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Theory and Practice of Constitutional and Legal Protections of Minorities: Christians in Pakistan

¹**Dr. Umbreen Javaid**

1. Professor, Lahore School of Economics, Lahore, Pakistan
umbreenj62@gmail.com

²**Dr. Ammara Tabassum**

2. Assistant Professor, University of Sialkot, Sialkot, Pakistan
Ammaraasghar23@gmail.com

Abstract

The Christian community of Pakistan have to face adversities with regards to the legal protection. Practically the Christian community has all the fundamental rights of a civilized nation under the protection of the Constitution of Pakistan 1973, judicial judgments, parliamentary debates and address of Quaid-e-Azam in the Constituent Assembly. People belonging to the Christian community, legitimately and legally has right to equality but in practice they are not gratified with their present status. They face political as well as socio-economic problems besides the religious problems. They consider themselves as second class citizens in all walks of life. This matter seems more religious than political and economic. Pakistan is declared as a religious state and keeps Muslims at the top of helm of the affairs. It is also worth noticing that in the administrative plus history of the country many Christian has been appointed on the seats of public policy making, judiciary, armed forces and the brass top positions but still the Christians are frustrated and discontent. This article is a deep study of the constitutional rights of minorities in theory and practice.

Keywords: *Theory and Practice, Christian, Religious State, Constitutional Rights, Socio-Political*

Introduction

Father of the nation was a great advocate for justice, humanity, liberty, and equality. Quaid-e-Azam Mohammad Ali Jinnah, the objective of Pakistan was to establish a state that upheld the rule of law. All people were to be protected by the rule of law and justice, regardless of caste, creed, colour, or religion. The Statistics Division and Population reflect that the total population of Pakistan is 238.1 million. It is divided by 230 million Muslims which is 96.47 percent. The Christians are 1.3 million, and they comprise 1.27 percent. The Constitution of Pakistan 1973 advocate legal plus constitutional protection to all the individuals of Pakistan without any favoritism of caste, creed, color, or even religion. Nevertheless, the Christian minority has never shown their satisfaction with the standard and the rights of religion and rituals. However, the pro-government section speaks in favor of the government and the constitutional status of rights. (Bureau of Statistics, 2021)

The Indian Independence Act, 1947

The Indian Independence Act of 1947 was legalized and completed by the process of the partition of India. The British Parliament approved it on July 18, 1947. This Act implemented the British Government's 3rd June Plan, which effectively partitioned India into two sovereign states, Pakistan and India. Furthermore, Pakistan and India were established on August 14 and 15, 1947, respectively. The key components of this Act are listed below.

The Act of Indian Independence 1947 was an act of the British Parliament that granted independence to India and Pakistan, ending British colonial rule in the region. Some of the main features of the Act are:

1. **Partition of India:** The Act established two independent countries, India and Pakistan, each with its own Constitution and administration.
2. **Transfer of Power:** The Act provided for the transfer of power from British rule to the new governments of India and Pakistan on August 15, 1947.
3. **Dominion Status:** The legal, self-governing, and controlled status of both the countries, India and Pakistan, have been accepted and approved through this Act.
4. **Partition of Bengal and Punjab:** The Act also provided for the partition of the provinces of Bengal and Punjab, which were divided along religious lines.

5. **Abolition of British India:** The Act abolished the British India office and transferred its responsibilities to the new governments of India and Pakistan.
6. **Constitutional Reforms:** The Act established Constituent Assemblies in India and Pakistan to draft new Constitutions for each country.

Overall, the Indian Independence Act of 1947 marked a significant turning point in the history of India and Pakistan, and its legacy continues to shape the political and social landscape of the region.

Interim Constitution of 1947

Pakistan's first hurdle after its inception on August 14, 1947, was to draft its own constitution. Quaid-e-Azam replied to this problem by modifying the Act of India 1935 to fit the demands of Pakistan, the world's biggest Islamic state, which had just established. This is called the Interim Constitution of Pakistan and was to be replaced with the country's properly drafted Constitution. However, it lasted until 1956, when the government drafted its first constitution (Munir, 1980).

