolished by political and economy's marketization of China<sup>36</sup>. The Minzu minority groups (nearly 730,000

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<sup>34</sup> (Refworld.org, 2022) <<https://www.refworld.org/pdfid/57fb91e54.pdf>> accessed 10 May 2022.

<sup>35</sup> Barry Sautman, *'Ethnic Law and Minority Rights in China: Progress and Constraint'* (1999)

<sup>36</sup> Ibid

people) also exclude ethnicities that have been defined as existent minority by state authorities, denying them their legal rights to public participation<sup>37</sup>.

Aside from this, minority rights in India's Constitution preserve individuals from being differentiated against on the rationale of their ethnicity, culture, linguistic background, or religious identity. Members of underrepresented groups need to be able to understand and utilize the language of ancestors, people should be able to identify themselves by referring to themselves as such. Thus, minority rights guarantee equal treatment before the law, protection of fundamental freedoms and nondiscrimination and safety from violence based on identity, participation in political and public life as well as opportunities for collaboration with other communities or organizations, both within the country as well as outside of it.

## **CONSTITUTIONAL RECOGNITION AND PROTECTION**

### **Bangladesh**

Bangladesh especially emphasized formal equality in its constitution without recognizing the minorities. According to Articles 27-31 ensure equal security and restrict discrimination on the basis of religion, race, caste, gender or place of birth but there are no specific provisions that ensure cultural, linguistic or religious rights of minorities.

### **India**

India, on the contrary, provides a comprehensive constitutional structure for minority rights. Articles 29 and 30 clearly protect the rights of minorities for their language, script and conservation of culture and establish and administer educational institutions. India also recognizes religious, linguistic and cultural minorities and provides positive action, unlike Bangladesh.

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<sup>37</sup> China- World Directory of Minorities & Indigenous Peoples' (Minority Rights Group, 2022) <<https://minorityrights.org/country/China/>> accessed 11 May 2022.

## **Pakistan**

Pakistan recognized the minorities in its 1973 constitution, but did not clearly define them. Despite the theoretical guarantee of religious freedom, discriminatory laws such as Hadud Orders and Blasphemy Acts, especially under general Zia-ul-Haq, have severely reduced these rights. The influence of Sharia courts has also marginalized religious minorities in civil and criminal justice systems.

## **China**

China constitutionally guarantees ethnic equality (Article 4) and supports minority languages, cultures and regional autonomy. However, in practice, the assimilation policies of ruling rule and Han-focused nationalism weaken these rights. While caste laws exist, the political control of the state limits autonomy, especially in areas such as Xinjiang and Tibet.

## **SIGNIFICANT COMPONENTS OF MINORITY RIGHTS THAT A CONSTITUTION SHOULD HAVE**

Peaceful coexistence of diverse groups within the framework of the state can be facilitated by a constitution that ensures their proper protection, acknowledgment, and involvement in all parts of public life. Minority representation and accountability mechanisms should be established and activated in the event that minority rights and concerns are violated. As an example, this could be expressed as follows:

1. The emphasis should be on a shared existence in the widespread sphere as proportional citizens under a broad individual rights system on the basis of the non-discrimination rule<sup>38</sup>.

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<sup>38</sup> This implicates two elements: first, power-sharing, which “denotes the participation of representatives of all substantial communal groups in political decision making, especially at the managerial level;” second, group autonomy entails giving groups “authority to run their internal affairs, especially in the areas of education and culture.”

2. Particular regulations or minority group rights may pertain to religious, cultural, and linguistic freedom, educational rights, participatory rights in defining regional and national strategy, and the right to strengthen cross-border associations with a focus on ensuring equality, in addition to general human rights<sup>39</sup>.
3. Affirmative action policies or non-territorial aspects of sovereignty, such as proportional state assistance for every academic organization if fundamental criterion set and surveyed by the country are met<sup>40</sup>.
4. Structures of spatial sovereignty like confederacies, federalism, and confederation may be helpful strategies to acquire adhering to the notion of “internal self-determination” in some instances, mainly in the niche of ethnic and religious cleavages are territorially based<sup>41</sup>.

