

**Domestic Application of International Human Rights Law related to
Religious Rights of Minorities in Pakistan**

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by

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Tanveer Badar

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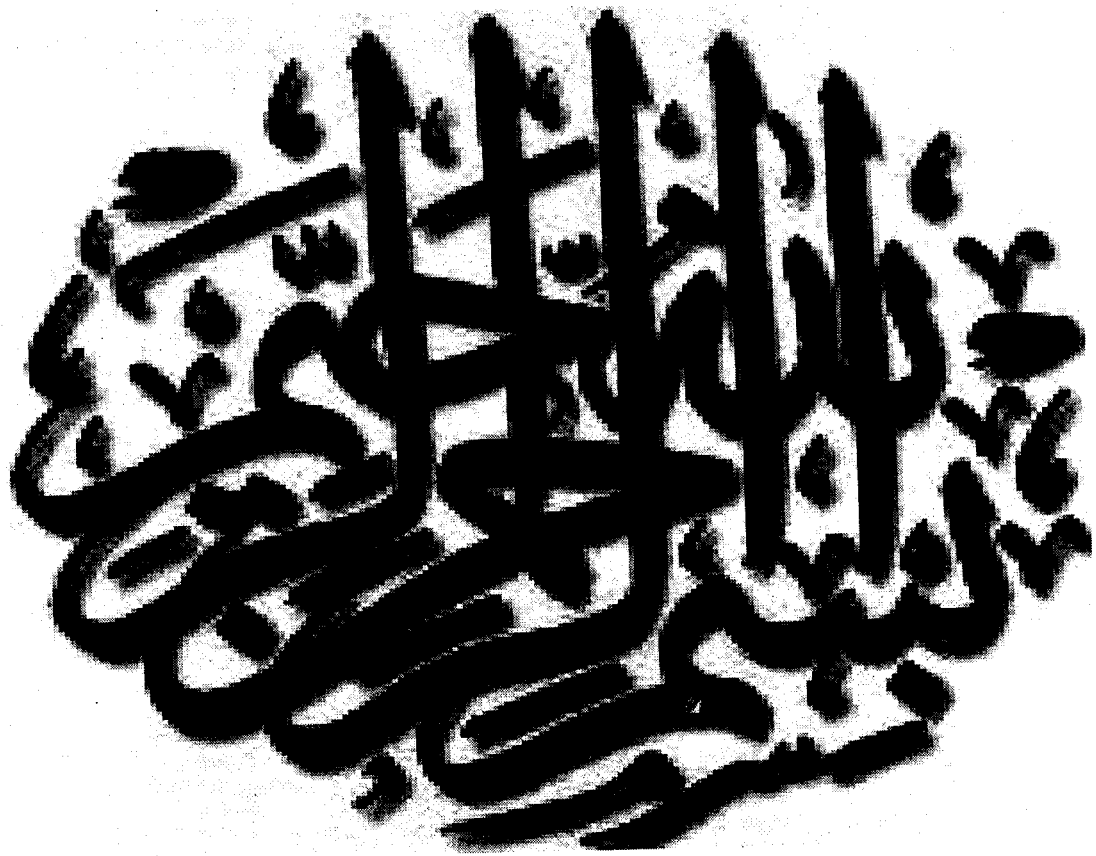
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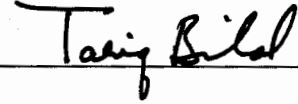
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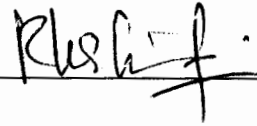
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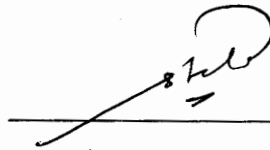


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Abstract

This research work attempts to explain the concept of religious rights of minorities in International Human Rights Law. International Human Rights law has taken so many steps for the protection of these rights in the form of different Conventions and Treaties and the Countries which are signed and ratified these Conventions and Treaties are obliged the same through their national legislation. Pakistan being an Islamic country and also party of the International Conventions and Treaties has taken certain steps for the protection of the religious rights of minorities. For prevention of the defilement or injuring the religious feelings of any religious community blasphemy laws are promulgated.

Religious rights of minorities are protected by the Constitution of the Islamic Republic of Pakistan and Statutes. For the prevention of abuse of the blasphemy law investigation will be conducted by the Suprintendant of Police under Section 156A of the Code of Criminal Procedure, 1898. Indian Constitution also protects the religious freedom of the minorities and Indian Penal Code provides the punishment for defilement of the religious places, personalities and sentiments. U.S.A Constitution provides freedom of religion, speech and the press, rights of assembly and petition to its citizens.

This research discusses the freedom of expression and limitation which are provided by the Constitution of Pakistan and Article 19 of the International Covenant on Civil and Political Rights. Right to freedom of expression is available under Article 19 of the Constitution of the Islamic Republic of Pakistan is subject to certain limits. On violation of the religious rights of minorities forums for litigation are available to the minorities from bottom to top level i.e.

District Courts, High Courts and Supreme Court. In the end suggestions and recommendations are also proposed.

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Tanveer Badar

Dedication

This work is dedicated to my parents whose constant support has been a perpetual source of comfort and inspiration during my academic, professional and social life.

List of Acronyms

AIR	All India Report
Cr.P.C	Code of Criminal Procedure 1898
FIA	Federal Investigation Agency
F.S.C	Federal Shariat Court
ICCPR	International Covenant on Civil and Political Rights 1966
I.P.C.	Indian Penal Code 1860
M.P.A	Member of Provincial Assembly
P.Cr.L.J.	Pakistan Criminal Law Journal
P.L.D.	Pakistan Law Digest
P.P.C.	Pakistan Penal Code 1860
NLR	National Law Report
S.C	Supreme Court
SCMR	Supreme Court Monthly Review
UDHR	Universal Declaration of Human Rights 1946
U.S.A.	United States of America

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Introduction

Religious minorities exist around the world and the protection of religious rights of these minorities in Pakistan is the basic theme of this research. International Human Rights Law has taken certain steps and guarantees these rights through different Conventions and Treaties. For instance Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1982).

The following central questions are to be addressed: who are religious minorities? What are their protections? How international law and Islam protects the religious rights of minorities. Is Pakistan as an Islamic and signatory of the international covenants successful for providing the religious freedom to the minorities?

The work is divided into three chapters. The first chapter discusses the definition of minority and the religious rights available under international law as well as in Islam. Pakistan as an Islamic country as well as the signatory of the international covenants guarantees the religious rights of minorities through its constitution and statutes because religious right is one of the fundamental rights of every human being no matter whether he belongs to majority or the minority religious community.

In the second chapter the research focuses on the religious freedoms which are given in the Constitution of Pakistan. On violation of these rights penal laws are provided in the codified form and comparison on regional level with India and on international level with U.S.A. on religious freedom provided by these two countries to the minorities.

The last chapter discussed the freedom of expression and limitations on the same under the Constitution of Pakistan and also deals with the forums available to the minorities for litigation on violation of their religious rights. In last portion of the thesis conclusion and suggestions are given.

CHAPTER 1

THE RELIGIOUS RIGHTS OF MINORITIES

Religious right is one of the fundamental right of every human being no matter whether he belongs to majority or the minority religious community. Islam is the religion which respects and protects religious rights of minorities. International Human Rights law has also gurantees these rights through different Conventions and Treaties. Pakistan is a party to most of these Conventions. For instance Universal Declaration of Human Rights(1948), International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1982)

1.1 Definition of the Minority

International Human Rights law has provided with universally accepted and binding definition of a minority, and efforts by the United Nations to define a minority have proved unsuccessful.¹ Two definitions have been proposed within the framework of Article 27 of the International Covenant on Civil and Political Rights (1966). These are as follows.

1-A group numerically inferior to the rest of the population of the state, in a non dominant position, whose member-being nationals of the state-posses ethnic, religious or linguistic characteristics differing from those of the population and show, if only

¹ See [http:// www.hrcr.org/safrica/equality/mandla_Dowelll ce.htm](http://www.hrcr.org/safrica/equality/mandla_Dowelll ce.htm) Definition of the minority (accessed October 15, 2008)

implicitly, a sense of solidarity , directed towards preserving their culture, traditions, religion or language.

2- A group of citizens of a state constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics with differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.²

The difficulty in arriving at an acceptable definition lies in the variety of situations exist. Some live together in well-defined areas, separated from the dominant part of the population, while others are scattered throughout the national community. Some minorities have a strong sense of collective identity on a well remembered or recorded history, others retain only a fragment notion of their common heritage. In certain cases, minorities enjoy or have known a considerable degree of autonomy.

“The smaller number of votes of a deliberative assembly: opposed to majority”.³

1.2 The Religious Rights of Minorities

The term “right” is a legally recognized and protected interest, a legal relationship between two juristic persons recognized by courts concerning their conduct. A legal right need not have been created by the state, but it needs to be such, that the law courts should

²See [http:// www.hrcr.org/safrica/equality/mandla_DowellLee.htm](http://www.hrcr.org/safrica/equality/mandla_DowellLee.htm) Definition of the minority (accessed October 15, 2008)

³ Blak’s Law Dictionary(1979) Fifth Edition, West Publishing Co. at p. 900

recognize it and should give it the support of their decisions, which could then be backed by the force of the state for its enforcement.⁴

Minorities are entitled to religious freedom as the majority are, particularly they have the right to profess and practice their religion freely.⁵ Minorities have the right to profess, practice, manifest or to adopt their own religion or belief and to establish their own religious institutions, organisations and associations, only those restrictions are imposed on the religious freedom which are necessary for maintaining the public order and good for the society.⁶ These rights include the freedom to:

- (a) Worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) receive or convey instructions in their own religion or belief;
- (c) change one's religion or belief;
- (d) establish training schools for the faithful;
- (e) teach a religion or belief in places suitable for these purposes;
- (f) publish and disseminate their own religious materials, in any language or format, including in the minority language;
- (g) train, appoint, elect or designate by succession appropriate religious leaders called for by their religion or belief;

⁴ Brohi, A.K. (1958) Fundamental Law of Pakistan Karachi, Din Muhammadi Press at p.301

⁵ Article 18 of the Universal Declaration of Human Rights (1948)

⁶ Mahmood, M. (2008) The Constitution of Islamic Republic of Pakistan 1973, 7th Edition Lahore. Markazi Kitab Khana at p.95

- (h) seek and receive financial and other contributions to finance their own religious activities;
- (i) establish, manage and maintain their own religious institutions;
- (j) observe days of rest and celebrate holidays and ceremonies in accordance with the precepts of their own religion or belief.⁷

These religious rights of minorities are established through International human Rights Law. These are included all those rights which are required for any religious community in any society.