Pakistan, the homeland, was formed to achieve particular goals. Muslims in India fought for a nation in which all inhabitants may conduct their lives in accordance with world norms and fundamental rights laws. Liaquat Ali Khan collaborated and consulted with prominent party leaders and Constituent Assembly members to create a document that included Pakistan's aims. The Objectives Resolution of 1949 was a landmark constitutional document in Pakistan that laid down the foundational principles and objectives for the country's political system. The resolution was moved by Prime Minister Liaquat Ali Khan and passed by the first Constituent Assembly of Pakistan on March 12, 1949.

The primary purpose of the Objectives Resolution was to provide a framework for the future Constitution of Pakistan and to ensure that it would be based on Islamic principles. It is mentioned through the Act that sovereignty belongs to Allah, and all matters would be dealt in accordance with the Islamic meaning and tradition. It was also ensured that no discrimination would be practiced based on caste, creed, and gender. Also, equity of treatment had been ensured by avoiding discrimination based on faith and religion. Moreover, the federal government would share the powers and responsibilities with all provincial bodies for smooth and good governance.

The Objective Resolution pointed out that the Constitution of Pakistan is responsible for protecting and safeguarding the rights and interests of all citizens, specifically minorities. The welfare of all the citizens would be ensured through equality-based social and economic systems guided by Islamic principles and theology.

As per the resolution, it was assumed that Pakistan would be a state-driven democracy by ensuring no discrimination based on gender, caste, and religion. The federal government would also share power and responsibilities with all respective bodies (The Constituent Assembly of Pakistan Debates, 1949).

The Objective Resolution of 1949 is considered an essential document and guideline in Pakistan's history to provide fundamental rights, principles, and objectives. These points are major significance of the resolution that are described as:

1. Sovereignty Belongs to Allah: The Objectives Resolution confirmed that the only power belongs to Allah in this state, and freedom, equality, and tolerance would be the Islamic rule of law and traditions. This would ensure social justice and social stratification among the masses of the state.
2. Islamic Identity: The Act has guaranteed the Islamic identity of the state, and the state is responsible for freely practicing the Islamic tradition of individuals and groups without any discrimination.
3. Democracy and Federalism: The state would run under democratic rights of all citizen and no discrimination would be allowed based on gender, race, color, faith, religion etc. It also affirmed that the principles of federalism would be respected, with power being distributed between the central and provincial governments.
4. Protection of Minorities: The resolution declared that the Constitution of Pakistan would provide protection to minorities.
5. Islamic Principles: The resolution stated that Pakistan would work towards establishing an economic and social system based on Islamic principles, ensuring all citizens' welfare.

Overall, the Objectives Resolution reflected the aspirations of Pakistan's founding fathers that would be based on Islamic principles and the rights of minorities. The principles outlined in the Objectives Resolution continue to shape the political discourse in Pakistan to this day.

Constitution of Pakistan -1956

This is the country's first constitutional document. The country waited nine years for this hallowed text. The preamble of this Constitution includes the Objectives Resolution of 1949. This was referred as Pakistan's Constitution of 1956. The constitution's preamble showcases the true gist of the Pakistan Movement, as well as the All-India Muslim League's agenda. The preamble to the Constitution is presented here (Choudhury, 1969).

Preamble.

This preamble was presented on March 2, 1956. Here are some significant points presented. The Preamble of the Constitution of Pakistan 1956 outlined the fundamental principles and objectives that guided the country's political system. Some significant points of the preamble are:

Islamic Identity: The preamble affirmed that Pakistan was an Islamic Republic and that the sovereignty belonged to Allah, the Almighty Creator.

Democracy: The preamble declared Pakistan a democratic state, with power exercised through the people's representatives elected through free and fair elections.

Fundamental Rights: The preamble acknowledged that the dignity of the human person and the protection of fundamental human rights and freedoms were essential for human progress.

Federalism: The preamble acknowledged that Pakistan is a federal state of four provinces. All these provinces would be provided power to run and keep their cultural and linguistic norms in view.

