

ANALYTICAL STUDY OF ARTICLE 25 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

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Abstract

Equality begins with the national flag of Pakistan, taking its essence from the core concept of equality of all religious followers with a true sense of light and progress. As a fundamental right, equality of citizens engulfs many historic parameters. Article 25 of Pakistan's constitution mandates equality for all citizens, including minorities and transgender people, and bars sex discrimination. In the last sermon of the Holy Prophet PBUH, He unequivocally declared equality for all. After the Magna Carta, Europe adopted the idea of human rights. In this paper, we will scrutinize the reality of actual equality in Pakistan, which is ensured by Article-25, with its comparative analysis with modern societies. This research will allow the reader to deduce those golden scales of equality which must exist in a society.

Keywords: Equality, Article 25, Human rights, Minorities, Transgender, the Constitution of Pakistan, Discrimination

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1. Introduction:

The Constitution of the Islamic Republic of Pakistan, which establishes the rights and obligations of its inhabitants, contains the idea of equality. In a society that is constantly evolving and becoming more interconnected, the concept of equality plays a fundamental role. Many social and political movements around the world have been motivated by the fight for equality. The flourishing of Pakistan's cultural and historical heritage is a key factor in the country's progress towards equality. The nation's founding father, Muhammad Ali Jinnah, had social justice and equal rights for its entire people, as his core values. The idea of equality, which is the bedrock of a just and progressive society, is nevertheless difficult to grasp in many regions of the world. The scenario in developed countries is rather different than Pakistan. Although industrialized countries have progressive laws and regulations, the situation in underdeveloped countries such as Pakistan poses special difficulties.

Islam has given these human rights to its followers far before the western nations. The Farewell Sermon of the Holy Prophet PBUH is a pivotal moment in Islamic history. The discourse, which was given while He was on his last visit to Mecca, covered some topics, including the idea of equality for all people. Irrespective of backgrounds, the values expressed in the Farewell Sermon emphasize the significance of treating everyone with justice, respect, and equality.

2. Discussion:

Article 25 of Pakistan's Constitution is extremely important since it covers the idea of equality and non-discrimination among citizens. This Article establishes the groundwork for guaranteeing equal consideration, opportunities, and safeguards for all people throughout the nation and is codified in part 2 of the constitution

of Pakistan. The desire to address the inequities and disparities that characterized the region's pre- and early post-partition society led to the creation of Article 25. It takes its cues from the UDHR and seeks to establish a foundation for equality, protecting people from arbitrary discrimination. A quick read of Article 25 reveals an unambiguous notion of equality i.e. all citizens are treated equally before the law and are given equal protection under the law, and there shall be no racial exclusion.

3. Gender discrimination:

Human Rights are the component of women's rights and are valued in every society. Without these fundamental principles of equality and justice, people cannot live with dignity. These are unbreakable and indivisible rights that all individuals have. The nation's diversity, size, population, status as a developing nation, and Islamic democracy with a mix of Islamic and non-sectarian laws, including the rights to free opinion, liberty to receive information, the rights of faith, liberty of social interaction, freedom of the media relations, and autonomy of assemblage, all contribute to the complexity of the situation for women's rights in Pakistan.[1] Gender continues to be a sign of exclusion, with disadvantages for females in terms of distribution, recognition, and representation. Inputs, resources, especially female teachers, and outcomes in education are not equally available to girls. The significant marginalization of impoverished girls living in rural regions is the result of the intersection of gender and other types of inequality. The lowest percentage of female instructors is seen in these regions.[2] The Islamic Republic of Pakistan's constitution (The Constitution of Pakistan, Article 25 (2) (1973)) deems it mandatory that there will be no gender discrimination. The constitution affirms that men and women are equal before the law, bans all kinds of discrimination, including sexual discrimination, in the civil service, and gives women the right to freely participate in all spheres of national life. Pakistan has endeavored to elevate the status of its women by enacting an array of laws and regulations designed to protect them from bigotry and illicit conduct. However, the truth that is starting to emerge in Pakistan raises alarm bells about the mistreatment and discrimination of women who are subject to complete denial of justice.[3] Not to the surprise of many, Pakistan is placed 145th out of 146 countries in 2022.[4] In WEF Global Gender Gap Report 2023, Pakistan was ranked 142 among the 146 countries worldwide, with the most gender parity since 2006. Despite the fact that this state of parity remains among the poorest in the world, Pakistan has made progress in the last ten years, growing by 5.1 percentage points on the sub-index of "economic participation and opportunities" to 36.2%. Although the top nine nations, Germany, Nicaragua, Namibia, Lithuania, New Zealand, Sweden, Iceland, Finland and Norway have narrowed at least 80% of their gender gap, no nation has yet fully reached gender parity. For the fourteenth consecutive years, Iceland is the most gendered-equal nation in the world, having closed its gender disparity by more than 90%.[5] As per the 5th CEDAW periodic evaluation, one of the primary challenges Pakistan has, is a lack of valid information regarding violence against women (VAW) to promote the design of acceptable policy responses, resulting in unproductive and inefficient reforms to policies.[6]