1.3 Religious Rights of Minorities in Islam

Islam entitles its followers the right to freedom of conscience and belief.⁸ The Holy Quran has laid down the injunction: "*There should be no coercion in the matter of faith*".⁹ Islam not only gives the freedom of conscience and belief but also protects religious sentiments.¹⁰ Islam as a code of life recognizes the struggle for existence and survival. It has granted full religious and social liberty to the non-Muslims. Muslims have lived with the non-Muslim as friends and brothers and sisters. The only condition is that they must be loyal.¹¹

The non-Muslims subjects of an Islamic State, particularly those coming under the category of the people of the Book, are technically called *ahludh-dhimma* or *dhimmiis*, literally, meaning people under the guarantee of protection of a Muslim State. They enjoy

⁷ See http://usrif.gov/countries/global/comparative_constitutions/03082005/study/0305.pdf (accessed February 19, 2009)

⁸ Mawdudi, Abul A'la. Human Rights In Islam, Lahore Islamic publications Ltd, at p 29

⁹ Al-Quran 2:256

¹⁰ Mawdudi, Supra note 8 at p.30

perfect security of life and property and complete freedom in the exercise of their religious rites and ceremonies. They are equal with Muslims in the eye of law.¹² They had permission to retain their own religious Institutions, personal status, places of worship and religious trust.¹³ Islam, while recognizing the internal and indispensable unity of the universe and of humanity, does not lose sight of the external diversity of the phenomena of nature and the variety of manners and customs, ideas and beliefs, languages and colors characterizing different peoples.¹⁴

The Quran calls attention to this variety and regards it as a sign of the creative power of God. It says: *"And among His signs are the creation of the heavens and the earth and the variety of your colors. Verily in them are signs for those who know"*.¹⁵ *"Seest thou not that God sends down rain from the sky? And with it We produce fruits of various colors and intensely black. And also among men, beasts and cattle in like manner they are of various colors. Those truly fear God among His servants, who have knowledge"*.¹⁶ The Holy Quran has mentioned the division of the people in different groups, communities, difference of manners and customs, belief in the following Verses: *"O mankind, we created you from a male and a female, made you into nations and tribes that you may*

¹¹ Hilali, Dr. Sheikh Ghulam Maqsd. (1952) Islamic Attitude Towards Non-Muslims, Ganakpara Rajshahi Eastren Pakistan, at p.1

¹² Ibid at p.31

¹³ Choudhry, G .W. (1959) Constitutional Development in Pakistan, Karachi.Royal Book Company, at p.86

¹⁴ Hilali,Supra note 11 at p.1

¹⁵ Al-Quran 30: 22

¹⁶ Al-Quran 30: 27-28

*know one another”.*¹⁷ *“Each sect rejoices in what is with it”.*¹⁸ *“He it is who created you, but some of you are unbelievers and some of you are believers”.*¹⁹

It is evident from the above mentioned Quranic Verses that besides the religion of Islam other religions also exist and the people of other religions lived side by side with the Muslims. Religious and social differences arised due to the influence of historical, geographical and ethnological factors and traditions working in the minds of different people. People generally inherit their beliefs and practices from their parents and early training in life. Only few people think over this. Otherwise they follow the religion of their parents.²⁰

Prophet (P.B.U.H) is a messenger of Allah. He spreaded the message of Allah peacefully with patience and polite manners. He gave the message of brotherhood and unity after his arrival at Madinah. He granted a Charter to the people who embody the grand conception of forming a state of different communities on the foundation of universal brotherhood, mutual good will, sympathy and tolerance. The relevant portions of the charter are translated below:-

Those (Jews) who make common cause with the Muslims and fight on their side shall form one nation (with the Muslims)... these Jews who join us shall enjoy our help and sympathy and shall be protected from oppression and vexation. The Jews shall spend their money along with the Muslims as long as they fight the common enemy. The Jews of the *Banu Awf* shall constitute one nation with the Muslims; the Jews shall follow their own religion and the Muslims their own. The Jews of the *Banu Najjar*, *Banul Harith*,

¹⁷ Al-Quran 49 :13

¹⁸ Al- Quran 23 :53

¹⁹ Al-Quran 64 :2

²⁰ Hilali, Supra note 11 at p. 5

Banu Sa'ida, Banu Jusham, Banul Aws and Banu Tha'laba shall have the same privileges as the *Banu Awf*. The Jews and the Muslims shall help one another against those who fight against the parties to the charter and they must be sincere in their dealings with one another. The interior of *Yathrib (Madinah)* is inviolable for those who accept this charter and they must help one another against those who invade *Yathrib*.²¹

The Treaty with Najran

The Prophet (P.B.U.H) made a treaty with the Christians of *Najran* when they capitulated, and the terms of the treaty gave them the following, among other, privileges.

(The people of) *Najran* and their followers are granted the protection of Allah and the security of Muhammad (P.B.U.H) the messenger of Allah, in respect of their persons, religion, lands and possessions, including those of them who are absent and those who are present, their camels, messengers and images.²²

In this treaty Prophet (P.B.U.H) forgives the Christians and gives all those protection which are not only limited to the human beings but also to the animals.

As Professor Arnold pointed out: The theory of the Muslim faith enjoins toleration and freedom of religious life for all those followers of other faiths who pay tribute in return for protection and though the pages of Muhammadan history are stained with the blood of many cruel persecutions still, on the whole, unbelievers have enjoyed under Muhammadan rule a measure of toleration, the like of which is not to be found in Europe until quite modern times the very existence of so many Christian sects and communities in countries that have been for centuries under rule is an abiding testimony

²¹Hilali, Supra note 11 at p. 20

²² Ibid at p.21-22

to the toleration they have enjoyed and show that the persecutions that they have from time to time been called upon to endure at the hands of bigots and fanatics, have been excited by some special and local circumstances rather than inspired by a settled principle of intolerance".²³

Professor Arnold admires the era of Prophet (P.B.U.H) regarding the protections which are given to the different religious faiths and also make a comparison with modern eras like Europe.

Prophet (P.B.U.H) is a mirror of the teachings of the Quran. His behavior was not only good with the Muslims but also with the non- Muslims. Aisha (God be pleased with her) said that the Prophet (P.B.U.H) said, *Gabriel* constantly exhorted me to do good to the neighbour (be he a Muslim or an infidel (non-muslim), pious or impious, a friend or a foe, malevolent or benevolent). So much so that I thought he would make him my heir (i.e. sharer in my property along with other near relations, a portion being given to him).²⁴

The Holy Prophet (P.B.U.H) said that: The whole creation is the family of Allah. So the most beloved person to Allah is he who does the greatest good to his family.²⁵ Whoever falsely accuses a *Dhimmi* of immorality will be punished with the scourge of fire on the Day of Resurrection. Whoever does violence to a *Dhimmi* who has paid his *jazia* and evidence his submission, his enemy I am.²⁶ In this context some other incidents also mentioned here. Asma, a daughter of Abu Bakar said, my mother came to me in the time of truce with the *Quraysh* while she was an idolatress. So I said, "O Prophet of Allah, my

²³Arnold, T.M.(1913) The Preaching of Islam, London at p.420

²⁴Hilali, Supra note 11 at p.23

²⁵Ibid at p.23

mother has come to me and she is averse to Islam, shall I observe my relationship with her? He said yes, "observe your relationship with her".

Shayma, the daughter of Halima the foster mother of the Prophet (, was taken captive in the battle of Hunayn. She was a non-muslim and belonged to the enemy camp. When the Prophet (P.B.U.H) recognized her, he spread his wrapper for her to sit on, and according to her desire, she was sent to her own people with gifts from the Prophet (P.B.U.H).²⁷

During the caliphate of Hazarat Abu Bakar (R.A) Khalid b-al-Walid after the conquest of Province of Hira. He granted the following privileges. The churches and the other religious places has not been destroyed and they were permitted to ring the bells whenever they want, except at the times of muslim prayer, and to take out their crosses on the days of their festivals.²⁸

Dhimmis (non-muslims) are equal to the Muslims in the eye of the law. Hazarat Ali said "he who enjoys our protection, his blood is like our blood and his blood-money is like our blood money."²⁹

The all above mentioned examples shows the behavior and treatment with the non-muslims of the Holy Prophet (P.B.U.H). Even Caliph Hazarat Abu Bakr (R.A) and Hazarat Ali (R.A) gives all those protections which are required not only religiously but also socially and economically.

²⁶Hilali, Supra note 11 at p. 25

²⁷ Ibid at p.27

²⁸ Ibid at p.39

²⁹ Ibid at p.47

The concept of human rights in Islam is broader than the Constitutions of the world. The dignity of man is in conformity with the Quranic Verse which says: *we have honored the sons of Adam*.³⁰ No distinctions in dignity and fundamental rights between one man and another as race, sex, blood relations or wealth, in accordance with the saying of the Prophet of Islam. There is no advantage for an Arab over a non-Arab or for a white man over a black man excepting by piety.³¹

Islam recognizes the rights of the minority to ensure their welfare and safety: Muslim ruler's initiated apoll-tax (*jizyah*) on them. Caliph Umer (R.A) did not even allow praying inside a church. Jews were welcomed and flourished in Muslim Spain even while they were persecuted in the rest of Europe. They consider part of their history as the Golden Era.³² In Muslim countries, Christians live in prosperity, hold Government positions and attend the churches. Christian missionaries are allowed to establish and operate their schools and hospitals. However, the same religious tolerance is not always available to Muslim minorities as seen in the past during Spanish inquisition and the crusades, or as seen now in Israel and India. Muslim do recognize that sometimes the actions of a ruler does not reflect the teaching of his religion.³³

1.4 International Conventions, Treaties related to the Religious Rights of Minorities.

International human rights law refers to the body of International Law designed to promote & protect human rights at the international, regional and domestic levels. As a form of international law, international human rights law is primarily made up of treaties.