Unity and Tolerance: The preamble affirmed that the nation's unity and promoting a spirit of nation's unity is essential for the country's progress.

Economic and social justice: The preamble recognized the need to ensure economic and social justice for all citizens, including providing basic needs such as education, health, and housing.

The Preamble of the Constitution of Pakistan 1956 reflected the country's commitment to democracy, Islamic identity, human rights, federalism, unity, and tolerance. While the Constitution underwent several revisions and amendments over the years, these core principles have remained central to Pakistan's political system. (The Pakistan Commissions of Inquiry Act, 1956)

The Constitution of Pakistan 1962

The Pakistan Constitution of 1962 was promulgated by Pakistan's President, Gen. Mohammad Ayub Khan. He stated that he had given this Constitution to the country of Pakistan. The following text clearly shows his will, desires, and deep aspirations, "As the President of Pakistan, holding the mandate given to me by the people of Pakistan on February 14, 1960, to promote the prosperity and esteemed status of the Pakistani nation among the world's countries, as well as contributing towards international peace, progress, and the well-being of humanity (Afzal 2001).

Preamble.

This preamble is equally important as the preamble to the latter Constitution, namely the Constitution of Pakistan 1956. The Preamble of the Constitution of Pakistan 1962 outlined the fundamental principles and objectives that guided the country's political system. Some significant points of the preamble are: (Ziring,1971).

1. **Islamic Identity:** The preamble affirmed that Pakistan was an Islamic Republic and that the sovereignty belonged to Allah, the Almighty Creator.
2. **Democracy:** The preamble declared that Pakistan was a democracy, with the people being the source of all power and authority and the state functioning through their elected representatives.
3. **Fundamental Rights:** The preamble acknowledged that the dignity of the human person and the protection of fundamental human rights and freedoms were essential for human progress.
4. **Federalism:** It is honored through the preamble that Pakistan is a federation having two provinces and each province has a single identity.

5. **Unity and Tolerance:** The preamble affirmed that the nation's unity and the promotion of a promotingance were essential for the country's progress.
6. **Economic and Social Justice:** The preamble recognized the need to ensure economic and social justice for all citizens, including providing basic needs such as education, health, and housing.

Overall, the Preamble of the Constitution of Pakistan 1962 reflected the country's commitment to democracy, Islamic identity, human rights, federalism, unity, and tolerance. While the Constitution underwent several revisions and amendments over the years, these core principles have remained central to Pakistan's political system(Burki, 2018).

1973 Constitution

Pakistan's 1973 Constitution is the country's first to be drafted and unanimously ratified by its legislature. Zulfikar Ali Bhutto deserves substantial credit for this overwhelmingly passed Constitution. However, it cannot be disputed that all parties in Parliament completely cooperated in the Constitution-making process, especially given the tragic split and emergence of East Pakistan. It is worth noting that the 1949 Objectives Resolution was a part of the Preamble of the constitution. The following phrase is the preamble of Pakistan's Constitution of 1973 (Muhammad, 1991).

Preamble.

The Preamble of the Constitution of Pakistan 1973 outlined the fundamental principles and objectives that guided the country's political system. Some significant points of the preamble are:

1. **Islamic Identity:** The preamble affirmed that Pakistan was an Islamic Republic and that the sovereignty belonged to Allah, the Almighty Creator.
2. **Democracy:** The preamble declared that Pakistan was a democracy, with the people being the source of all power and authority and the state functioning through their elected representatives.
3. **Fundamental Rights:** The opening paragraph recognized that protecting fundamental freedoms and rights for all people was crucial for advancing humanity.

4. Federalism: The preamble recognized that Pakistan was a federation of four provinces and that each province was a separate entity with its own cultural and linguistic identity.
5. Unity and Tolerance: Unity and tolerance are the significant ingredients of the state to remain in peace.
6. Economic and Social Justice: The introduction stated that fostering compassion and maintaining unity among nations was essential to the nation's advancement.
7. Rights of minorities: The preamble recognized the importance of protecting the rights of minorities and ensuring that they can freely practice their religion and culture.