Only 3% of surveyed women in Pakistan between the ages of 15 and 49 own a home, according to the Demographic and Health Survey [DHS], 2017–18. In contrast, the percentage for men is 72%. Similar disparities can be seen in the Pakistani labor market. Pakistan has one of the lowest percentages of female labor force participation in the world, according to the International Labor Organization, at only 25%. The expected figure for men is 81%. Women end up doing most unpaid work (like childcare) in Pakistan, which contributes to the low female labor force participation rate in that nation. Men end up earning significantly more than women in intra-household income differences because of this.[7]

The World Economic Forum used an index based on four factors, economy, education, health, and policies to assess gender disparity in 144 countries. According to this index, women must wait 217 years before they can earn a salary that is comparable to that of men. According to the World Economic Forum (WEF), there is a 58% pay and achievement discrepancy between men and women in the workplace. To be a welfare state, gender equality should be a moral and practical requirement. It is said that equal treatment of women and men is a moral and economic imperative. Some countries have become mindful of this and they are now reaping the benefits from the dynamic actions they have made to close disparities in gender.[8]

The Pakistani government has a responsibility to play in addressing the issues of gender imbalance by confirming and sanctioning the CEDAW. However, till now Pakistan does not have a sense of obligation to deal with the problem of discrimination against women. Furthermore, the Pakistani government

has sanctioned and punished offenders who commit acts of sexism. However, retribution and penalties have yet to be applied significantly. The Pakistani government must have the necessary structures in place to properly implement a strategy that would eventually oversee and regulate the country's constitutional liberties and procedures. Therefore, the Pakistani government must avoid being drowsy and worn out, especially as gender inequity must always be taken seriously. The equal rights of men and women in the same job should be better protected by Pakistan's Constitution.[9]

4. Transgender rights:

People who identify as transgender are frequently referred to as "khawajasira or hijra," and they have long endured institutional prejudice and societal exclusion in Pakistan. Although Pakistan officially recognizes transgender people as a separate gender, public acceptance and protection of their rights are still insufficient. They have experienced social marginalization, public mockery, discrimination, harassment, and violence since the colonial era. Pakistan battled to gain legal and social approval for gender expression and identity. This changed in 2009, with the SC of Pakistan's first decisive ruling on transgender rights in Constitutional petition number 43 of 2009. For the first time in its history, Pakistan's legal system validated transgender people's unique gender identities. Multiple orders were issued by the Supreme Court under the said Constitutional Petition reported as Dr. Muhammad Aslam Khaki and Others vs. S.S.P. (Operations) Rawalpindi and Others, PLD [2013] SC 188, directing the government to honor transgender people's sex identity and take steps to safeguard their basic rights. [10]

The possibilities available to transgender people have only included street begging, dancing, or performing sex acts in exchange for cash. They are not provided an education or given the opportunity to learn the vocations necessary for them to live as equal citizens since they are not seen as members of the society. Despite being rejected in all other roles, they are mocked for the labor they undertake to support themselves. The danger of being targeted by organizations that regularly rape and attack members of the transgender community prevents them from projecting their enterprises on social media or from becoming well-known in the public. They mention a member of their neighborhood who was raped and assaulted in Sialkot, with the offenders getting away with it. People who identify as transgender in Pakistan claim that they are always in danger of being killed in the streets of this country. The ones who have received textile design training from nonprofit groups claim that finding employment is challenging. They claim to have experienced sexual harassment, verbal abuse, and insults at work. [11]