³⁰ Al- Quran 17 :70

³¹ Hilali, Supra note 11 at p.47

³² See http://www.islam-usa.com/25_ques.html-28k. Is Islam intolerant of other religious minorities (accessed February 16, 2009)

³³ Ibid

agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way. Other international human rights instruments while not legally binding contribute to the implementation, understanding and development of international human rights law and have been recognised as a source of political obligation.

Enforcement of International Human Rights Law can occur on either a Domestic, Regional or International Level. States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When Domestic Law fails to provide a remedy for human rights abuses parties may be able to resort to regional or international mechanisms for enforcing human rights.³⁴

Many steps have been taken by the United Nations in this regard. The first step is the Universal Declaration of Human Rights UDHR (1948). Article 18 of UDHR affirms the freedom of thought, conscience and religion and also conversion of religion, practice publically or privately, individually or collectively. Article 18 says in this regard: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching practice, worship and observance.³⁵

³⁴ See http://www.google.com/international_human_rights_law (accessed December 28, 2010)

³⁵ Article 18 of Universal Declaration of Human Rights (1948)

Article 18 of the International Covenant on Civil and Political Rights ICCPR (1966) affirms the freedom of thought, conscience and religion and also freedom of free choice for the adoption of any religion, freedom to practice either individually or collectively but with limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Article 18 states: (1) every one shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) no one shall be subject to coercion which would impair his freedom to have or to adapt a religion or belief of his choice. (3) freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.³⁶ Article 27 of this convention is also gives the freedom of religion of minorities.³⁷

The only difference between Universal Declaration of Human Rights 1946 and International Covenant on Civil and Political Rights 1966 that the ICCPR is impose the necessary restrictions which are important for public peace and fundamental freedoms of others but the UDHR has not imposed any such restriction.

Similarly, Article 1 of the Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981). Article 1 states: (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion

³⁶ Article 18 of the International Covenant on Civil and Political Rights (1966)

³⁷ Ibid

or belief in worship, observance, private and teaching. (2) no one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. (3) freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedom of others.³⁸

This convention affirms the freedom of religion of the individual of his own choice and no body will be coerced for conversion. Only those limitations are imposed which are necessary for public order and freedom of others.

As far as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) is concerned. The same has given the freedom of conscience, religion and also practice to the minorities. Minorities have freedom to participate in cultural, religious, social, economic and public life activities. Article 2 states: (1) persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. (2) persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.³⁹

After the second World War Europe has developed regional system of Human Rights protection. In this regard European Convention on Human Rights (1950) was promulgated. Article 9 provides a right to freedom of thought, conscience and religion.

³⁸ Article 1 of the Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981)

³⁹ Article 2 of the Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities (1992)

This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

Article 9 says in this regard (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance. (2) freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.⁴⁰

In the light of the above-mentioned developments the religious rights of minorities were incorporated in various Constitutions around the world. Pakistan a state established with the name of Islam incorporates the religious freedom in its Constitution. Article 20 of the Constitution of the Islamic republic of Pakistan states: (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.⁴¹

⁴⁰ Article 9 of the European Convention on Human Rights (1950)

⁴¹ Article 20 of the Constitution of the Islamic Republic of Pakistan, (1973)

Article 20 gives the freedom of conscience, religion, establish and maintain religious institutions and it should be noted here that all the restrictions imposed by this article on freedom to practice are the same as those imposed by the International Covenants such as International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1982)

1.5 Obligations of Pakistan as party to the International Covenant

As a signatory of the Universal Declaration of Human Rights(1948), International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1982) it is the obligation of Pakistan to make a legislation for this purpose.

In this regard Pakistan has taken so many steps for the protection of religious rights of minorities like freedom of religion to all its citizens through the grund norm i.e Constitution and there is no difference of majority and minority community.

Minorities are equally entitled to profess and practice religion freely and manage their religious institutions. Constitution also provides that all citizens are equal before law and entitled equal protection of law. Beside the Constitution other statutes are also provided the freedom.

Such as restriction is imposed only on such freedom where the public peace is disturbed. For the protection of defiling and injuring the religious feelings of any class or community blasphemy laws are promulgated. Section 295 to 295C of Pakistan Penal

Code specifically deals with the offences relating to the religion. These sections are not specifically for the the protection of the religious beliefs of the Muslims but also for every religious community. This Blasphemy law is general in nature not specific for the non- muslims. On violation of this law the person should be punished either he is a muslim or non-mulim.

Religious minorities have the right to exercise their religious belief freely and act accordingly even their marriages are conducted according to their personal laws as well as divorce and inheritance. Mulims have no concern with their personal laws. Minorities have a representation in the Provincial and National Assemblies. They have also specific quota in jobs in Provincial and Federal level.

1.6 Conclusion

Religious rights of minorities are the basic right which although recognized by every religion with the basic condition that the same right may protected by the State. In this regard Islam is the religion which protects and respect the religious rights of minorities and International Human Rights law has also taken so many steps for the protection of these rights in the form of different Conventions and Treaties and the Countries which are signed and ratified these Conventions and Treaties are obliged the same through their national legislation. Pakistan being an Islamic country and also party of the International Conventions and Treaties has taken certain steps for the protection of the religious rights of minorities. In short for prevention of the defilement or injuring the religious feelings of any religious community blasphemy laws are promulgated. This law is not against the minorities.

Chapter 2

Religious rights of minorities in Pakistan

In this chapter we shall analyze the Constitutional protections to the minorities on religious freedom in Pakistan. Blasphemy, procedural and substantive laws for the protection of religious rights. Constitutional protections to the minorities on religious freedom in India, U.S.A and blasphemy laws of India.

2.1 Constitutional protections to the minorities on religious freedom in Pakistan

The minorities as citizens of Pakistan have equal rights and protection. The preamble says adequate provision shall be made for the minorities freely to profess and practice their religion and culture.

The preamble embodies a guiding principle given by the Quid-i-Azam Muhammad Ali Jinnah. In one of his public meetings he said: "You may belong to any religion or caste or creed that has nothing to do with the business of the state. We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste, or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of the state".⁴²

The minorities are not less entitled to the safeguards granted by the Constitution such as equality of status and opportunity, equality before law, freedom of thought, expression,

⁴² Pakistan, Constituent Assembly Debates, Vol.I, No. 2., at pp.19-20

belief, faith, worship, association, economic and political justice.⁴³ Even beyond that general provision, the preamble makes special provisions for the minorities. It is mentioned in the Objective Resolution twice. Firstly, it cites as one of the objectives of the Constitution "making provision of the minorities freely to profess and practice their religion and develop their culture" and at the second place it requires that in the Constitution "adequate provision should be made to safeguard the legitimate interests of the minorities."⁴⁴

As far as the matter of Pakistani religious minorities is concerned. They are fully protected. If some instances of discrimination happened it is due to the procedure or negligence of someone otherwise it could not be tolerated. The right to freedom of religion is an essential right of the citizens of every state. The right of a human to express such religious views as appeal to his individual conscience, without dictation or interference by any person or power, civil or ecclesiastical, is as fundamental in a free Government as is the right to life and liberty.⁴⁵

Article 20 of the constitution of Pakistan 1973 gives the constitutional safeguard to every citizen no matter whether he/ she belongs to minority or majority group to profess .

⁴³ Ali.Shaheen Sardar. Javed Rehman . (2001) Indigenous People and Ethnic Minorities of Pakistan Constitutional and Legal Perspective, Surrey at pp.22-23 (accessed January 1st 2010) available from [http://books .google.com](http://books.google.com)

⁴⁴ Fazeel. Ahmer. (1997) The Constitution of Islamic Republic of Pakistan. Pakistan Law House Karachi at p 95

⁴⁵ Mahmood.M.(2008) The Constitution of Islamic Republic of Pakistan1973. Markazi Kitab Khana. Lahore. 7th Ed. at p.284

practice and propagate any religion and also establish, maintain and manage religious institutions.⁴⁶

This right embraces two concepts, freedom to believe and freedom to act. As for as the right of freedom to believe is concerned, it is an absolute right but freedom to act is subject to some restrictions imposed by law, public order and morality.⁴⁷

So long as religious beliefs are held, professed and practiced in private, no question of public disorder can arise, but when they are practiced and propagated in public, by speeches, processions and placards, and are accompanied by denunciation of other religions, they are bound to clash with the rights of others, and thus lead to breaches of the peace.⁴⁸ It is for consideration like these that the practice and propagation of religion is made subject to law. Religious freedom does not include conduct which violates the criminal law, offends public morals or interferes with the legitimate exercise of the public power for the protection of public safety and health.

In a case it was clearly held that protection under Article 20 does not extend to doing of acts by individuals or groups which had been declared a crime under law of the Pakistan.⁴⁹ Similarly it was held that Ulma procession was a right guranteed under Article 20 but it was still subject to law and the constraints of public order had to be kept

⁴⁶ Supra note 44 at p.284

⁴⁷ Ibid

⁴⁸ Ibid at p.285

⁴⁹ State Vs Sheikh Shoukat Ali Advocate (1976) PLD Lahore at p.355

in view.⁵⁰ Qadianis can profess that they believe in the unity of Allah and of Prophethood of Mirza Ghulam Ahmed but they cannot profess themselves as Muslims because they have been declared as non- Muslim by the law of the land.⁵¹

They enjoy full freedom under Article 20 of the 1973 Constitution like other religious minorities in the country. But they must refrain from any propagation which is against the law of the country. The right under Article 20 in Pakistan, as in other countries of the world, is not absolute but qualified.⁵²

Similarly article 21 gives the protection in relation to impositions of taxes for the propagation and maintenance of particular religion. In simple terms no person is to be taxed for the purpose of propagating and maintenance of any religion other than his own. The basic rationale of the taxation theory is that tax collected individually must be spent on the payees collectively. So the basic purpose of the taxation shall be frustrated if tax is collected from people of one religion and spent for propagation and maintenance of another religion. The basic purpose of this article is to avoid the unnecessary taxation.