Overall, the Preamble of the Constitution of Pakistan 1973 reflected the country's commitment to democracy, Islamic identity, human rights, federalism, unity, tolerance, and the protection of minorities. These core principles continue to guide Pakistan's political system today. However, the interpretation and implementation of these principles have been subject to debate and controversy over the years (Preamble of Pakistan Constitution of Pakistan, 1973, 2017).

Constitutional and Legal Protection

There has been a mention within this constitution to provide fundamental rights of all the citizens of Pakistan making no discrimination on the basis of caste, creed and even religion. The Constitution guarantees religious rights to all the citizens of Pakistan and even to the people living in Pakistan who have not attained the citizenship. All their fundamental rights are protected in accordance with international standards.

The Christians of Pakistan as well as other minorities have exclaimed that the major change in the character of the constitution came after during Zia-ul-Haq's regime where the constitution became rather Orthodox in nature, following a theocratic system. This also led to the minorities have a separate electorate.

Pakistan's 1973 Constitution guarantees all people equal rights and status, regardless of caste, creed, colour, or religion. Christians are concerned that they be perceived more as Christians and less as Pakistanis. Practically speaking, it creates a void in their national identity. This dilemma gets more acute when it is linked to blasphemy legislation. Blasphemy concerns are

fostered by groups seeking to destabilise Pakistan and undermine religious peace. (Bhatti; 2012).

Ordinance XX of 1984 was also implemented during General Zia-ul-Haq's theocratic regime against the Ahmeddiya community. The Eighth Amendment of the Constitution provides protection for this statute. It cannot be repealed like other laws; instead, a constitutional amendment method must be used to alter it. Amending or repealing it needs a two-thirds majority. This rule restricts and punishes Ahmadis from calling themselves Muslims or engaging in religious activities comparable to those of other Muslims. A considerable number of Ahmadis have been convicted under this statute, and new cases are being filed all the time. (Gabriel & Gabriel, 2007)

Table 1. *Victims of blasphemy laws (Summary, 2014)*

Religion	Victims
Christians	07
Ahmadis	11
Hindus	05
Muslims	82
Total	105

Source: *Human Rights Monitor 2014-15. P.75*

Background of Section 295 C (Pakistan Penal Code)

Since 1885 there has always been a law to prevent hurting the religious feelings of others. Section 295 was part of the Indian Penal Code, now Pakistan Penal Code (PPC).

Table 2. *Section 295-C convictions upheld on appeal from 1986-2015*

Period	Number of Appeals to High Courts and Supreme Court	Acquittals	Convictions
1986-1994	01	01	0
1995-2004	10	09	01
2005-2015	14	09	05

Source: *Implementation of Pakistan's Blasphemy Laws. P.27*

Table 3. Christian: Victim of blasphemy laws

S. No.	Name	Victims	Location	Section	Date	Allegations	Status	Source
1	Javed Masih, Nazia, Rose Mary and Kiran	1 Male 3 Female	Mirpur Khas	298-A	17/05/2014	Distributing the pamphlets	Arrested	http://www.worldvisioninprogress.com/
3	ShahzadMasih&Shama Bibi	A couple	Kot Radha Kishan district Kasur	--	04/11/2014	Desecration of the Holy pages of the Quran	Burnt alive in a brick kiln	NCJP
4	QasirAyub	Male	Talagang/Chakwal	-	15/11/2014	Derogatory language against the Prophet (PBUH) on his website	The case was registered in 2011, but due to hiding declared absconder by the court in 2012. arrested in November 2014 from	Express Tribune
Muslims: Victim of Blasphemy Laws								
1	68 lawyers (registered against eight named lawyers and 60 unidentified ones)	8: known 60: Unknown	Jhang	--	13/05/2014	During the protest, the lawyers are accused of insulting a companion of the Prophet Muhammad (PBUH)	Not arrested	http://www.bc.com/news/worldasia-27391334
2	Prof. Muhammad Shakeel Auj (Dean) Islamic Studies	Male	Karachi	--	18/09/14 (Dawn) 19/09/14 (Ex.	Shot dead due to issuing a fatwa 'wajibulqatal' (liable to be killed) relating		Dawn / Express Tribune