5. Killing of the transgender:

Pakistan is the earth's second-biggest Islamic country. As per Islam, everyone has the same privileges. Through print and digital media, we observe that, albeit living in a Muslim country, transgender persons endure prejudice from both the local population and the authorities. Alisha, a 23-year-old transgender from Khyber Pakhtunkhwa, was cruelly shot seven times on a Sunday night time in Peshawar. She was in a serious condition and needed urgent medical attention. During this terrible event in Peshawar, the doctors and nurses at Lady Rendering Hospital (LRH) weren't ready to deal Alisha as a human being and they debated whether to put him or her in the female or male ward for four hours. Alisha left the world and the question behind due to carelessness. I, who? So who am I? Why do I not receive the same level of human treatment as others? On the tragic 25th of May, she left the world defenseless.[12]Farzana Jan, head of the Shemale Association of KP, literally burst into tears as she told Dawn about her efforts to identify a proper ward and a doctor, while others, especially caretakers with admitted patients, hounded and mocked her rather than supporting her in her time of crisis. Farzana claimed that if someone was going through a traumatic occurrence, patients or their attendants would constantly make fun of them and laugh at them. These folks don't make fun of us when they hire us for their productions and family gatherings, but they do so when we have difficulties, just like any other person would. She continued by saying that she felt ashamed and belittled when, rather than providing aid to her injured companion, people were making fun of them.[13] In addition, due to persistent bullying and sexual and physical assault at the hands of instructors, school administration, and peers, the transgender are unable to pursue an education due to disturbing cultural norms. This lack of education restricts their options for employment and adds to his or her three-dimensional material poverty, which leads to physical illness and fears.[14]

After passing years, a little improvement has been seen in the rights of transgender. The Transgender Persons (Protection of Rights) Act, passed in 2018 shields transgender people's constitutional rights, such as lineage, schooling, work, casting votes, retaining positions of authority, well-being, access to public spaces, and property, as well as their right to be identified as being consistent with their perceived sex identity. After the law was passed, the transgender community was quite happy, but Nayab Ali, a transgender activist and consultant for the United Nations Development Programme, claimed that a year and three months later, still the group has not established its rules of conduct.[15]

6. Progress made regarding transgender rights:

The goal in 2022 was to provide the transgender community more educational possibilities. The Punjab government decided to open Lahore's first school for transgender students in March. Only transgender children are accepted to Barkat Market's Gender Guardian School, which also offers free uniforms, textbooks and transportation. The first transgender madrassah in Lahore opened its doors in April. At her home in Johar Town, Shama Jan offers transgender people religious instruction. The Punjab government introduced the "Masawaat Programme" in January, a financial support scheme that offers monthly financial help of Rs. 3,000 to transgender people over the age of 40 and Rs. 2,000 to people with disabilities between the ages of 18 and 40. The Sindh House (Assembly) implemented legislation in July setting a 0.5% employment quota for transgender people across multiple provincial departments of government. Transgender people are able to participate in the local governmental systems of Sindh's 31 districts, according to the Local Government Amendment Act, which reserved 1% of seats for them. There are barriers to their execution despite good ideas such as educational programs, advocacy campaigns, job quotas, etc. But the provisions of the said Act were disregarded by some people.[16] There is a true need to make such legislation that will ensure the equal status of transgender community as they all are same humans as us. Article 25 is very clear in this regard and does not discriminate among males, females, and transgender.

7. Minorities Rights and their status in Pakistan:

A minority is a group of individuals who share the same identity as the rest of the population of the country but are less in number. They are identified by their ethnicity, religion, or language. These minority groups are prevalent practically everywhere in the world, and in most instances, they are suppressed. There are numerous factors at play in the modern world, and various nations are discriminating against them. Minorities are typically divided into religious, linguistic, and ethnic groups along with classifications for gender, sexual orientation, and impairments.

As per international law, religious minorities have a right under the law to enjoy their culture, customs, religion, and language protected while existing within a state. Following the demise of World War II, the United Nations General Assembly created the UDHR in 1948 to make sure that no one's rights were violated. Islam has placed a strong emphasis on an equal set of rights for all people. Islam teaches that there should be no distinctions based on caste, language, race, or color. Discrimination between various social groups has been eliminated at all levels by religion. The sacred book of Islam, the Quran, is replete with verses that advocate for and preach religious freedom and equality for all people The Quran Says: "There is no compulsion in religion." (Quran, 2: 256).[17]

Pakistan has been graced with a plethora of prominent world faiths. Tensions between different communities and sects should not occur as an outcome of Pakistan's rich cultural and religious heritage, which enhances the country's cosmopolitan background. Pakistan's present state significantly contrasts with Muhammad Ali Jinnah's original goal of a multicultural, accepting Pakistan. Pakistan was envisioned as a forward-thinking, democratic, and accepting nation that would grant its non-Muslim inhabitants equal rights while maintaining a Muslim majority. Jinnah and his modernist Muslim colleagues did not refer to Pakistan as a secular state, but they thought that its residents socio-economic situations would improve and that inhabitants of all religions and practices would be able to live in peace. Jinnah stated on August 11, 1947,