Article 22 protects the majority rights as well as minority rights. In clause (1) the religious protection is given to those persons in educational institutions who are not belonged to that particular religion for whom religious instructions are taught other his own. Similarly in clause (2) there is no discrimination as regards to exemption or concession of taxes in relating to religious institutions whether they belonged to majority

⁵⁰ Syed Manzoor Hussain Bukhari Vs SP city Lahore (1990) MLD at p.1807

⁵¹ Khurshheed Ahmed Vs Government of Punjab(1992) PLD Lahore at p.1

⁵² In mujeeb ur Rehman Vs Federal Govt. of Pakistan PLD1985 FSC at p 8 the same principle was re-emphasized that the Constitution conferred the Fundamental Right

or minority and also no religious community or denomination shall be prevented from providing religious institution for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination and also no citizen of Pakistan shall be denied for admission in that institution which is receiving aid from public revenues only on the basis of race, caste, religion or place of birth. "Where the government issues a directive to a professional college to reserve some seats for students from particular region or belonging to a particular class, it was held that the circular did not make any discrimination on the basis of religion, caste, race or place of birth and was, therefore, not opposed to the Constitution.⁵³

It is clarified in clause (4) that the preceding clauses never preventing any public authority for making provision of the advancement of any socially or backward class of citizens. In regard to admission in public institutions the Vice Chancellor could not create classes so as to exclude some on the basis of race, religion, caste or creed. It was held that Article 22 of the Constitution did not confer a right on students to be admitted to an educational institution yet surely gave them a right to demand authorities concerned to determine their application in accordance with law, fairly reasonably and equitably.⁵⁴

Article 22 (4), Constitution of Pakistan 1973 empowers a public authority for making provisions for advancement of any socially backward class of citizens. Citizen's rights as a human being are not affected by reason of his descent, religion, social or official status.

upon all citizens of Pakistan to profess, practice and propagate ones religion but the right is clearly subject to law, public order and morality.

⁵³Syed Abdul Wadood Vs Pakistan (1957) PLD Karachi at p.740

⁵⁴Rehmat ullah Vs University of Punjab (1982) PL D Lahore at p. 411

economic condition or place of birth or residence. All citizens are equally subject to the general law of the land. Equal protection of law envisages that no person or class of persons shall be claimed the same protection of laws, which are enjoyed, by other persons or classes in same circumstances.⁵⁵

Article 25 gives the equal protection to all the citizens of Pakistan. It does not matter whether the person is a man or woman, Muslim or non-Muslim, educated or illiterate, rich or poor, old or young and belongs to minority or majority communities. Article 25 is general in nature. So according to the Article 25 all citizens are equal before law and entitled to equal protection of law.

Similarly, article 26, prohibits the discrimination on the basis of race, religion, caste, sex, residence or place of birth. Under this article no person should be restrained to access of public entertainment places or resort. The basic purpose of legislation is to make this article not to discriminate any person or access to public entertainment places or resort. It is a fundamental right of every citizen to access to information, education, entertainment etc but if any citizen stops from these places than it is the violation of his fundamental right and also violation of the Constitution. So this article not differentiate between the majority and minority communities or race, sex, religion, caste and also make a special provisions for the welfare of children and women.

Article 36 gives the constitutional safeguard to the legitimate rights and interests of minorities. Administration of social, economic and political justice is one of the

⁵⁵Abdul Baqi Vs Muhammad Akram (2003) PLD Supreme Court at p.163

objectives of the constitution. For the appointment of different Pakistan services, every province and region has given his due representation. Article 36 has made it obligatory to safeguard the legitimate rights and interests of minorities including their due representation in the Federal and Provincial services. Personal, fundamental and other rights of individuals had yield to national interest, collective rights and welfare of society.

⁵⁶ Article 36 is specifically for the protection of the legitimate rights and interests of minorities.

2.2 Blasphemy laws in Pakistan

The Pakistani blasphemy law is present in a codified form in the Pakistan Penal Code, 1860 in sections 295 to 295 C. Here we discuss the definition of blasphemy and its punishment in different religions.

Definition of blasphemy

Blasphemy originates from the Greek word blaptein, meaning to injure, and peme, meaning reputation.⁵⁷ Blasphemy is defined in the Webster's dictionary as "[p]ropane or contemptuous speech, writing or action concerning God or anything held as divine / any remark deliberately mocking or contemptuous of God."⁵⁸

Punishment of Blasphemy in Islam and other Revealed Religions

Islam recognizes and protects the freedom of belief. In an Islamic state every citizen is at liberty to hold any belief or religion and no body is allowed to compel him to renounce

⁵⁶ Ahmad Yar Chohan Vs Federal Public Service Commission (1998) MLD at p.1832

⁵⁷ Blasphemy definition (accessed February 12, 2006) available from www.newadvent.org/cathen/02595a.htm.

⁵⁸ Webster's New World College Dictionary, (Third edition, Simon and Schuster inc., 1997) .at p.147

his religion. The Constitution of Pakistan guarantees fundamental rights to all citizens including non-Muslims.

They have the right to perform their religious rights and practice their beliefs with the restriction that this right may not be used in a manner which may annoy the others. The main purpose of prescribing punishment for crimes is to deter criminals and refrain people from taking the law in their own hands. Every person is free to accept the Holy Prophet (P.B.U.H) as the messenger of Allah. Many verses of the Holy Quran and sayings and practices of the Holy Prophet (P.B.U.H) are clear about the seriousness of this heinous crime. The main theme of Sura Al- Hujrat is to educate the people about the etiquettes to be adopted in the presence of the Holy Prophet (P.B.U.H).

There is no injunction in the Holy Quran suggesting the death punishment for blasphemy. However there are many verses, which impliedly support the said punishment and provide a base to the said unanimous view of jurists suggesting capital punishment for blasphemy. There are many verses, which help us to evaluate how much respect the Holy Prophet (P.B.U.H) deserves in the eyes of God and how much is blasphemy a serious matter. In verse 63 of Sura Al- Noor the people have been enjoined to use proper terms of respect for the Holy Prophet (P.B.U.H) and that he may not be addressed in an ordinary manner in which they address one another.

Similarly, according to verses 1 and 2 of Sura Al-Hujrat even an attitude of slight disrespect about the Holy Prophet (P.B.U.H) by showing impatience or addressing him in a loud tone is enough to spoil the good deeds of that person. Again Verse No. 53 of Sura Al-Ahzab says that it is a very serious matter in the eyes of God to annoy the apostle of Allah. Allah says:-“is it right for

you that you should annoy God's apostle? Truly such a thing is God's sight an enormity."⁵⁹

"Those who annoy Allah and His Messenger Allah's curse is upon them in the world and in the hereafter and Allah has prepared for them a degrading torment".⁶⁰ In Sura Tuba and also in many other Verses of the Holy Quran a grievous penalty has been suggested for those who molest the apostle of Allah. "Among them are men who molest the Holy Prophet (P.B.U.H) and say "He is (all) ear".⁶¹

Sunnah of the Holy Prophet (P.B.U.H)

There are many sayings and practices of the Holy Prophet (P.B.U.H). The detail of these are as follows.

- (1) It has been narrated that after the conquest of Makkah, the Holy Prophet (P.B.U.H), after giving general pardon, ordered killing of Ibn Khatal and his she-slaves who used to compose defamatory poems about the Holy Prophet (P.B.U.H).⁶²
- (2) It has been narrated by Qazi Ayaz in Shifa that a person abused the Holy Prophet (P.B.U.H) said to Sahaba "who will kill this person." On this Khalid Ibn Walid said. "I will kill him." The Holy Prophet (P.B.U.H) ordered him and he killed him.⁶³

⁵⁹ Al-Quran 33: 53

⁶⁰ Al-Quran 33: 57

⁶¹ Al-Quran 9: 61

⁶² Iyad, Qadi. Al-Shifa, (1991) translated by Aisha Abderrahaman Bewely, Madinah press, Garnada, Spain at p. 284

⁶³ ibid

(3) It has been narrated that a person came to the Holy Prophet (P.B.U.H) and said, "Oh Prophet (P.B.U.H)! My father abused you and I couldn't bear it thus killed him." The Holy Prophet (P.B.U.H) confirmed his action."⁶⁴

(4) It has also been related that a woman who belonged to Bani Khatmah tribe used to abuse the Holy Prophet (P.B.U.H). The Holy Prophet (P.B.U.H) said to his companions, "who will take revenge from this abusive woman." A person of her tribe took the responsibility and killed her. He then came to the Holy Prophet (P.B.U.H) who said "in this tribe the two goats will not quarrel and the people will live in unity and integrity."⁶⁵

Punishment of Blasphemy in other Revealed Religion

In the Christian religion not only blasphemy of the Prophet but also of their disciples has been regarded to be an offence liable to the punishment of death as evident from chapter 17 of the Bible. Estina.⁶⁶

The Mosaic Law also decreed death by stoning as the penalty for the blasphemers. The said punishment remained in force in many kingdoms ruled by Christians. The punishment of death remained in force in England till it was abolished in 1677. The punishment was burning.

The last burning in England of blasphemy took place in 1612.⁶⁷ However, after the ouster of religion from state politics, the essential elements of the offence have been changed and the criterion for blasphemy is the disturbance of the peace: L.B curson

⁶⁴ Ibid at p. 285

⁶⁵ Ibid at p. 286

⁶⁶ Qureshi, Mohammad Ismail, (1994) *Namoose Rasool (P.B.U.H) Qanoon Touheene Risalat*, Nasharan -o- Tajiran Qutub Lahore at p. 466

⁶⁷ Criminal law cursor 3rj edition at p. 233

writes. "Today, however, an indictment will not lie unless the publication of the blasphemy expressed in terms which tend to disturbance of the peace."⁶⁸

Such kinds of observations have been given in many reported cases. In a recent case R Vs. Lemon, this was a motion to quash the indictment on the ground that blasphemy was no longer an offence, the judge said inter alia. "The offence of blasphemous libel today occurs when there is published anything concerning God, Christ or the religion in terms so scurrilous, abusive or offensive as to outrage the feelings of any member of or sympathizer with the Christian religion and would tend to lead to a breach of the peace."⁶⁹

A Brief History of Blasphemy Law in Pakistan.

