

**Distr.
RESTRICTED**

**E/CN.4/Sub.2/AC.5/2003/WP.13
5 May 2003**

ENGLISH ONLY

**COMMISSION ON HUMAN RIGHTS
Sub-Commission on Promotion
and Protection of Human Rights
Working Group on Minorities
Ninth session
12-16 May 2003**

MINORITIES IN SOUTH ASIA

(Paper prepared by I. A. Rehman, Director, Human Rights Commission Pakistan)*

* The views expressed in this paper are those of the author and do not necessarily reflect the views of the Working Group or the United Nations

GE.03-14163

Introduction

South Asia is rightly described as the land of great ethnic, religious, cultural and linguistic diversity. In each of the South Asian states examined in this paper – India, Pakistan, Bangladesh, Sri Lanka, Nepal and Bhutan – one also finds national minorities, almost all of them living in their historical homelands and possessing distinct cultural and linguistic identities. All of them, except Nepal and Bhutan, entered the modern period in history under British colonial dispensation which gave them the concepts of constitutionalism, representative government, autonomy and safeguards, and even Nepal and Bhutan did not remain unfamiliar with these ideas.

In nearly all of these countries the British reinforced the distinct identities of the various groups, majorities as well as minorities. They identified the religious, tribal and caste identities of these groups in the census and in the manuals for administrators, allowed them the freedom of religion, personal laws and customs (except for trying to suppress such practices as the burning of widows), and took steps to safeguard the interests of the weaker groups by reservation of quotas in elected bodies, educational institutions and services. The various communities were told to co-exist, avoid attacking each other and remain firm in loyalty to the British Crown. Most of them were given first lessons in democratic elections, though on a restricted franchise, leading up to assemblies at the national level, in impartial justice between the natives (though not necessarily between the native and the Englishman and the European), and in dealing with their neighbours and the world beyond. They were not interested in either pushing for the integration of diverse groups into new communities in any sense except for their shared bondage or allowing the assimilation of smaller groups into the bigger ones.

Two factors greatly contributed during the colonial period to the strengthening of national, cultural and other identities. The introduction of democracy, however elementary or imperfect, gave rise to the politics of power at the various sub-national levels and sowed the seeds of majoritarianism. Each group looked upon accession to power through the election system as means of garnering the benefits of the new experiment in its limited interest and used religious, cultural and other affinities to

acquire power and forced the weaker elements to demand protection, safeguards, minority status, and ultimately the right to self-determination.

Most of these South Asian states moved towards independence during the Second World War and the years after its end when the rhetoric of self-determination and human rights was running strong in international discourse, and the Universal Declaration of Human Rights in most cases came while discussions on post-independence national constitutions had begun. This discourse attracted all groups but while it had a special appeal for majority groups in the context of decolonisation it gave the minority groups a strong instrument to defend their identities – the argument of human rights. A change in the entitlement to form nation-states, regardless of the size of a community, the area occupied by it and its economic viability as a state, and the application of this idea first in the proposed division of Palestine and then in the partition of India made sizeable minority communities aware of the possibility of escaping the rule of majorities by establishing their own power centres.

More than half a century after their independence the South Asian states are still struggling to resolve majority-minority issues, which in some cases have generated long-running conflicts. The main factors contributing to this situation have been:

1. A strong disinclination to replace the colonial patriarchal state structures with new models of governance to accommodate the diversities.
2. Making constitutions that envisage centralised state structures and effectively exclude minority groups.
3. Reliance on theoretical safeguards for minorities without adequate guarantees of their enforcement.
4. Failure to realise that poverty and shortage of economic opportunities make it impossible for minority groups to grow out of their primary social affiliations and accentuate their feelings of hurt at real or perceived discrimination.
5. Lack of affirmative action to integrate majorities and minorities into single nations while hoping for assimilation without overt state intervention.
6. Re-interpretation of self-determination in the interest of majorities.
7. Politicisation of religion.

India

As the largest, most populous and most-resourceful of the South Asian states and the home of many cultural and some religious communities, India was expected to provide a role model for other South Asian neighbours, and possibly to the world at large, in evolving a workable pluralist democracy. It did make a good attempt and the effort continues despite the assumption of power by religious revivalists.

The founding fathers of free India recognised the existence of many nationalities, with distinct ethnic and / or linguistic identities, within the country's fold. But they also entertained the view that the freedom struggle had moulded the various groups into a single nation, at least in the political sense, and the pre-independence plans to respect linguistic identities could wait. They were surprised by the intensity of the language agitation, and the administrative units (called provinces) created by the British had to be redemarcated.

India also opted to structure the State as a union of autonomous states (previously provinces) with some territories given special safeguards. However, faith in centralised planning and in the leading role of the party that had led the struggle for independence and reluctance in accepting the opposition parties' governments in states (such as West Bengal and Kerala) kept the autonomy question alive. Eventually the bigger states won the right to autonomy while smaller communities, particularly in the north-east, are still struggling for autonomous status. Some of them have also entertained the idea of gaining independence.