You are free; you are to go to your temples. You are free to go to your mosques or any other places of

worship in Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State”[18]

Equal rights are guaranteed under the constitution. This privilege is predicated on the rule of law. This implies that everyone in Pakistan is treated equally and without any form of prejudice, including the country's minority populations. For instance, on February 17, 2012, the Lahore High Court granted Amina Tarrar's non-Muslim mum guardianship of her 11-year-old daughter, arguing that a young girl ought to reside with her mother. Justice Manzoor Ahmad Malik pronounced the ruling on a plea filed by French national Ingrid Branden Burger seeking guardianship of her daughter Amina from her former spouse Razzaq Tarrar, an inhabitant of Tehsil Phalia. [19]

Given that the national rate of illiteracy for women in Pakistan is 58%, recent polls indicate that 87 percent of categorized caste Hindu women are unable to read or write compared to 63.5 percent of men in their group. Because of their low demographic and institutional status, there are essentially no minority women in leadership positions. Negating the rationality of Article 106 of the Constitution, there was just one Christian woman among the 371 members of the last Punjab assembly.[20]

8. Violence against minorities:

In Pakistan religious minorities are not getting equal rights and opportunities, they are merely present on Pakistan's flag as represented by white color. Sometimes their existence seems to be no more than this. The institute of conflicts Pakistan reported in its Annual Safety Assessment Report that radicalism rose in Pakistan last year. According to the research, there were 57% more militant strikes in 2021 than in 2020. 395 people were killed to death and 629 were bruised as a result of these attacks, which is an increase of 48% and 6%, respectively, from the previous year. The HRCP reports that intolerance and violence towards minorities have increased rapidly.[21] The start of 2022 was tarnished by the shocking news that a Sri Lankan citizen had been massacred and his body set ablaze by a rioting crowd in Sialkot. The tragic occurrence stunned the country, with civil and military leaders describing it as "terrible," "deplorable," and "unlawful vigilantism." [22]

Another recent occurrence took place in Pakistan. On August 16, a ferocious mob of hundreds roasted the regional Assistant Commissioner's office in Jaranwala, ransacked and set fire to many churches, and attacked Christian homes. According to Faisalabad district administration, roughly 22 churches were plundered by rioters, resulting in losses of Rs29.1 million, while 91 residences suffered damages of Rs38.5 million.[23] The US Commission on International Religious Freedom in its yearly report identified Pakistan as a nation of special concern for systemic and severe violations of religious freedom.[24]

9. Comparing racial discrimination in Pakistan with that in the USA:

In Pakistan, social and economic inequalities based on caste and ethnicity are frequently entwined with racial discrimination. A complicated web of discrimination has been woven throughout the history of the nation as a result of marginalization and unequal access to resources among various ethnic groups like Punjabis, Sindhis, Baloch, and Pashtuns. On the other hand, racial prejudice in the US has its origins in the long history of slavery, which was followed by years of segregation and unfair treatment of African Americans. Systemic racism is still present in many facets of American society, including housing, education, employment, and criminal justice, even after the Civil Rights Movement of the 1960s.

American history regarding the equality of citizens can be easily evaluated by some judgments of US Supreme Court.

10. Plessy v. Ferguson:

A significant Supreme Court case involving racial segregation and the legality of it was Plessy v. Ferguson. Homer Plessy, a native of Louisiana with mixed racial ancestry, initiated the case by consciously refusing to follow the state's segregation regulations. If the facilities were equal, did state-imposed racism violate the Fourteenth Amendment's Equal Protection Clause? That was the primary issue in the case. When the SC of USA ruled 7-1 that racial segregation was legal, the "separate but equal" paradigm was formed. Justice Henry Billings Brown wrote the majority judgment, which found that state laws enforcing ethnic segregation in public facilities were constitutional as long as the amenities provided to each race were of equivalent nature.