Originally the Indian Penal Code 1860 contained section 295 suggesting punishment of imprisonment for a maximum term of two years for injuring or defiling a place of worship with intent to insult the religion of any class of persons. Section 298 was also there in the Code for punishing the person with an imprisonment up to one year with or without fine who with the deliberate intention of injuring the religious feeling of any person utters any words etc.

However no proper provision was available in the Code for punishing the blasphemers in spite of the fact that blasphemy of the Christian religion was not only a common law offence but a statutory offence in England. Cases could be lodged in this Sub-Continent against the blasphemers under section 153 A, which was added to the Code in 1898 basically for punishing those who promote enmity between different groups so that law

⁶⁸ Ibid at p.234

⁶⁹ The Satine Verses Case Revisited, A. A.Oba, journal of law and Society, January 2001 at p.7

and order situation may not be created. Later on in 1927 section 295 A was added by the criminal law amendment Act XXV of 1927.

After independence the British India Penal Code was adopted as the law of the land by virtue of section 18 of the Indian Independence Act, 1947 with necessary adaptations.

In 1980 through the 2nd amendment Ordinance section 298 A was included in the Code for punishing the persons who defile the sacred names of any wife or members of the family of the Holy Prophet (P.B.U.H) or any of the righteous caliphs or companions of the Holy Prophet (P.B.U.H). Similarly in 1982 through the Pakistan Penal Code (amendment) Ordinance I of 1982 section 295 B was added to the Pakistan Penal Code suggesting life term imprisonment for those who defile the Holy Quran. However it is very strange that no proper law was made available for punishing those persons who defile the most Holy personality of Islam i.e. the Holy Prophet (P.B.U.H). Blasphemy law or section 295 C was inserted in the Code in 1986 through the Criminal Law "Amendment" Act III of 1986. But in October in 1990 Federal Shariat Court has observed in its judgment that the punishment of the sacrilege of the Holy name of Muhammad (P.B.U.H) is death penalty and nothing else and gave a deadline of April, 30, 1991 beyond which date the words "Or Imprisonment for Life" would cease to have effect if the law is not amended by the Government accordingly. As no such action was taken by the Government the sentence of life imprisonment became unaffected and death became the only mandatory punishment.⁷⁰ The Pakistani blasphemy law is present in a codified form in the Pakistan Penal Code, 1860 in sections 295 to 295 C.

⁷⁰ Muhammad Ismail Qureshi Vs Pakistan.(1991) Federal Shariat Court at p.10

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Sections 295 and 295-A are general in nature. On violation of these two Sections the whole society is aggrieved not only the particular group of people without any distinction whether it belongs to Muslim community or any other religious community. Defiling place of worship or insulting religion or religious belief is an offence and punishable under the above mentioned Sections. But intention is necessary for commission of an offence under these two Sections.

As for as the Section 295-B is concerned it is specific and relating to the defiling of Holy Quran. Stuffing of objectionable pictures in binding of Holy Quran. Petitioner contended that manner in which such objectionable pictures were concealed in binding of Holy Quran amounted to defiling of Holy Quran which constituted an offence under section 295-B, of Pakistan Penal Code. Investigation report in that respect submitted by relevant authority showed that nobody in Pakistan could be blamed for such reprehensible act of stuffing of objectionable pictures in binding of outer cover of Holy Quran which was indisputably done in foreign country and that prompt steps were taken to remedy the situation and publishing company in Pakistan had been cleared by F.I.A. from any possible blame. High Court dismissed petition with observation that if any copy of Holy Quran is found in any area of police station with kind of such stuffing . a report could be lodged at police station by any person which would be strictly dealt with according to law. When at any police station report was not lodged then as provided under law aggrieved person could file a direct complaint in court.⁷¹

⁷¹ M.M.K.A. Zai Vs Director General F.I.A PLD (1988) Karachi, at p.305

Another case which is relating to the defiling of Holy Quran is that accused charged for throwing on the ground again and again Nimaz Mutrajjam and trampling the same. Accused an illiterate person taking plea that some unknown person had been given him cigarette filled in with charas which he smoked by him and became intoxicated and senseless and somebody put Nimaz Mutrajjam in his pocket which later on turned to an ugly scene and resulted into the occurrence. Accused thus had committed no offence in circumstances and was acquitted.⁷²

Defilement, disrespect if willful shall be covered by the definition of "defilement" constituting an offence under section 295-B, P.P.C.⁷³ Section 295 B is specifically providing the punishment imprisonment of life for defiling the Holy Quran.

Section 295-C is relating to the derogatory remarks in respect of the Holy Prophet (P.B.U.H) and punishment for this is death or life imprisonment and shall also be liable to fine. This section protects the honor of the Holy Prophet (P.B.U.H). Hadd punishment of death sentence for contempt of Holy Prophet (P.B.U.H) can be imposed only when contempt has intention, purpose, design or at least foresight.⁷⁴

By sending "Darood" on Mirza Ghulam Ahmed the Qadianis treat him equal to Hazarat Muhammad (P.B.U.H) and thereby relegate the Holy Prophet (P.B.U.H) to the position of Mirza Ghulam Ahamed. Such act of the Qadianis, prima facie, amounts to defiling the

⁷² Ubaidullah Vs The State (1991) SCMR at p. 1734

⁷³ Ijaz Hussain Alias Tahir Pir Vs The State (1994) MLD at p.15

⁷⁴ National Law Report (1991) Shariat Decision at p. 24

sacred and exalted name of the Holy Prophet (P.B.U.H) which is punishable under section 295-C, P.P.C.⁷⁵

Defiling sacred name of the Holy Prophet (P.B.U.H), whether it takes place ex facie by written or spoken words or act of person accused of offence or whether defiling is to be seen keeping in view totality of milieu, including necessarily the faith, intention, object and background of person using written or spoken words.⁷⁶ Section 295 C is providing the death and life imprisonment punishment for blasphemy.

2.3 Procedural and substantive laws of Pakistan

Blasphemy is an offence under section 295-C of Pakistan Penal Code 1860 and it is a cognizable offence according to the column 3 of Schedule II of Code of Criminal Procedure and a police officer can arrest any person without the permission of the concerned Magistrate. The offence which is committed under section 295-C of Pakistan Penal Code, the information for this can be given if orally then to the officer in charge of a police station, shall be reduced in writing by him or under his direction, and be read over to the informant and the person who gives the information which is reduced writing shall be signed by him under section 154 of the Code of Criminal Procedure 1898. As far as investigation of offence under section 295-C is concerned a new section i.e. section 156-A has been inserted in the Code of Criminal Procedure 1898 vide the Criminal Law (Amendment) Act, 2004, whereby investigation of offence against any person alleged to have been committed by him under section 295-C of Pakistan Penal Code shall be made by a police officer not below the rank of superintendent of police.

⁷⁵ Pakistan Criminal Law Journal, (1992) at p. 2346

⁷⁶ National Law Report (1993) Shariat Decision at p. 147.

Religious minorities in Pakistan claimed that blasphemy law is only used against them which is not true. In this regard the daily newspaper "Dawn" of 18th July 2002 had published the report. According to this report 52 such cases were registered in 2000 and strangely 43 cases had been registered against the Muslims while 09 cases were registered against the non Muslims, which shows that blasphemy law is not specifically for the non- Muslims but also applicable on the whole society.

Whoever violates the law should be punished accordingly without any distinction the accused is a Muslim or non- Muslim.

2.4 comparative analysis with India and U.S.A.

I have make comparison of Pakistan with India on regional level on religious freedom of minorities. On international level I have make comparison with U.S.A. on religious freedom.

2.4.1 Constituional Protections to the Minorities on Religious Freedom in India

Freedom of religion in contemporary India is a fundamental right guaranteed by the country's Constitution. Every citizen of India has a right to practice and promote their religion peacefully.⁷⁷ India's Constitution preamble protects the fundamental right of freedom of religion in these words "liberty of thought, expression, belief, faith and worship".

It is the duty of state to protect its citizen's fundamental rights. Freedom of religion is one of those fundamental rights. India's Constitution provides to its citizen's freedom to

profess, practice and propagate religion. Article 25 guarantees the freedom of religion not only to the citizens of India but also it extends to every person., the freedom of conscience and the right freely to profess, practice and propagate religion but the right is subject to public order, health and morality. Further no limitation is imposed on the exercising of powers of the state like to put restrictions on economic, financial, political or other secular activity which may be associated with the religious practice. The state is also to free for making the law relating to social welfare and reform of the society.⁷⁸ To profess a religion means the right to declare freely and openly one's faith.⁷⁹ Freedom of religion enshrined in article 25 is not guaranteed only in respect of one religion but also covers all religions. Religious freedom is subject to public order, health and morality⁸⁰. In one of the case in which Supreme Court has decided that section 295A of Indian Penal Code is not inconsistent with articles 25 and 26 as it imposes restrictions in the interest of public order that is, making punishable deliberate and malicious intention of outraging the religious feelings of any class of citizens of India.⁸¹

In article 25 clause (2) (a) freedom of religion of practice is subject to public order, health , morality, but there is no such protection to those activities which are economic, commercial or political in their character, though they are associated with religious practice. In clause (2) (b) the right of religious freedom is subject to the power of state to make laws for social welfare and social reform. It has been held by the Bombay High

⁷⁷See <http://www.google.com> (accessed July 21, 2009)

⁷⁸ Singh,D.K (1982) Constitutions of India, Eastern Book Company Lucknow, 7th Edition at p.144

⁷⁹ Punjab Rao v.D.P.Meshram, (1965) All Indian Report Supreme Court at p.1179

⁸⁰ Saharay,H.K. (2002) The Constitution of India, Eastern Law House New Delhi,3rd Edition at p.144

Court that an act to prevent bigamous marriages was not violative of religious freedom since it fell under clause (2) (b) of article 25.⁸²

Article 25 not only guaranteed the religious right of particular community but also for all the communities. Similarly, article 26, gives the freedom to manage religious affairs to every denomination and also religious sections but subject to public order, morality and health. This article includes the religious freedom like establish and maintain institutions for religious and charitable purposes and for this purpose to own and acquire the immovable property and administer such property according to the law.