The Indian constitution recognises minorities and on the one hand it enjoins a policy of non-discrimination in respect of basic rights, on the other hand it seeks to protect the socially and economically backward communities, such as scheduled castes and scheduled tribes. Quite a few states (Jammu and Kashmir, Nagaland, Sikkim, Assam, Manipur, Arunchel Pradesh) were assured of special status, and the process of creating new states (Jharkand, Uttaranchal) continues. A series of amendments to the constitution have testified to the resilience of the system. The scheduled castes and tribes have been allowed reservation of seats in elected bodies and tribal laws / customs and land rights are protected. Non-discrimination is pledged in Articles 14, 15, 16, 19 and 29 of the constitution. Freedom of conscience is guaranteed (Article 25) along with freedom for all

communities to manage their religious affairs (Article 26) and the right to establish and run their educational institutions.

In practice this constitutional arrangement has not worked as efficiently as desired and only a few might disagree with Ranabir Samaddar's summing up (paper presented at May 2001 session of Working Group on Minorities) in the following paragraph:

“Despite the range of forms of autonomy, demands for right to self-determination ranging from more autonomy to secession have arisen frequently, and if some have mellowed, others have persisted and have grown insistent notwithstanding massive state-suppression and loss of lives. It began with the Muslim demand for self-determination in the pre-independence time and continues in various forms and at various levels still today. The constituent states have said that their legislative, administrative and financial autonomy is inadequate or has diminished. Kashmir says its autonomy is fictive. Insurgents in the northeast have said that grant of statehood is a ploy to subsume them in Indian polity. Religious minorities say that they are under unprecedented attack of the fascist communal forces belonging to the majority community backed by the State. The scheduled castes and tribes say that their deprivation, poverty and disempowerment have only grown. The legal-administrative measures for protection of autonomy such as the Minorities Commission, Human Rights Commission, Women's Commission, are severely limited in their powers. These national commissions have their state counterparts even more limited in powers and functions. So are weak and inadequate the commissions in the states for protection of minority languages and cultures, and interests of scheduled castes and tribes.”

The problems of minorities have increased by the lack of their definition. The largest minority in India is the Dalits, about a quarter of the population. While the State has offered them concessions in political and service sectors they remain subject to the majority community's violence.

India has been even less successful in resolving issues related to religious minority.

The Muslims: The Muslims constitute the largest religious minority in India – around 12 % the population. They are scattered all over the country, constitute a majority in

Jammu and Kashmir and have sizable pockets in West Bengal, Uttar Pradesh, Kerala, Andhra Pradesh, Karnataka and Rajasthan.

The status of the Muslim minority has been affected by the pre-independence communal divide, the partition that allowed about half of the Indian Muslims to create Pakistan in their majority areas, the wars with Pakistan, and the fears aroused by the demand of Jammu and Kashmir Muslim majority for self-determination. Despite the efforts of pre-BJP governments to meet the demands of the Muslim community, especially in relation to representation in educational institutions and state employment, and the election of two Muslims as the heads of the state (and now BJP has added a third), it suffered discrimination at the hands of both the administration and non-state elements. It was difficult to erase the public image of the Indian Muslims being more loyal to Pakistan than to their own country.

The deprivation of the Muslim community has been well-documented. According to the 1981 census, the share of Muslims in central government jobs was 4.41% (their largest share 5.12% was in class IV employees, and it declined in higher classes – 4.41% in class III, 3% in class II and 1.61% in class I). During the nineteen seventies, only 2.86% of the officers joining the elite civil service (Indian Administrative Service) were Muslim, and they formed 2% of the fresh entrants to the Police Service, 3.06% of the Revenue Service, and 2.8% in the bank jobs. During this decade the Muslims accounted for 2% and 2.5% respectively of the new graduates in engineering and medicine and constituted only 4.08 per cent of the workforce. Their representation in the central and state legislatures has never corresponded to their demographic status.

Communal rioting had become an ugly feature of life during the nineteen thirties and forties and this menace has continued to cause misery to the Muslim minority. The rise of Hindu communal forces, especially in the last two decades of the 20th century, resulted in anti-Muslim rioting becoming fiercer. The more significant riots in which the Muslims suffered heavy loss of life and property have been at Biharsharif, Meerat, Baroda, Nellie (Asam), Bhiwardi, Ahmedabad and Bhagalpur – all during the 1980's. The threats to the Muslims' rights to security of life increased with the demolition of the Babri Mosque on December 6, 1992, and the Gujarat massacres of 2002 resulted in unprecedented Muslim casualties and loss of homes and work.

The Muslim Community's fears of persecution have been strengthened by their view that judicial forums have been unable to punish the perpetrators of violence and hate-preachers. The creed of Hindutva followed by the extreme RSS Wing of BJP has heightened these fears.

The Christians: The Christians constitute around 3% of the population (2.63% in the 1981 census) and are scattered all over, with sizeable pockets in the southern states (Kerala, Karnataka, Maharashtra and Gujarat). Till recently they got a share in central government services corresponding to their demographic status and sometimes even higher. However, with the growing strength of Hindutva followers during the nineties, attacks on Christians, especially missionaries, have become quite frequent. Christian leaders now mention two forms of discrimination – the discrimination faced by the Christian community in general and the discrimination within the Christian community, the latter resulting in the emergence of the issue of dalits among them.

The Christian leaders list the following as curbs on their fundamental rights and freedoms:

- ♦ The freedom to profess and propagate one's religion is subject to restrictions that can be and are used to curtail the basic freedom. Missionaries are frequently attacked and the freedom to change religion has been affected by court judgments and state legislation (such as in Tamilnad).