3	Mehar Ali Shah	Male	Naushero Feroze	--	27/06/2014	Torched a copy of the Holy Quran	Arrested	Dawn
4	Two booked	2 Male	Jhang	295-A	07/11/2014	Passed remarks against companions of the Prophet Muhammad (PBUH) on 4th Muhharam in a procession	The arrest of the accused has been deferred till the collection of irrefutable evidence in support of the allegations	Express Tribune
5	Muhammad Shoaib Adil (Editor of Naya Zamana monthly Urdu magazine)	Male	Lahore		12/06/2014	Printed in a book by Muhammad Islam Bhatti, a former judge of the Lahore High Court who happened to be Ahmadi	Arrested	Express Tribune
6	Junaid Jamshed	Male	Karachi	295-C & 298-A	03/12/2014	He spoke against the wife of Muhammad (PBUH)	Accepted the allegations and requested to Allah and all the Muslims for apology/pardon but not yet been arrested	Dawn
7	Rashid Rehman	Male	Multan	--	07/05/2014	Shot dead due to defending a blasphemy case of victim Junaid Hafeez (a professor at B.Z. University of Multan)	Murder	Express Tribune

Source: *Human Rights Monitor 2014-15 A Report on the Religious Minorities in Pakistan. P. 72.*

Section 295 B (Pakistan Penal Code)

The British ended up appointing committee at the time refrained from suggesting additional changes to avoid overextending their scope. However, General Zia-ul-Haq implemented extensive revisions through these sections and it was added to the Pakistan Penal Code (Amendment) by Ordinance 1 of 1982.

Section 295 C (Pakistan Penal Code)

This did not satisfy the radical Islamists. Life imprisonment was abolished in 1990. The sole penalties are death or life imprisonment, as well as a fine. Blaspheming the Holy Prophet is punishable by death alone (Aid, 2014).

Consequences of Religion Based Laws

This law, and others like it, have placed the country's religious minority in a precarious position. It has subjected them to constant persecution. Although Chapter XV of the Penal Code deals with religious offences, few cases have been reported under these rules since 1860. Many instances have been registered after the modifications to the death penalty offence were implemented. This fact creates suspicions in the minds of rational people about the veracity of these cases. Another regrettable aspect is that many people accused of similar offences have been killed by fundamentalists who took the law into their own hands (Channan, 2014).

Table 4. *Blasphemy victims of Punjab-Province*

#	District	Muslim	Ahmedi	Christian	Hindu	Total
01	Faisalabad	58	34	31	--	123
02	Lahore	80	42	25	--	147
03	Sialkot		476	08	--	91
04	Kasur	33	14	10	--	57
05	Bahawalpur	22	18	01	03	44
06	Gujranwala	19	09	17	--	45
07	Muzaffargarh	35	03	02	--	40
08	Jhang	75	22	04	--	101
09	Sargodha	06	20	04	--	30
10	Nankana Sahib	03	23	03	--	29
11	Sheikhupura	22	03	08	--	33
12	Khanewal	16	01	03	--	20
13	Rawalpindi	14	--	07	02	23
14	Chiniot	--	17	--	--	17
15	Toba TekSingh	06	--	13	--	19
16	Sahiwal	05	01	09	--	15
17	Pakpattan	01	--	01	--	02
18	Hafizabad	04	08	01	--	13
19	Islamabad	12	02	04	--	18
20	Narowal	10	08	02	--	20
21	Gujrat	09	04	01	--	14
22	Vehari	06	05	01	--	12
23	Rahimyar Khan	03	09	--	--	12
24	Layyah	04	05	--	--	09
25	Okara	06	02	06	--	14
26	Multan	81	01	--	--	82
27	Bahawalnagar	07	01	03	--	11
28	D.G Khan	06	04	--	--	10
29	Jhelum	07	--	--	--	07
30	Mianwali	02	04	--	--	06
31	Khushab	04	04	--	--	08
32	Chakwal	02	02	01	--	05
33	Bhakkar	03	01	--	--	04
34	MandiBahauddin	01	02	--	--	03
35	Rajanpur	01	05	--	--	06
36	Attock	--	--	01	--	01
37	Lodhran	01	--	--	--	01
	Sub-Total	611	310	166	05	1092