The word "denomination" means as given by Webster is "a collection of individuals, classed together under the same name: specially a religious sect or body having a common faith and organization and designated by a distinctive name". In India there are several religions like Hinduism, Islam, Christianity and Zoroastrianism. The members who belonged to these religions would be a denomination. The same expression is also used for the sects and sub-sects⁸³. Clause (b) of article 26 confers on a religious denomination or a section of it the right to manage its own affairs in "matters of religion". The expression "matters of religion" is not limited in matters of doctrines or belief: it extends also to acts done in pursuance of religion and therefore contains a guarantee for rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion.⁸⁴ For religious and charitable purposes religious

⁸¹ Ramji Lal Modi v. State of U.P. (1957) All India Report Supreme Court at p. 620

⁸² State of Bombay v. Narsu Appa Mali. (1952) All India Report Bombay at p. 84

⁸³ Singh, D.K.(1982) Constitutions of India, Eastern Book Company Lucknow, 7th Edition at p.148

⁸⁴ Durgah committee, Ajmer v. Syed Hussain Ali. All India Report 1961 Supreme Court at p.1402, Venkatoraman Devaru v. State of Mysore, 1958 SCR at p. 895

denomination and sections own and acquire the property and administer it according to the law.

Article 27 prohibits the levying of a tax which is used for the promotion or maintenance of any particular religion or religious denomination. In this regard Supreme Court said:

What is forbidden by article 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The reason underlying this provision is obvious. Ours being a secular state and there being freedom of religion guaranteed by the constitution, both to individuals and to groups, it is against the policy of the constitution to pay, out of public funds any money for the promotion or maintenance of any particular religion or religious denomination⁸⁵.

Article 27 protects from the undue tax.

Article 28 makes a difference between educational institutions wholly maintained out of state funds and those recognized by the state but receiving aid out of state funds. Institutions which are maintained out of state funds clause (1) prohibits the giving of instruction. But those institutions which are recognized by the state but receiving aid out of state funds there is no prohibition from giving religious instruction or conducting religious worship.

In explaining the reasons for prohibiting religious instruction in educational institutions wholly maintained by the State, Dr. Ambedkar, Chairman of the Drafting Committee, said:

Now, I take the liberty of saying that the Draft as it stands, strikes the mean which I hope will be acceptable to the House. There are three reasons in my judgment which militate against the acceptance of the view . . . namely, that there ought to be no ban on religious instruction.

⁸⁵Commr. H. R.E. v. L.T. Swamiar (1954) Supreme Court at p.1005

The first reason is this: We have accepted the proposition which is embodied in Article 21 (i.e. 27), that public funds raised by taxes shall not be utilized for the benefit of any particular community. For instance, if we permit any particular religious instruction, say, if a school established by a district or local board gives religious instruction, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provision contained in Article 21 (i.e. 27). The district board would be making a levy on every person residing within the area of that district board. It would have a general tax and if religious instruction given in the district or local board school was confined to the children of the majority community, it would be an abuse of Article 21 (i.e. 27), because the Muslim community children or the children of any other community who do not agree to attend these religious instructions given in the schools would nonetheless be compelled by the action of the district or local board to contribute to the district or local board funds.⁸⁶

Tax which is collected from a particular religious community cannot be used for propagation of any other religion.

In⁸⁷ Section 4 of the Guru Nanak University Act, which enjoined the State to make provision for the study and research on the life and teachings of Guru Nanak, was questioned on the ground that as the University was maintained wholly out of State funds, Section 4 of the Act offended Article 28(1) and was not saved by clause (2) thereof.

However, Jaganmohan Reddy, J. did not accept this argument as what Section 4 enjoined the University was to encourage an academic study of the life and teachings of Guru Nanak, which need not necessarily amount to religious instruction or promotion of any particular religion. Similarly article 29 gives the protection to the minorities to preserve

⁸⁶Singh, D.K.(1982) Constitutions of India, Eastern Book Company Lucknow, 7th Edition at pp.154-155

⁸⁷ D.A.V. College, Jullunder v. State of Punjab (1971) 2 Supreme Court at p. 269

their language, script or culture and in clause (2) the prohibition of discrimination on the basis of religion, caste, race, language for admission in those institutions which are governed out of state funds.

Article 30 gives the freedom to the minorities for establishment of their educational institutions and for this they acquire property. In this regard no discrimination in granting aid has to be made on the ground that it is belonged to the minority. A plea was made on behalf of the majority community that the giving of special protection to minorities resulted in discrimination against the majority. This matter was not finally decided as the State promised not to enforce the impugned law against the majority in the event of its being declared unconstitutional.⁸⁸ However, in the Ahmedabad St. Xavier's College society case, Chief Justice Ray observed that the whole object of conferring the right on minorities under article 30 is to ensure that there will equality between the majority and minority. If the minorities do not have such special protection, they will be denied equality.

2.4.2 Blasphemy laws in India

Indian Penal Code sections 295 to 298 are the relevant sections of the blasphemy.

It is the duty of state to protect the religious freedom of its citizens. In this regard state has promulgated the different laws. So India is one of those states who protect the religious freedom through its Constitution and further for outraging the religious feelings of any community penal clauses are provided in the Indian Penal Code. Sections 295 to 298 punish those persons who violate the law. The basic purpose of section 295 is to punish those persons who intentionally wound the feelings of others by injuring or

⁸⁸ State of Kerala v. Mother Provincial (1970) 2 Supreme Court at p. 417

defiling a place of worship. Similarly section 295A is intended to respect the religious beliefs of persons of different religious persuasions or creeds. In this regard courts have also give due respect to the religious feelings and religious emotions of different classes of persons⁸⁹. The nature of the offence which is committed under this section is serious rather than section 298. Outraging is a stronger word than 'wounding' and the intention to outrage is malicious as well as deliberate and is directed to a class of persons and merely to individual⁹⁰.

Violation of freedom of speech beyond the limits which are prescribed by the Constitution creates the public disorder. This section is not inconsistent with the right guaranteed by article 25 (1) of the constitution to propagate religion as the article has been expressly made subject to public order and this section has clearly been enacted in the interest of public order⁹¹.

The spoken words as well as written with deliberate and malicious intention would lead to insulting the particular religion, but where the deliberate intention is missing than it will not be constituted an offence. The High Court of Calcutta in Chandanmal case observed that section 295, I.P.C does not punish every act of insult to religion. It punishes only motivated acts of insult, etc. which are deliberate and malicious.

This section is intended to protect the religious worship that religious worship is collectively not individually. This section gives the protection from molestation to all the religions. If anyone violates this section and disturb the religious worship will be punished one year imprisonment as well as fine. A religious procession can be regarded

⁸⁹ All India Report 1960 All at p. 715

⁹⁰ V.R. Manohar and W.W Chitale, The A.I.R. Manual, The All India Reporter LTD Nagpur, 4th edition 1979 A1939 p.306

⁹¹ All India Report 1957 Supreme Court at p. 620

as an assembly lawfully engaged in the performance of religious worship and voluntarily causing disturbance to religious procession will be an offence under this section.⁹²

According to section 297 if any person intentionally commits trespass in any place of worship or on any place of sepulture or causing disturbance in a funeral ceremonies. He will be punished one year imprisonment of either description with fine. Where the accused entered upon a burial ground and plough up the graves it was held that they had committed trespass within the meaning of this section, though in fact they entered upon the property with the knowledge and permission of the owner and further with his wish that the graveyard should be ploughed up and turned into agricultural land.⁹³ Similarly section 298 punishes uttering of words, etc., with the deliberate intention of wounding the religious feelings of others. The essence of the offence under the section consists in deliberate intention of wounding the religious feelings of others and mere knowledge of the likelihood that the religious feelings of others may be wounded is not sufficient to bring the act of the accused within the mischief of this section.⁹⁴

2.4.3 Constitutional protections to the Religious Rights of Minorities in U.S.A

The U.S. Constitution in its preamble declares that:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for common defence, promote general welfare, and secure the

⁹² Indian Law Report 1890 All at p. 495

⁹³ Indian Law Report 1896 All at p. 395

⁹⁴ All India Report 1963 Orissa 23 (24) , 1963 (1) CriLJ at p.212

Blessings of Liberty to ourselves and our prosperity, do ordain and establish this constitution for the United States of America.

In U.S. hundred kinds of sects and creeds are living. For peacefully living of all the sects and creeds is depending upon the harmony and tolerance. For this purpose U.S.A. 14th amendment in its constitution that is known "Bill of Rights" and the 1st amendment is relating to the freedom of religion, speech and press, right of assembly and petition. Amendment 1 (1791) states:

Freedom of religion, speech and the press, rights of assembly and petition:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right to the people peaceably to assemble, and to petition the Government for the redress of grievances.

This Article of the U.S.A Constitution provides freedom to profess and practice religion, freedom of speech, press and peaceful assembly. For the protection of the public interest some restrictions are imposed on the religious freedom but it should be remembered that the restrictions should be reasonable and justified. If the state imposes the restriction for a public health. It must, however, prove the indispensability of such measures to the health of the government. In 1950, in the case of State ex rel. Holcomb VS. Armstrong⁹⁵ the Washington State Supreme Court upheld a TB chest inspection program in spite of vehement protests by a member of the Christians Science Church

⁹⁵ Pervaiz, Supera note 96

that such submission would be contrary to the doctrine of the church and to her personal religious convictions. The court weighed the grave nature of the disease and noted that it endangered life itself. Its discovery through chest X- rays was the only known means of preventing its spread. It was this clear and present danger of a contagious disease to the health of society that induced the court to disregard beliefs of the objecting Christian Science Church.

Reasonable restrictions may be placed on religious practices and justified on the ground that, in the absence of such restrictions, the social order would be disrupted. Acceptance of absolute rights to practice and preach all religious beliefs could, in some cases, threaten established moral values. This is best illustrated by the Mormon's belief in plural marriages and the reaction to it by the U.S. Supreme Court in *Reynolds VS. United States*⁹⁶.