- ♦ Where Freedom of Religion Bills have been adopted by states the law is ambiguous and allows the administration to follow its biases in matters concerning recognition of religious groups, public information about minority groups, and giving permission to build or enlarge churches.

The Sikhs: The Sikhs constitute around 2% of the population (1.95% in 1981) and although they are found scattered across the country, they are concentrated in Punjab where they are in a majority. Their share in central services is roughly according to their population.

The Sikhs have been aggressively conscious of their religious and linguistic identity for centuries and have two organisations – the Akali Dal to book after political issues and the Shiromani Parbandhak Committee to manage their religious places (gurdwaras) – and both are recognised by the State.

During the seventies the Sikhs mobilised themselves to agitate for greater political autonomy. They also complained of less than due share in the country's industrial economy, considering that Punjab is the richest state in India. The Indian government's attack on the Golden Temple, the assassination of Prime Minister Indira Gandhi by her Sikh guards and the large-scale killing of Sikhs in New Delhi that followed fuelled an insurgency that continued for many years. The insurgency was put down with extraordinary use of force and the wounds caused by heavy loss of lives have not yet healed, though the pre-1970 political and social equilibrium has been restored.

Other religious groups: There are several small religious groups – Buddhists, Jains, others – each less than 1% of the population. They suffer the discrimination faced by minorities in general.

A radical change: The rise of the saffron brigade (Hindu extremists) under the slogan of Hindutva has radically affected the rights of minorities. The destruction of Babri Mosque opened the way to destruction of more Muslim mosques and Christian churches. The constitutional safeguards are steadily being eroded and the protective policies are becoming increasingly ineffective. The Gujarat massacre, in which the state government was directly involved, and the return of BJP to power in the state elections, are considered models that may be followed in other states. There is much greater state patronage of temple rituals and an enhanced demonstration of majority's religious identity in public. Attempts to rewrite the constitution and educational texts frighten not only the minorities but also the secular elements.

In Tom Hadden's language, India followed for decades a policy of integrating the minorities into the mainstream with safeguards for backward communities and religious minorities. This policy of protection was, firstly, inadequately effective and, secondly, left the cultural aspirations and urges for political self-determination unsatisfied. Under BJP, India is seeking to replace the integrative approach with an assimilative one. Indian nationalism is being defined in terms of Hindu nationalism and all minorities told that their lives and rights depend on their adherence to Hindutva.

Fortunately, the anti-fundamentalist forces in India have not given up their resistance. While some observers commented favourably on the fact that the Gujarat violence did not immediately spill over into other states, others were alarmed at the

collapse of secularists in Gujarat. An unfortunate aspect of the situation in South Asia is that minority problems quickly cross national frontiers. The consolidation of fundamentalism in India, even if does not get stronger, will have extremely adverse effect in all other South Asian States.

Pakistan

Pakistan comprises the traditional homelands of several ethnic communities – Punjabis, Sindhis, Pakhtuns (also called Pathan) and the Baloch. They are concentrated in units of the federation, called provinces, that are named after them – Punjab, Sindh and Balochistan – except for the Pakhtuns whose land still carries the name coined by the British – the North Western Frontier Province (NWFP). However, there is considerable ethnic or linguistic / diversity within each province. The Punjab has a sizeable Seraiki-speaking population. Sindh has a large proportion of the Baloch, and an even larger number of post-partition Urdu-speaking settlers who call themselves ‘mohajirs’. NWFP has Hazara-speaking people who are concentrated in its south-eastern part, and a Seraiki-speaking community in the south-western district of Dera Ismail Khan. Balochistan has a large number of Pakhtuns besides a Brahui-speaking community and Punjabi settlers.

The population of Pakistan (132.352 million, 1998 census) is distributed over the federating units (called provinces) as follows: Punjab – 73.62 million; Sindh – 30.44 million; North-Western Frontier Province – 17.74 million; Balochistan – 6.56 million; Federal Capital territory of Islamabad - .8 (point 8) million; and Federally Administered Tribal Areas – 3.18 million.

In Pakistan, too, the absence of an agreed definition of minorities creates problems. The constitution does not recognise any ethnic and linguistic groups, it takes notice only of the religious minorities. The problem is complicated further by the fact that the major ethnic-linguistic communities dominating three provinces (Sindh, NWFP and Balochistan) do not accept the label of minorities and instead insist on being accepted as nations or nationalities. Even the migrant-settlers in Sindh wish to be recognised as a distinct nationality. However, all of these communities are entitled to be treated as national minorities as together they are less than the population of the Punjab and their struggles for their rights have revolved around the question of provincial autonomy.

The question of provincial autonomy is rooted in history. The British introduced representative government only in the provinces albeit within the centralised state structure. When the All-India Muslim League formulated its demand for separate homelands for the Indian Muslims it had to recognise the provincial units' aspirations for autonomy and the Pakistan resolution pledged that these units would be autonomous, independent and sovereign. Without this commitment, it was believed, the demand for Pakistan could not have received the mass support that it did in the decisive elections of 1945-46. After Pakistan had come into being in the form of two wings – East Pakistan and West Pakistan, and the two divided by over 1,000 miles of Indian territory – these pledges were disregarded. No demarcation of provinces on ethnic / linguistic basis took place. Instead, the demand for provincial autonomy was suppressed with force and the federal constitution worked in the manner of a unitary state. East Bengal, which accounted for a majority of the population, was obliged to accept parity in legislature with west Pakistan till 1970. Attempts to deny its majority status eventually forced that part to break away, after a bloody conflict, in 1971. In West Pakistan the provinces were abolished in 1955 to form a single unit and this experiment was undone only in 1970.