Constitutions cannot establish social utopias. They are “intended to ease the transition of conflict from the streets and battlefields to theaters of compromise and persuasion, rather than to produce peace per se,” as Lutz points out<sup>42</sup>. Some performance metrics on which we might assess the character of a “constitutional democracy” that not exist entirely because a constitutional article prevails include:

1. A constitution that is observed instead of disregarded;
2. A constitution that is established on and supports the rule of law
3. Free elections that include almost the whole adult population;
4. At least two competing parties;

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Arend Lijphart, *Constitutional Design for Divided Societies*, 15 J. DEMOC. 96, 97 (2004).

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Donald Lutz, *Thinking About Constitutionalism at the Start of the Twenty- First Century*, 30 PUBLIUS (2000).

5. At least an agreeable power between competing groups or materially several party unions through independent elections, or the enthusiasm that an electoral result that replaces the party or party union that is now in power will be accepted graciously<sup>43</sup>.

It's not just the form of constitutional governance that matters; and it's also the constitutional civilization or ethos of compassion and mutual admiration that contributes to societal harmony. It must uphold and express a constitutional civilization that is appreciative of individual and faction rights and dedicated to maintaining minor groups' diversity within nationwide order. Beyond rule-following and legalism, the validity of constitutional norms and the public ideals must be considered.

## FINDINGS

The structural grounds for this, as previously stated, foster and sustain a climate of superiority and discrimination toward minorities. Several influential newspapers often report on various sorts of violence against minorities. Which can be sorted as<sup>44</sup>,

**Violence Against Women:** Because an attack on a minority woman is seen as an attack on the community, they are more vulnerable. Society's patriarchal ideals strengthen the dominant community's hands, and they find it simple to violate the rights of the minority community<sup>45</sup>.

**Violation of the Rights of Religious Minority:** Bangladesh's state religion has been declared Islam. Citizens, on the other hand, are not prohibited from practicing, professing, or propagating any faith. Despite this specific rule, minorities' religious liberties are still being abused. In 2002, the media recorded 147 attacks on Hindu religious organizations and institutions<sup>46</sup>.

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<sup>43</sup> Id. at 119.

<sup>44</sup> Rights Of Minorities in Bangladesh, In Human Rights In Bangladesh-2002' [2003] Ain O Salis Kendra.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

The persecution of religious minorities in Bangladesh, such the 2002 Hindu religious institution attacks, are not state-governed. Article 41 of the Constitution of Bangladesh provides freedom of religion, which permits every citizen to observe and propagate their religion.

These abusive acts, while sensitive in nature, stem from the inaction of individuals or groups. Through state inaction, negligence is allowed as a result of the below policies: Inadequate response by law enforcement within the appropriate time frame, perpetrators of abuse left unchecked, encouragement of the politically motivated violence, pre-justice on politics within the local government. The state does not allow these abusive acts through legal framework, but rather through the absence of law, resultant apathy, and policy selectively enforcing.

**Violation of Right to Property of Minorities:** In the Hill Tracks Areas of Bangladesh, state acquisition has also deprived the plainland indigenous people, or Adivasis, of their land and forest resources. Because land and forest are at the heart of the indigenous people's cultural and social systems, they see alienation as a betrayal of their identity<sup>47</sup>.

Apart from the situations mentioned above, numerous violations of minority rights are commonly seen in Bangladesh, such as Torture, Abduction, Extortion, Forcible Eviction, Forcible conversion to the majority's religion, etc. <sup>48</sup>.

## RECOMMENDATIONS

Tolerance and conversation across cultural lines can be practiced through the preservation of minority rights. Through the cultivation of an understanding and respect for one another, the many subgroups that contain a community should be able to interact with one another and cooperate while yet retaining their distinct identities. The primary components necessary to accomplishing this objective are the dissemination of

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

intercultural understanding of the history, religion, language, and culture of minority groups. Protecting the rights of minorities can, in other words, assist in the development of an inclusive, harmonious, and cohesive society that appreciates the importance of diversity.