The first amendment, as interpreted in this case, distinguishes between the freedom to believe and the freedom to act. Whereas the freedom to believe cannot be restricted, the freedom to act may reasonably be restricted if it injures the moral susceptibility of the society or if it tends to subvert the social order. The court explained:

Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could

⁹⁶ Pervaiz, Supera note 96 at p. 162

not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pyre of her dead husband would it be beyond the power of the civil government to prevent her carrying her belief into practice.

The Court thus upheld the polygamy conviction of a member of the Mormon faith despite the fact that such conduct was a part of his religious beliefs.

In Davis VS. Beason the Supreme Court held⁹⁷ Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States, and they are crimes by the laws of Idaho. They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade women and to debase man. Few crimes are more pernicious to the best interest of society and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise, and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment, as aiding and abetting crime are in all other cases.

Similarly, in Prince VS. Massachusetts⁹⁸ the court upheld a statute making it a crime for girls under eighteen years of age to sell any newspaper, periodicals or merchandise in public places despite the fact that, in that case, the Jehovah's Witnesses custodian of a nine

⁹⁷ Ibid

⁹⁸ Pervaiz, Supera note 96 at p. 163

year old girl believed that it was her religious duty to engage in "preaching work" by selling religious publications.

In case of *Everson VS. Board of Education*⁹⁹ the question involved here was the validity of a new Jersey statute which authorized reimbursement of the cost of the transportation of children to parochial schools. The beneficiaries of this statute were, in this case, mostly Catholic parents. The plaintiff a tax -- payer, challenged this statute on public- tax-for-private- purpose argument and contended that it was thus violative of the due process of the Fourteenth Amendment and that it was also against the establishment prohibition of the first amendment.

In *McCullum VS. Board of Education*¹⁰⁰ case, a local Board of Education in Illinois agreed to give religious instruction in the school under a release time arrangement whereby pupils, whose parents signed request cards were permitted to attend religious instruction classes conducted during regular school hours in the school building by outside teachers furnished by a religious council representing the various faiths, subject to the approval or supervision of the superintendent of schools. Attendance reports were kept and reported to the school authorities in the same way as for other classes; and pupils not attending the religious instruction classes were required to continue their regular secular studies. A resident and tax-payer of the school district challenged the program as utilizing state's tax-supported public school system in aid of religious instruction thereby violating the First and the Fourteenth Amendments. The question thus involved was as to the constitutionality of use of public property, that is a school building, for religious purposes. It is, however, noted that there was no compulsion

⁹⁹ Pervaiz, Supra note 96 at p. 164

¹⁰⁰ Ibid at p. 165

involved and only willing children participated in the religious instruction. Non-willing children continued with their regular studies.

Another case *Zorach VS. Clauson*¹⁰¹ the New York City program involved in this case permitted its public schools to release students during the school day so that they could leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercise. A student was only released on the written request of his parents. Those not released stayed in the classrooms. The churches made weekly reports to the schools, sending a list of the children who had been released from public school but who had not reported for religious instruction. This "released time" program involved neither religious instruction in public school classrooms nor the expenditure of public funds. All costs were paid by the religious organizations.

2.5 Conclusion

Religious rights of minorities are protected by the Constitution of the Islamic Republic of Pakistan and Statutes as well and these Blasphemy laws are equally applicable on the Muslims and non-Muslims and violation on the same law punishment awarded accordingly. For the prevention of abuse of the blasphemy law investigation will be conducted by the Superintendent of Police under Section 156A of the Code of Criminal Procedure, 1898 and Indian Constitution also protects the religious freedom of the minorities and Indian Penal Code provides the punishment for defilement of the religious places, personalities and sentiments. U.S.A Constitution has also provides freedom of religion, speech and the press, rights of assembly and petition to its citizens.

¹⁰¹ Pervaiz, Supera note 96 at p.165

Chapter 3

Freedom of Expression and Forums Available to the Minorities for Litigation in Pakistan.

Freedom of expression is very important for every human being but should be within limits which are prescribed by law. For the violation of this particular right and the religious rights of minorities could knock the door of the courts.

3.1 Right to freedom of expression and limitation.

The liberty of an individual is based on the principle, that, a citizen may say or do what he pleases provided he does not transgress the law or infringe the legal rights of others, it means "freedom, exemption from extraneous control except such as are justly imposed by law which includes and comprehends all personal rights and their enjoyment."¹⁰²

Article 19 of the Constitution of Pakistan 1973 guaranteed the right of freedom of expression and speech. Freedom of expression is an essential right. But to some extent some restrictions are imposed for the welfare of the people and integrity and solidarity of the state. Freedom of expression is a restricted right which means that the particular right does not use for the infringement of the legal rights of others.

¹⁰² Black's Law Dictionary (1979) Fifth Edition West Publishing Co. at p.827

Article 19- Freedom of Speech and Expression. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, commission on incitement to an offence.¹⁰³

Freedom of speech and expression is an essential right. Article 19 not only guarantees the freedom of speech and expression but also freedom of press. Freedom of press is very important right for democratic institutions. Where the institutions are strong, democratic and the press is free, those countries are very progressive and developed.

These rights are subject to certain reasonable restrictions imposed by law in the interest of Islam or the integrity, security or defence of Pakistan. But the expression "reasonable restriction" is not defined in the Constitution of Pakistan, however, it depends upon a variety of circumstances, including the interest and urgency of the action proposed and the nature of safeguard, to prevent possibilities of abuse of power, however, any action which is arbitrary or excessive will of course be outside the bonds of reasons.¹⁰⁴

So it means that freedom of expression is freely granted but at the same time care should be taken that this freedom should not be abused, one of the case in which it is decided that, the concept of freedom of expression would imply that every citizen is free to say or

¹⁰³ Article 19 of the Constitution of Islamic Republic of Pakistan 1973

¹⁰⁴ Awan, Mehboob Prevez.(2003) Civil liberties, Human Rights Constitutional Protections, Federal Law House Rawalpindi, at p.83

publish what he wants, provided he does not trample upon the rights of others and this freedom is not to become a mockery and delusory.¹⁰⁵ Similarly the freedom of expression is not meant to give freedom to damage honor or prestige of an individual or of the country or nation.¹⁰⁶

In another case it is held that, a speech in which it is alleged that a particular sect is not a sect of Islam is covered by the Constitutional guarantee of freedom of speech.¹⁰⁷ Maintenance of public order is of vital importance in any organized society, because, fundamental rights have no real meaning if the state itself is in danger and also the liberties of the subjects. It is for these reasons, that, the equilibrium has to be maintained.¹⁰⁸

As the right of the freedom of press is also guaranteed by this article, thereof, all organs of the state are supposed to act in a manner in conducive to promote the object of Constitution.¹⁰⁹ The freedom of the journalism and journalists is part of the freedom of speech, but apart from statute law, their privileges are not higher than granted by law.¹¹⁰ Section 2 of the West Pakistan Use of Loudspeakers (Prohibition) Ordinance, prohibiting the use of loudspeaker except for Azan has been held to be unreasonable restriction on

¹⁰⁵ Muzaffar Qadir Vs District Magistrate Lahore, (1975) PLD Lahore at p. 1198

¹⁰⁶ Agha Abdul Karim Shorish Kasihmiri Vs Province of West Pakistan, (1988) PLD Karachi at p. 414

¹⁰⁷ Agha Abdul Karim Shorish Kashmiri Vs Province of West Pakistan (1969) PLD Lahore at p. 289

¹⁰⁸ Nawabzada Nasrullah Khan Vs The District Magistrate, Lahore (1965) PLD Lahore at p. 644

¹⁰⁹ Muhammad Rafiq Meer Vs Government of the Punjab (1989) PLD Lahore at p. 13

¹¹⁰ PLD 1969 Lahore at p. 293

the freedom of speech.¹¹¹ But reasonable restriction imposed by law of contempt is neither unreasonable nor unconstitutional.¹¹² However under the Constitution press is not free to that extent to publish anything it desired. But, its freedom is subject to some reasonable restrictions imposed under law; press must take due care and cautions before publishing any material by verifying its correctness from the concerned authorities.¹¹³

Freedom of speech and liberty is not an absolute right but also having some restrictions which means freedom of speech and press is not absolute at all times and in all circumstances, and it does not mean that one can talk or distribute where, when and how one chooses".¹¹⁴

However there can be no test of reasonableness of the restrictions which are imposed on the freedom of expression and speech and it is decided by the court whether such restriction in a circumstances of the case should or should not be held to be reasonable.¹¹⁵

Public order means public safety and those speeches which effects the public safety will not receive any constitutional protection for the maintenance of public safety and public order restrictions are imposed on freedom of speech¹¹⁶ and the same principle will apply

¹¹¹ Khawaja Muhammad Safdar, M.P.A. Vs Province of West Pakistan (1964) PLD Lahore at p. 722

¹¹² Hakam Qureshi Vs The Judges of the Lahore High Court (1976) PLD Supreme Court at p. 716

¹¹³ Sheikh Muhammad Rashid Vs Majid Nizami (2002) PLD Supreme Court at p. 515

¹¹⁴ Nawabzada Nasurallah Khan Vs The District Magistrate, Lahore and the Government of West Pakistan (1965) PLD Lahore at p. 642

¹¹⁵ Tofazzal Hussain Vs Province of West Pakistan (1969) PLD Dacca at p. 589

¹¹⁶ Tofazzal Hussain Vs Province of West Pakistan (1965) PLD Dacca at p. 68

to orders where disturbance of public order sought to be prevented to likely to affect the security of the state.