Unlike India, which had its new constitution in 1950, Pakistan was governed by the British statute, Government of India Act of 1955, till March 1956. The continuance in force of this colonial-viceregal system sharpened the provincial identities and put their autonomy at the top of the political agenda. The first post-independence constitution (1956) largely denied provincial rights, and the second constitution (1962, imposed by a military dictator) repudiated parliamentary democracy. It was only after the debacle of Eastern Wing's separation that the constitution of 1973 conceded a somewhat reasonable measure of provincial autonomy. Problems arose when this constitution was not respected in practice. The document has lost a great deal of its sanctity as a result of drastic changes introduced in it by military regimes (1977-88 and 1999-2003).

The constitution defines the State as a federation comprising four units (provinces), each having its own elected legislature and an executive answerable to it. The provincial chief executive (Governor) is a nominee of the federal chief executive (President). The federal parliament is bicameral – National Assembly, the lower house directly elected by the people, and a Senate, the upper house in which all provinces have equal seats that are

filled through indirect election, the members of the provincial assemblies being the electoral college. The National Assembly can be dissolved by the President in his discretion. The federal executive comprises a Prime Minister and his cabinet who are answerable to the parliament. The division of legislative powers between the federation and the units is done on the basis of lists of subjects – one comprising matters on which the central parliament has exclusive jurisdiction and the other comprising subjects on which both the federal parliament and a provincial assembly have power to legislate. If both authorities adopt legislation on a subject in this list the federal legislation prevails over the provincial one. The federation collects most of the revenues and its expenditure is the first charge on them, while the rest is divided amongst the provinces on the basis of population through an award by a National Finance Commission. A council of common interests deals with matters related to interests / services shared by the provinces, such as rivers, railways, and electricity. Fundamental rights are guaranteed in a chapter of the constitution. The judiciary is presided over by the Supreme Court at the federal level with a high court in each province and a subordinate judiciary under it.

The constitution has remained suspended for long years; from July 1977 to December 1985 in one instance and from October 1999 to November 2002 in another instance, a total of eleven and a half years out of the 29 years since it was enforced. Only one elected government – 1971-77 -- completed its term and all others formed between 1985 and 1996 were removed by the President by dissolving the National Assembly (elected in 1985, 1988, 1990, 1993 and 1996). The Senate cannot be dissolved but has been dissolved twice. Suspension of the constitution and its inadequate enforcement even when it is supposed to be in force have kept the questions of autonomy unresolved.

The autonomy demands of the federating units and ethnic communities now can be summed up as follows:

- ♦ The Pathans (also called Pakhtuns or Pashtun) assert that they have been arbitrarily divided into three units – NWFP, Balochistan and Tribal Areas. The demand for their unification into a single unit through reorganisation of provinces on ethno-linguistic basis has often been raised but is yet to gain the support of a majority of elected provincial representatives. The Pathans in NWFP also demand the right to name their province

Pakhtunkhwa (the land of Pakhtuns) just as other provinces (Punjab, Sindh and Balochistan) bear the names of their dominant ethno-linguistic communities.

- ♦ The Sindhis have been resisting being turned into a minority through continued influx of migrants from India and other parts of Pakistan.

- ♦ Balochistan, which is the largest of the provinces in terms of its territory and has the smallest population of them rejects the division of revenues on population basis.

- ♦ All the three provinces have a grievance that they are under-represented in armed forces and civil services. They also complain of denial of control over their natural resources. They are unhappy with the emergency provisions of the constitution under which the centre can dismiss their governments and dissolve their assemblies through its Governors. They argue that the upper chamber that is supposed to protect the provincial rights lacks effective powers.

- ♦ The 'Mohajirs' demand share in power in Sindh in accordance with their population but support the demand for provincial autonomy.

These problems have been aggravated because Pakistan does not recognise ethnic-linguistic minorities, although it does accept the right of provinces to develop their languages without affecting the status of the national language, which incidentally is the language of a small minority. This posture was adopted during the freedom struggle when it was presumed that all communities had dissolved their ethnic-linguistic and cultural identities into their common religious identity. The argument has been summed up in a few paragraphs on a single page in the report of the 1998 census (the federal volume):

“Ethnicity and Tribes: Pakistan has been the habitat of various immigrants prominently called Dravidians, Aryans, Persians, Greeks, Arabs, Turks, Afghans and Mughals, who entered this land on different occasions... Hence, Pakistan's population is marked by diversity of castes and races as a multi-ethnic society... In general, ethnicity of Pakistan society may be identified according to geographically and administratively defined limits as Punjabis, Sindhis, Pukhtuns and Baloch. Similarly these ethnic groups may be divided into more than one category as well as into various castses. However, the notable races can be classified into three socio-culture groups: Indo-Aryan. Turco-Iranian and Mongola-Dravidians... The people of Pakistan are further divided into linguistic groups. The main languages spoken in

well defined areas are Urdu, Punjabi, Pushto, Balochi, Sindhi, Seraiki, Dari and Gujrati. Among all these languages and dialects. Urdu occupies a very significant place. It enjoys the status of our national language. It is widely spoken and understood all over the country and serves as “lingua franca” throughout Pakistan. Most of people in Pakistan are bi-lingual, speaking their regional language and Urdu with almost equal facility. ... The diversity of castses, races and linguistic groups is however not so great as to create fissiparous tendencies. The people are fully conscious of common nationality. This feeling of unity is mainly based on religious, historical, geographical and political factors. Islam is a great unifying factor and the population is overwhelmingly Muslim and being Muslims they share common history in the Indo-Pak sub-continent.”