1. Minority groups need to participate. If they want to keep their identity and battle social isolation, they must participate in all aspects of the nation's political, economic, social, and cultural life. Public institutions, including national legislatures, the civil service sector, including the police, and the judiciary, must reflect the diversity of a society in terms of minority groups, and minorities must be represented, consulted, and have a voice in decisions that affect them or the territories and regions in which they live.
2. These mechanisms are also required to ensure that minorities are sufficiently defined, discussed, and have a leading voice in judgments that affect decisions that affect them or the territories and regions in which they live. It is not enough for participation to be merely symbolic; rather, it must be meaningful, and it must take into consideration problems like the underrepresentation of minority groups and questions that may not be adequately dealt with. Thus, the involvement of women who belong to underrepresented groups is a source of great concern.
3. The state has the power to make special provisions in favor of minorities for the advancement of any backward sections of the citizens or the state has the authority to make laws for the reservation of any backward sections of the citizens if they are not sufficiently exemplified in the Service of the Republic or earmarking nominations to the person of a special religion or group, if the office is connected with the circumstances of any religion or same type of institutions. This is because the state has the authority to make special provisions for the improvement of any primordial sections. However, there have not been any such significant actions done for



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the advancement of any of the backward parts of the citizenry, and they should be followed.

4. Religion has been used as a political tool in Bangladesh by political parties and politicians. They believe that minorities have no place in the Islamic community and that they should be exterminated. The legislators need to recognize that Bangladesh is not a monolithic nation but rather a melting pot of cultures and that this reality should be reflected in our constitution.
5. Bangladesh needs to cultivate an atmosphere of tolerance and respect for other resident minor groups. Bangladesh was established with the blood and sacrifice of numerous minority groups. Religious and ethnic minorities have each made their own unique contributions to the development of the country. Thus, national history should also include their contributions and sacrifices during the battle of liberation.

## CONCLUSION

The rights of minorities are an essential element of universal human rights. They foster an atmosphere of tolerance and acceptance of one another's unique qualities. They want to make sure that minority groups and majority groups may coexist peacefully and work together to build a better future. There is a mistrust of human nature and a belief in institutions to control and limit government authority, which is why constitutions exist. Constitutions are built on a foundation of skepticism about human nature and faith in institutions. Because of the constitutional amendment process, the supreme law of the land is shielded from the whims of the people. Ensuring minority rights in Bangladesh is essential for creating a united, equitable, and harmonious society. Despite constitutional guarantees, discriminatory attitudes, violence, and systematic marginalization continue to haunt minority groups. Various minorities express the similar aspirations for sovereignty and willingness to have self-government as indigenous

peoples. Proposals to subdivide the classification “minorities” and formulate standards that are tailored to the specific categories of minorities that are tilted to strive for independence.

Specific legal reforms, actual political participation, and strict compliance with international human rights covenants are required to eliminate these phenomena. The state has to start taking proactive steps towards the protection of ethnic and religious minorities by implementing laws against discrimination, giving them representation in state institutions, and ensuring their historical and cultural identity. Elimination of political manipulation of religion and promoting tolerance through education can enhance long-term social cohesion. Enshrining acknowledgement of minority contribution to national history and policy-making will strengthen the democratic base of the country. There is the potential for a great deal of harm to be caused whenever religion and politics are combined. Despite the fact that India and Bangladesh have historically shared the idea of secularism, Bangladesh has taken a distinct strategy to dealing with minorities, which, according to the author, is more harmful to minorities than it is protecting them from majoritarianism. The treatment of the minority, particularly religious minorities, has been particularly heinous. It is a horrible situation. Henceforth, the nation progressed its sovereignty in 1971, the rights of minorities have not been sufficiently respected. In order for the government of Bangladesh to prove that it is committed to secularism, it should instead focus on resolving the long-standing problems of the country’s religious minority. Up to that point, it cannot be considered a state that is entirely secular.