An order under the Code of Criminal Procedure, prohibiting speeches likely to disturb the public order, is protected.¹¹⁷ Similarly, offences against public tranquility, punishable under the Pakistan Penal Code, e.g., offences of being members of unlawful assemblies and rioting.¹¹⁸ The court while deciding of Ghulam Sarwer Awan Vs Government of Sindh make an order that the accused should not makes those speeches which becomes the source of hate between different ethnic groups. Such order cannot impose the total prohibition or any restriction or any embargo on freedom of speech guaranteed by article 19. Every citizen has required by law not to make any statement which is prohibited. Article not gives the unrestricted freedom of expression but also imposed certain restrictions. The purpose for this to suppress the mischief rather than encourage the mischief.¹¹⁹

Freedom to express one's thoughts in an important right. When someone expresses his ideas through verbal and written form, he is contributing in ideas and participating in a society. Freedom of expression is covered under article 19 of the United Nation's Universal Declaration of Human Rights: "every one has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

¹¹⁷ The Code of Criminal Procedure (V of 1898), Section 107, 144

¹¹⁸ The Pakistan Penal Code (XLV of 1860), Chapter VIII

¹¹⁹ Ghulam Sarwar Awan Vs Government of Sindh (1988) PLD Karachi at p. 414

Freedom of expression is widely acknowledged as a basic human right that should be available to all, playing crucial role in a fair and open society. But some countries and organizations put limits on the freedom of expression to suppress the opposing views. So while the expressing of one's views should be in a parameter and not beyond the limits of the freedom and hurt the feelings of the others. Hate speech attacks people based upon such distinctions as race, religion and gender¹²⁰.

Islam gives the right of freedom of thought and expression to all citizens of an Islamic state with condition that this particular right is used for propagating virtue and not for spreading evil. The Islamic concept of freedom of expression is superior rather than the West. Because the right of freedom of expression to propagate virtue and righteousness is not only a right, but an obligation. The ruling person who deny this right to his subject/people he is at war with God, the all powerful. It is right as well as an obligation of an individual to stop the evil no matter whether it is created by an individual, group of people, or by his own country or by the Governments of the other countries over and above, he should openly condemned the evil and point to the morally correct course which should be adopted.¹²¹

3.2 Available forums to the minorities for litigation

Every citizen of Pakistan has a right to access to the courts and seek remedy according to the prevailing law. Minorities are entitled to knocks the door of courts on violation of

¹²⁰See <http://issues.tigweb.org/expression> . Freedom of expression. (accessed March 9,2009)

¹²¹ Syed,M.H. Human Rights in Islam. The Modern Perspective, Volume I at p. 111

their rights. Here we only describe the detail of available forums for litigation to the minorities on violation of religious rights.

In an Islamic state, religious minorities have the right to profess, propagate the religion and also establish the religious institutions and maintain them. However, at any stage if any violation and material threat is committed to the particular religious community or individual than he/she/they can file a complaint in the court and afterwards the court will decide the case accordingly.

However, if the plaintiff is not satisfied with the decision of the lower court then he files an appeal on the upper forum. The issue, which is important that the individual should be aggrieved and question of law and fact involved. If no forum is available for litigation than the writ petition option is also available under article 199 of the constitution of Pakistan, 1973 in the High Court. They can approach to the supreme court as well.

For the prevention of the violation of human rights "Human Rights Cell" has also established in the supreme court premises which is working under the supervision of the Chief Justice of Pakistan. If any person is aggrieved or his/her human rights are violated he can approach to this forum through written application or publication in the electronic and print media and Chief Justice of Pakistan also took a suo moto action under the constitution on any violation.

Pakistan inherited the British Indian Judicial structure. At the apex of the pyramid of this judicial structure is the supreme court which acts as the final guardian of the constitution. It has also the final court of appeal in matters arising out of cases decided by the High

Courts, and in this capacity, it replace the judicial committee of the Privy Council in London.

Next to the Supreme Court are the four High Courts in the provinces exercising general control over the administration of justice in their respective territorial limits.

Under the High Courts are the District and Sessions Judges and Additional District and Sessions Judges with jurisdiction in both civil and criminal matters. Below the District and Sessions Judges, there are on the civil side, civil judges of different grades. On the criminal side, there are District Magistrate, Additional District Magistrate exercising various powers.

In addition there are several special judges for trying specific type of cases and likewise there are special courts and tribunal with jurisdiction conferred on them in specified field only. These special tribunals have also been established to deal with specified matters such as the Income Tax Tribunal, Rent Tribunals etc whose powers and jurisdictions are specified in the statute creating them .

However, though these courts and tribunals are not subordinate to the Provincial High Courts, their decisions are amenable to correction by the High Courts in exercise of its constitutional jurisdiction whenever these courts or tribunals are found to contravene the law under which they are acting, or exceed their jurisdiction.

Similarly the decision of Service Tribunals established to deal with cases relating to the terms and conditions of persons in the service of Pakistan can be brought for examination

before the Supreme Court which may grant leave to appeal against their decisions if these cases involve a substantial question of law of public importance.

The Federal Shariat Court which was established had to examine and decide the question whether or not any provision of law is repugnant to the injunctions of Islam as laid down in the Quran and Sunnah of the Prophet (P.B.U.H). Appeal against the decision of Federal Shariat Court can be instituted before the Shariat Appellate Bench in the Supreme Court of Pakistan.

Any decision whether of an ordinary or special court or tribunal can be taken for scrutiny to the apex of pyramid of the judicial structure in the country, the Supreme Court either by the process of appeal and revision before the normal courts in the ordinary way or by exercise of extra ordinary constitutional jurisdiction of the High Courts where the decision has been given by a special court or tribunal.

Religious minorities on the violation of their religious rights under Pakistan Penal Code can file an F.I.R. The important thing that minorities are claimed that they are persecuted and kept in jails on the false accusation of blasphemy.

So in this regard in Code of Criminal Procedure inserted a new section 156 A vide Criminal Law (Amendment) Act, 2004, whereby investigation of offence against any person alleged to have been committed by him under section 295-C of Pakistan Penal Code shall be made by a Police Officer not below the rank of Superintendent of Police. If any such offence is committed and Complaint is filed before registering the F.I.R the Superintendent of Police can investigate the matter and after that dispose the matter

according to the law. Due to insertion of this section the false litigation on the name of religion can be reduced. So much so the minorities can knock the door of the courts on any violation on any time because under the Constitution all citizens are equal before law and are entitled to equal protection of law.

3.4 Conclusion

Right to freedom of expression is available under Article 19 of the Constitution of the Islamic Republic of Pakistan but with certain limits. On violation of the religious rights of minorities forums for litigation are available from bottom to top level i.e District Courts, High Courts and Supreme Court.

Conclusion

The principle objective of this research has to know about the religious rights of minorities in International Human Rights law, Islam, Pakistani law as well as comparative analysis with other jurisdictions like U.S.A and India while also determine its position as compared to human rights, especially the right of freedom to profess and practice religion and also freedom of expression. The main conclusions that may be drawn from this research. Minorities have the right of freedom of religion to profess and practice freely only limitations are imposed where the public peace and tranquility is under threat. International Human Rights Law such as Universal Declaration of Human Rights(1948), International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1982) gives the religious freedom i.e. adoption the religion of their choice and also conversion. The only limitations are imposed which are necessary for public peace and fundamental freedoms of others.

Islam is the religion who gives the complete protection to the non Muslims in an Islamic state. In the era of Prophet (P.B.U.H) non Muslims enjoyed the freedom of religion and other protections. Even Hazrat Abu Bakar (R.A), Hazrat Umar (R.A) and Hazrat Ali (R.A) have taken so many steps for the protection and welfare of the non Muslims.

Pakistan as an Islamic state declared by the Constitution gives the complete protection to the minorities. They have the right to profess and propagate their religion freely and establish their religious institutions.

Pakistan is gurantees these rights to the religious minorities and for violation of these rights penal laws are promulgated. Blasphemy laws are promulgated for the protection of the honour of every religion not the tool which is used against the non Muslims.

Freedom of expression is provided to the citizens of Pakistan so much so the limitations are also imposed on the same for the welfare of the society but these limitations should be reasonable and justified.

It is finally concluded that religious right is the fundamental right of every citizen. The particular right must be protected by the special laws, international and national level.

3.3 Sugestions and Recomendations

Religious rights of minorities are the fundamental rights of an individual. For the protection and freedom of these rights there is need to take some further steps. these are as follows.

- **Recommendations to the International Community**

- There is a need to make a serious efforts for defining the term minority on international level.

- **Recommendations to the Government of Pakistan**

- Harmony may be created among different religious groups for the welfare of the society.
- For the public peace and tranquility religious tolerance may be promoted.
- For this purpose the Islamic teachings may be followed which are provided by the Quran and Sunnah of the Prophet (P.B.U.H).
- Awareness may be created among the masses regarding blasphemy laws and also prosecute and bring to justice those who brought frivolous or malicious complaints.
- Ban on printed material, books and audio-visual materials containing hate speeches.

- Section 295 B of Pakistan Penal Code, 1860 is relating to the defiling of Holy Quran. This section may suitably amended includes the other Holy Books such as Bible etc in this particules section.

Annexure

Article 20 of the Pakistan Constitution 1973 (a) Every citizen shall have the right to profess, practice and propagate his religion, and b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions

Article 21: No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own. nt on the propagation or maintenance of any religion other than his own.

Article 25: (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this article shall prevent the state from making any special provision for the protection of women and children.

Article 26.(1) In respect of access to places of public entertainment or resort, not intended for religious purpose only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) nothing in clause (1) shall prevent the state from making any special provision for women and children

Article 36. The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services

Section 295 of the Pakistan Penal Code 1860 Whoever destroys, damage or defile any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to

their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Section 295-A Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Section 295-B Whoever willfully defiles, damage or desecrates a copy of the Holy Quran or of an extract there from or uses it in any derogatory manner or for any lawful purpose shall be punishable with imprisonment for life.

Section 295-C Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (P.B.U.H) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 156-A of the Code of Criminal Procedure 1898. Investigation of offence under section 295-C, Pakistan Penal Code. Notwithstanding anything contained in this Code, no police officer below the rank of a superintendent of police shall investigate the offence against any person alleged to have been committed by him under section 295-C of the Pakistan Penal Code, 1860 (Act XLV OF 1860).

Article 25 of the Indian Constitution. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.(2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law – (a) regulating or restricting any economic, financial, political or other secular

activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II— in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. Article 26. Freedom to manage religious affairs. --- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right--- (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire moveable and immoveable property; and (d) to administer such property in accordance with law.

Article 27. Freedom as to payment of taxes for promotion of any particular religion,--- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institution. --- (1) No religious instruction shall be provided in any educational institution wholly maintained out of state funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached

thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 29. Protection of interest of minorities—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (3) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Article 30. Right of minorities to establish and administer educational institutions.—(1) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. [(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.] (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

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