The assumptions underlying such statements have never stood the test of time or pressures of politics and it can be asserted that the national minorities do not fully enjoy their rights and will not do so until the national, ethnic diversities are not only recognised but also respected through firm and operative constitutional instruments and functional institutions of democratic governance are stabilised.

Religious minorities

Pakistan is a predominantly Muslim country. The number of all the non-Muslim minorities is 4.919 million in a population of 143 million (2002). These minorities are: Christians, with their largest pockets in Punjab; Hindus, with their largest pockets in Sindh; a small number of Parsis, mainly in the city of Karachi; a small number of Sikhs in Balochistan and NWFP; a small number of Bahais in some urban centres; pockets of indigenous people in Northern Areas and of scheduled castes in Sindh. These are distinct religious groups recognised as such since the British period. In 1974 Pakistan created a new religious minority, Ahmadis. They claim to be Muslim but were declared outside the pale of Islam through a constitutional amendment. Attempts have been made off and on to get the Zikris, a sect in Balochistan, declared as non-Muslim but so far these moves have failed. There are also minority Muslim sects, such as Shias, Ismailis and Bohras, that are not treated as religious minorities.

Starting as a secular democracy, Pakistan has gradually moved close to a theocratic state. It is known as an Islamic republic though its political structure is based on the

Westminster type of parliamentary democracy, Islam is its state religion, the Objective Resolution according to which sovereignty belongs to God alone and the parliament exercises authority within the limits prescribed by Him, is a substantive part of the constitution. No law which is repugnant to Islamic injunctions can be enacted and all existing laws are to be brought in conformity with these injunctions. A religious court titled the Federal Shariat Court has the power to strike down any law on the ground of repugnancy to Islam and also to suggest amendments in statutes. The constitution also provides for a Council of Islamic Ideology, comprising religious scholars, to advise the government on Islamisation of laws and state policies and practices. Five Hudood laws prescribe Islamic punishments for crimes. The head of state can only be a Muslim and in practical terms the Prime Minister too can only be a Muslim.

The constitution does not explicitly recognise national or ethnic minorities, while it refers to religious minorities at several places. In addition to the provisions of the Objectives Resolution, which guarantee them freedom of belief and safeguards for the legitimate interests of all minorities, the fundamental rights are guaranteed to all citizens. A non-Muslim has the right to freedom of belief, every religious denomination has the right to maintain its religious institutions and is exempted from payment of any special tax raised in the interest of a religion other than its own. No-one can be required to receive instruction in a religion, or join a religious ceremony related to a belief, other than his own.

Apart from the discriminatory provisions of the constitution noted above, the biggest cause of discrimination against religious minorities till 2002 was the system of separate electorates. Under this system Muslims elected legislators on an exclusively Muslim list of voters while non-Muslim denominations voted only for their co-religionists on separate voters' lists. The religious minorities opposed this system as it kept them out of the political mainstream and led to discrimination in education and services and also in social and economic fields. In 2002 the system of a common voters' list was adopted except for the Ahmadis. The religious minorities have reserved seats in all legislatures, except for the Senate, but these seats are filled with candidates appearing on political parties' lists in proportion to the seats won by these parties in the various legislatures. These political parties are largely all-Muslim outfits.

The freedom of belief, guaranteed to all, is subject to laws and public order. The Ahmadis are forbidden by law to preach their belief, cannot call their prayer houses mosques nor pray in public in Muslim style. They can be punished for displaying epithets belonging to Islam and they are not allowed to hold congregations on the ground that these will hurt the feelings of Muslims and create law and order problems. The judiciary has consistently failed to recognise the Ahmadis' basic rights. The constitution does not recognise the right to change one's belief. While non-Muslims' conversion to Islam is welcomed a Muslim converting to any other faith runs the risk of losing his life.

Several laws have built-in discrimination towards the religious minorities. These include the Islamic laws under which compensation for killing a non-Muslim is less than that for killing a Muslim, cases against non-Muslims can be heard by religious courts but they cannot be represented by non-Muslim counsel. Under the blasphemy law even a non-Muslim faces mandatory death-penalty for insulting the Prophet of Islam.

Pakistan is deficient in watch-dog bodies to protect the rights of religious minorities. It has a division in the Ministry of Minority Affairs, Culture, Sports and Youth Affairs but its mandate is limited. A broader mandate has been allowed to a minorities' commission but it is an appendage of the Minority Affairs Division and has done little to protect the minority rights.

During the series of consultations held in the 2000-2002 period, the following issues were highlighted.

- ◆ The constitutional scheme treats Muslims as a privileged majority while religious minorities are promised only protection. In the presence of Islamic provisions the minorities will always be at a disadvantage.

- ◆ Laws that practically deny the freedom of belief (such as the blasphemy law and provisions of the Penal Code targetting only Ahmadis) need to be scrapped.

- ◆ The minorities do not enjoy equal right to public service.