Since then, Plessy v. Ferguson has drawn a lot of flak for supporting racial segregation and sustaining institutional racism. The "separate but equal" philosophy was fundamentally faulty since Black people frequently received facilities that were far less advanced than those available to white people.[25]

11. Brown v. The Board of Education:

In Brown v. Board of Education of Topeka, a group of Afro American parents sued the Topeka, Kansas, school board. The parents maintained that the "separate but equal" approach established by the Plessy v. Ferguson decision in 1896, which supported racial segregation in public schools, contradicted the 14th Amendment which guarantees equal protection before the Law. The main question in the case was whether the Fourteenth Amendment's Equal Protection Clause banned racial segregation in public institutions solely based on the race of the students. The notion of "separate but equal" was invalidated by the United States Supreme Court in a majority decision that sided with the plaintiffs. Chief Justice Earl Warren stated in his judgment that racism in public schools was fundamentally unfair and violated the foundations of the Constitution.[26] This judgment revolutionizes the history but apart from all these things racial discrimination is still very prevalent in America.

On the other side, the events of 1971 that led to the breakup of Pakistan and the founding of Bangladesh had a horrible aftereffect, with which we are still contending in 2023. Up to the late 1970s, there was movement between the two nations. The law provided protection for the migrant people so they may apply for and receive Pakistani citizenship based on proof of presence or residency in the nation. When Pakistan introduced its first national identity card in 1973 under Zulfikar Ali Bhutto, the bulk of its ethnic Bengali or Bengali-speaking populace received ID cards. Birth right citizenship is another provision of the Pakistan Citizenship Act, which states unequivocally that every child born in Pakistan is a Pakistani. However, whether at the state level or in interpersonal relationships, our system has a pervasive undercurrent of prejudice and xenophobia. This prejudice, or viewing the populace through the prism of ethnicity, has had significant repercussions that continue to marginalise and stigmatise ethnic communities. Numerous people continue to be without documentation, are at risk of becoming stateless, are undocumented, or have difficulties obtaining documentation.[27]

12. Is there any way forward:

Language:

Inequities, social divides, and stratification were also perceived as being caused by the language of instruction. Inequities in education and the job market were thought to be particularly exacerbated by unequal access to high-quality education delivered in English as the medium of instruction. The decision to change the language of instruction in public schools to English was made with the intention of dispersing access to this potent language on a national and international scale. The promotion of educational success, equity, and cultural awareness are all aided by the use of mother tongues as a medium of instruction. National unity benefits from the use of Urdu as the official language. It would be preferable from a social standpoint if teachers who are qualified also taught English.[28]

Policies and the regulatory environment:

Strong legal and policy frameworks are essential to establishing equality. Discrimination based on race, gender, religion, and other protected traits is illegal under anti-discrimination laws. These laws give people a base on which to seek justice and provide them with defense against discriminatory actions.

Educational Projects:

For the purpose of eradicating prejudice and advancing equality, education is a potent tool. The adoption of inclusive curriculum that reflects various view points and historical periods can promote empathy and understanding among the populace. Multicultural education has been incorporated into the curricula of several nations, such as Norway, to inspire pupils to value cultural variety and dispel misconceptions.

Equal representation and affirmative action

By providing representation and opportunities for disadvantaged groups, affirmative action policies seek to address past disadvantages. Examples of such Programmes include the reservation system in India and the Black Economic Empowerment policy in South Africa. These policies aim to address historical injustices and advance inclusivity by offering reserved seats in employment and education.

Community involvement and social interventions:

Communities must be included in discussions about equality if real change is to occur. Grassroots activities that promote communication and cooperation between various communities can create bridges and lessen prejudice. Community dialogues in Canada and Sweden's "Living History" workshops serve as models for promoting candid conversations on racial and cultural differences.

Challenges and Things to Think About

In a multicultural society, enforcing equality is not without difficulties. The rights and needs of various groups must be balanced in order to prevent reverse discrimination. Any project promoting equality must also win support from all societal groups in order to succeed. Unconscious prejudices must be addressed in order to promote cultural competence among citizens, educators, and policymakers.

13. Conclusion:

On concluding this paper, it can be easily deduced that the status of equality of citizens is only prevalent to the extent which is presented on the national flag of Pakistan. Our constitution, our flag, our legislation are merely showcase of equality. Actual status of equality in Pakistan seems to be like a myth in Pakistan because every single dimension which we discussed, there was discrimination in that dimension. For achieving an actual status of just and fair society, strict steps as discussed in this paper are needed. In a multicultural society, achieving citizen equality necessitates a thorough and multidimensional strategy. Societies can attempt to create an environment where all citizens have equal opportunity and legal protection by combining policies, legal frameworks, educational programs, affirmative action, and community participation. Societies can get closer to the realization of a future that is truly inclusive and fair by studying successful case studies and tackling potential problems.

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