- ◆ Non-Muslims are restricted to nominal quotas in educational institutions and are denied admission on merit.

- ◆ Girls belonging to minority communities are abducted and forcibly converted to Islam and the state machinery often denies them justice.

- ♦ The properties belonging to minorities' shrines and trusts have been taken over under the pretext that the owners have migrated to India while only the managers may have gone away and the community owning these properties is still here.

- ♦ The minorities' lives and properties are threatened as a reaction to events abroad. When the Babri Mosque was demolished in India many temples and churches were demolished in Pakistan. Christians have come under regular and intense attacks after the September 2001 events.

To conclude, all minorities are at a disadvantage in Pakistan and suffer discrimination in many ways. State institutions and policy frameworks need to be remodelled and mechanisms to guarantee minorities' equal rights and redress in the event of their violation made effective.

Bangladesh

Bangladesh has a significant minority population, estimated in the 1991 census at 12.6 per cent of the total. It includes Hindus (10.5 per cent), Buddhists (0.6 per cent), Christians (0.3 per cent), and other religious minorities (0.3 per cent). The Buddhists are largely concentrated in the Chittagong area while the other communities are spread across the country. Besides, there are 27 ethnic minorities, accounting for 1.13 per cent of the population, that are concentrated in the Chittagong Hill Tracts and the northern Bangladesh. Several analysts have argued that the population of ethnic minorities may be higher than the official figures. The linguistic minorities include the Biharis who opted in 1973 to go to Pakistan, who claim to be Urdu-speaking, and the Adivasis speak several different dialects.

The proportion of the largest religious minority, the Hindus, in the country's population has been going down. In 1941 they formed 28.3 p.c. of the population. In 1947, when the territory became part of Pakistan, the figure came down to 25 .c., and further down to 12.6 p.c. in 1991. The head count shows that while the population of Muslims rose by 219.5 per cent during 1941-91 that of Hindus increased only by 4.5 per cent. The demographic change in the area of concentration of the ethno-linguistic minority has been most pronounced. In the Chittagong Hill Tracts the indigenous population was 97 per cent in 1947, by 1991 it had declined to 51.5 per cent while the Bengali population had jumped from 2 p.c. to 48.5 per cent.

These demographic changes have had a wide-ranging impact on the rights and properties (especially land) of the minority communities. In the Chittagong Hill Tracts, the British had made special laws that allowed the indigenous tribes considerable autonomy under their chiefs. This included some autonomy in land regulations and administration of justice and declaration of excluded (from government's control) areas. By 1937 the powers of the tribal chiefs had been reduced and, more importantly, in that year the safeguard against immigration was withdrawn. The special administrative status of the Hill tracts was ended in 1964.

The government policy of setting Bengalis in the hill tracts deprived the indigenous tribes of substantial parts of their land and forests, and sparked an insurgency which continued for two decades and ended only with the signing of a peace accord with the government of Sheikh Hasina Wajid in December 1997. Saleem Samad notes the view of Philip Jain, a widely respected research scholar, that "the principal causes of the political and economic disturbances in the Adivasi areas are attacks on its soil, forests and local resources." And he quotes an indigenous community's leader who argued that "the nation-state, through the expansion of the market economy into the adivasi-inhabited areas, had seriously threatened their traditional rights." Of late complaints of non-implementation of the peace accord have multiplied and the tribal people are reported to be up in arms against not only the government in Dhaka but also against their own leader who had signed the accord in good faith.

The Hindus lost a large part of their lands during the communal riots at the time of partition of India in 1947, through the land reforms in the early fifties, and as a result of migrations to India during riots in fifties and the sixties. While the territory formed part of Pakistan (1947-71), many Hindus also lost their lands and houses under the Enemy Property Act, which empowered the government to seize the property of all those who had migrated or had been deemed to have abandoned their country in periods of conflict with India. The replacement of the Enemy Property Act with the Vested Property Act sustained the process of depriving the Hindus of their property. According to Mohammed Tajuddin, "the Vested Property Act is being rampantly misused to appropriate the properties of Hindus by declaring them as migrants to India before 1965. The Hindu owner might not have migrated to India and may be a citizen of Bangladesh. The act has

become a tool in the hands of the rural elites to dispossess and displace the Hindus.” According to Saleem Samad, the Bangladesh parliament was informed in July 1991 that 827,705 acres of land was listed as vested property, and a Bengali daily reported in 1993 that 757,704 acres of land was under the Ministry of land, 28,768 houses were listed as vested property, and a few jute mills, textile mills and other industries were under the various ministries. Resistance by the Hindu community has brought some relief but the bulk of the loss to the minority is irreparable. The Awami League government did honour its pledge to repeal the Vested Property Act but left the matters of already seized properties undecided and the number of people seeking justice is quite large.

The state of Bangladesh has for the last many years been moving towards a theocratic model. For two centuries (mid-18th century to middle of the 20th century) they lived under the secular laws of England, first under the East India Company till 1858 and then under the British Crown till 1947, though during the latter period the communal safeguards increased. The position did not change materially between 1947 and 1956 while as citizens of Pakistan they were governed under the colonial basic law (the government of India Act of 1935). In 1956, when Pakistan’s first post-independence constitution was adopted they became citizens of an Islamic Republic that had begun to take the critical first steps towards a religious polity. They gained independence after a brutal war which demarked enormous sacrifices at the end of 1971 and began their journey as a secular democracy. The constitution of the new state abolished communalism, state’s recognition of the political role of religions, abuse of belief for political ends, and discrimination on religious grounds.

However, since the assassination of Bangladesh’s founding father and President, Sheikh Mujibur Rehman, the state has been drifting away from its secular, democratic ideals. The changes made in the constitution over the past 27 years include: removal of the prohibition of communal political parties; deletion of the cultural and linguistic foundations of Bengali nationalism; replacement of a citizen’s identity as a Bengali with Bangladeshi; replacement of the secular principle with absolute trust and faith in the Almighty Allah as the basis of all action; and declaration of Islam as the state religion. All these developments have adversely affected the minorities.

Ranabir Samaddar notes that ‘the constitution of independent Bangladesh does not recognise minorities as groups distinct from the Bengalis; everyone is a Bangladeshi,’ and adds that the obligation assumed by the state to “conserve cultural traditions and heritage of the people” has the objective of enriching the ‘national culture’. And Saleem Samad accuses the state of “trying to establish a hegemony over the entire population on the basis of either a single dominating language, or a single dominating religion, or both.”

These constitutional changes have increased societal intolerance of diversity and the hazards to minorities’ rights.

Soon after the last general election which brought Khaleda Zia back into power there were widespread reports of violence against religious minorities. The opposition alleged genocide though its protests sounded somewhat exaggerated. Nevertheless, few discount the view that life for the minorities has become much harsher than before. The situation is unlikely to change for the better, considering the course the state has adopted. Bangladesh may not be as conservative as Pakistan but it has also created many of the obstacles to the realisation of minorities’ rights noticed in Pakistan.

Sri Lanka

All eyes across the globe are on the Sri Lanka peace process and hopes are being entertained that the 20-year-old bloody conflict between the Sri Lankan government and the Tamil Tigers will come to an end. But those who know the history of Sri Lanka over the past half century, especially of accords made and unmade in the past decades, are keeping their fingers crossed as some of the basic issues between the majority Sinhalese and the ethnic, linguistic and religious minorities remain unaddressed.

Like India, Pakistan and Bangladesh, Sri Lanka inherited at independence in 1948 a British-made basic law that envisaged a centralised unitary state, did not pay adequate heed to the issues of diversity except for recognising and using it, and emphasised law and order more than political and economic justice. The Soulbery constitution of 1948 made little change and a combination of Sinhala nationalism (they constitute 74% of the population) and the Buddhist religious code (70% of the Sinhalese are Buddhists) made for an even more aggressively majoritarian state. This State offered little accommodation to the minorities – Tamils 18%, Muslims 7%.

In 1957, Prime Minister Bandaranike tried to correct the anti-minority bias through an agreement with the Tamil Federal Party. The key was devolution of some powers to regional councils, as the Tamils were concentrated in the northern region. This agreement was unilaterally scrapped by the ruling coalition. Another accord was signed in 1965 and this too was abandoned. Instead, the constitutional changes in the early seventies aggravated the plight of minorities and led to armed conflict. Yet another accord was negotiated in 1987 through Indian good offices and it too failed to work. Mrs Chandranaike then drafted new devolution proposals and at the same time launched an all-out war with LTTE which continued till 2001, when the present ceasefire took effect.

During all this process, ethnic /religious identities have been further strengthened. The Tamils' hopes of a good bargain with Colombo have given them reason to be firm on their demands and the Sinhalese reaction to possible compromises on the unity of the state and primacy of Buddhism too appears to have hardened. Between the two sides, the Muslim minority is going through a phase of religious revival and also has its eyes on a piece of the political cake.

Although caught in the web created by Sinhala-Buddhist politics of excluding all other elements in society, Sri Lanka has at the same time made considerable effort at developing mechanisms for minorities' protection. Its constitution guarantees basic freedoms and there is a Ministry of Ethnic Affairs and National Integrity. A National Human Rights Commission has also been functioning for some years. Attempts to enact equal opportunities legislation have been made though not wholly successfully. It is too early to say whether the present peace process will lay the basis for constitutional changes that establish majority-minority relations on the basis of justice and mutual good. Even if this is possible both majorities and minorities will take time to purge their minds of notions that have provided them with war cries for a long time. At the same time it will be wrong to suspend discussion on minority rights in the future set-up and it is necessary to stress the need for effective decentralisation of power, meaningful devolution of authority and giving minority protection provisions the support of workable enforcement mechanisms.

Nepal

Ethnic, linguistic and religious diversity in Nepal is far greater than one would expect in a small country (population: 20 million). Official institutions have listed at least 61 indigenous ethnic groups and more than 70 linguistic groups. 86 per cent of the population is Hindu, the Buddhists account for 8% and the Muslims for about 4%.

Nepal was a feudal monarchy and effectively controlled by a military dynasty till the democratic revolution of 1990 when a new constitution was drafted and the country stole the lead over its South Asian neighbours by ratifying a larger number of international human rights instruments than any one of them. However the promise of democracy remains unrealised and adherence to international covenants brought little relief to the disadvantaged. The Maoist insurgency has aggravated the conflicts over division of state power and distribution of economic benefits and a massacre in the palace has resulted in the suspension of democratic governance.

The constitution declares Nepal as a “multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu and a Constitutional Monarchical Kingdom”. While religious diversity is not admitted, the basic law concedes basic rights and freedoms, of course, subject to law as in other South Asian states.

All minorities have serious grievances about lack of political space that a democratic dispensation should offer them. The differences between the people living in the different regimes (the hills, Terai, etc) have led to demands for a federal structure and recognition of nationalities. Half the population has problems with the national language. The worst off minorities are the low-caste people, estimated at around a fifth of the population, and people of non-Nepali origin and refugees.

In the present situation the fate of the minorities depends on the country’s return to democratic ways followed by the evolution of a new constitution based on devolution of power to the local communities and creation of appropriate judicial mechanisms.

Bhutan

As a full and equal member of the South Asian Association for Regional Cooperation (SAARC) since its inception in 1978, the independent Himalayan Kingdom of Bhutan cannot be left out of a discussion on minorities in the sub-region, especially in view of the diversity of its population. Although quite a few social and political changes have taken place during the three decades since the kingdom started opening up to foreigners (it became a member of the United Nations only in 1971), an objective analysis of the minorities' condition is made difficult by the existence of two conflicting sources of information.

In one group fall observers who are enchanted by the pristine environment of the country and its strong adherence to the traditional culture. They focus less on the human rights situation in the kingdom than on its steps towards constitutional rule. One even detects a tendency to glamourise and condone reservations on pluralism. The king's idea of 'Gross National Happiness,' that the spiritual and emotional well-being is just as important as wealth is sometimes mentioned approvingly without realising that emotional well-being is incompatible with poverty and that a trade off between the two significant concepts is often a sop for the deprived.

Likewise, little attention is paid to the state's repudiation of pluralism through a 1989 proclamation: "Pluralism is only practical for a larger / country where a diversity of customs, traditions and cultures enriches the nation. A small country like Bhutan cannot afford the luxury of such diversity, which may impede the growth of social harmony and unity among its people." Such a proclamation points to the choice of a policy of assimilation.

The second source of information is the fairly sizeable Bhutanese diaspora which is stridently critical of the state's treatment of its minorities and dismisses the king's proclamations on decentralisation and the promise of a new constitution as a eyewash.

Even after making allowances for the subjective factors underlying the latter view, the problems faced by the Bhutana minorities are serious enough to merit attention.

Bhutan's population, estimated to be around 700,000, comprises three main ethnic groups – the Sharchops (about 40 per cent), the Lhotshampas (also about 40 per cent), and the Ngalungs (about 15 per cent). The smaller tribes include the Khengs, the Brokpas, the Merak-Saten, the Doyas, the Totas, the Mangdeps, the Kurteops, Tibetans, and adivasis (the common description of indigenous people in South Asia, earlier called aboriginals). The Buddhists form the largest religious group. However, they are divided into two sects – the Drukpas, whose faith is recognised as the state religion, and the Nyingmapas, who are treated as a religious minority along with the Hindus and Christians. There is a small population of animists also. The ruling group, the Ngalungs, is smaller in size than both of the main ethnic groups, the Sharchops and the Lhotshampas, and Bhutan invites attention to the possibility of majority ethnic communities being treated as minorities.

The political system so far has depended on the will of the hereditary monarch. Between 1972 and 1998 he was not accountable to the Tshogdu (the National Assembly). In 1998 king Jigme Singye Wangchuk revived a previously suspended provision that he should receive approval of his policies from the Tshogdue every three years. Under the same order the choice of ministers was almost entirely limited to those elected by the Tshogdu. The Tshogdu has 154 members – 105 are directly elected by universal adult suffrage for three-year terms, 37 are nominated by the government and 12 seats are reserved for religious bodies. There is no system of general election as election is held for each seat in the assembly on the expiry of its holder's term. There is no opposition in the assembly as there are no political parties.

There are some signs of progress towards responsible government. Adult franchise has replaced the system of voting by household. Local government elections were held in 2002. The 1991 incident of the dismissal of 17 members of the national assembly for failure to control a crowd that had dared to remind the king of his promises seems to have been superseded by subsequent developments. In 1998 the king did sack the cabinet but he also imposed some restraints on himself and made the office of the Prime Minister subject to rotation. These features of the state order need to be borne in mind while

assessing the new constitution drafted by a special committee and submitted to the king recently (December 3, 2002). The position of minorities under the new dispensation will also be judged in the context of their grievances voiced over the past decades.

The drafting of a constitution, the kingdom's first, itself has give rise to a minority grievance. The constitution committee did not include any representative of the large Lhotshampa community. It is asserted that this omission alone will make the constitution controversial.

Perhaps the most serious grievance of the minorities stems from the citizenship law of 1985, which has deprived a large number of Lhotshampas of citizenship and obliged many of them to take refuge in Nepal. Their other grievances include denial of the rights to freedom of expression, association and assembly, discriminatory treatment by the police in matters of identification, the imposition of a dress code on the entire population, and lack of access to justice.

If after the promulgation of the constitution the citizenship issue is not resolved to the extent that the Bhutanese refugees can return home, discriminatory laws are not revised, basic freedoms are not guaranteed, and forced assimilation measures are not given up, the minorities will not be able to enjoy even their elementary rights. Nor will a constitutional order become stable and painless. Progress towards these objectives will demand not only specific measures to end discrimination but also, and more essentially, a realisation on the part of the government that acceptance of pluralism will bring peace and progress.