Source: *Human Rights Monitor 2014-15 A Report on the Religious Minorities in Pakistan. P.*

Separate Electorate Mechanism

General Zia-ul-Haq separated the country into the division for the muslim voters as well as the Non-muslim voters and established a separate electoral system based on religion. Prior to this modification, assemblies were to be elected through Joint Electoral System. One could see no differentiation between citizens based on faith. Minorities' representation in assemblies was preserved by assigning them special seats. One could state that this was an apartheid of another form (Saman, 2015).

Even though fundamental rights hold their importance but these can be very well suspended or dissolved by the president if in the circumstances of an emergency. If he declares that fundamental may be suspended, he declares an emergency on the given grounds. If it happens, the Bill has to be moved to the National Assembly to be discussed in the upcoming session. The act shows that the legislators are indeed concerned about the human and citizen rights (Khan, 2005).

The Constitution states that everyone is equal in the eyes of the law and it guarantees to protect the rights of life, honor, and property. Some of them are given in the following lines.

The Constitution of Pakistan recognizes and protects a range of fundamental rights for its citizens, including the rights to life, honor, and property. Here are the key points regarding these rights:

1) Right to Life:

- Every citizen of Pakistan has the right to life, liberty, and security, as enshrined in Article 9 of the Constitution.
- This includes the right to live with dignity and without fear of violence and access necessities like food, water, and healthcare.
- The Constitution prohibits torture for extracting evidence and mandates that no person shall be deprived of their life or liberty save by law.

2) Right to Honor:

- The Constitution recognizes the right to the inviolability of the dignity of the human person, as stated in Article 14.

- This includes the right to be free from discrimination and harassment based on race, gender, religion, or other personal characteristics.
- The Constitution also mandates that the State shall safeguard the rights of minorities and protect their legitimate interests.

3) Right to Property:

- The Constitution of Pakistan recognizes the right to own property, as stated in Article 23.
- It prohibits the deprivation of property except by law and mandates that compensation be paid for any property taken over by the State for public purposes.
- The Constitution also protects tenants' rights and prohibits forced eviction or dispossession from the property.

The Constitution of Pakistan provides a framework for protecting citizens' fundamental rights to life, honor, and property. However, there are still challenges in ensuring these rights are fully realized, and there have been human rights violations in Pakistan. The government and civil society organizations continue to work towards improving the protection of these rights and promoting justice and equality for all citizens (Malik, 2001).

The study of the aforementioned essential rights reflects the legal and constitutional position of these globally recognised rights. Their inclusion elevated the Constitution's legal standing among the world's constitutions. The free world demands that all citizens' rights, both individual and collective, be preserved and secured by the Constitution and practice. According to the Constitution, this is where the courts should go, and neither the government nor any other institution, including the legislature or the judiciary, may hinder or interfere with these rights (Chaudhry, 1993).

Fundamental Rights and Directive Principles of Policy

Christians should be given the same position and function in the state that Quaid-e-Azam envisioned. Quaid e Azam was a strong champion and believer in protecting minorities' rights, which he argued for on September 11, 1947, when addressing the first Constituent Assembly. The political leadership in and out of Parliament has consistently shown strong concern about problems pertaining to Pakistani people' fundamental rights. Most leaders think that regardless of caste, race, colour, or religion. All citizens should be treated equally

under the law, with no distinctions made based on gender, caste, creed, colour, locality, or religion. The Pakistani Constitution of 1973 includes nearly all of these citizens' rights. However, minority are dissatisfied with certain legislation and Constitutional provisions. They believe that their religious position differs from that of Muslims. They are also concerned about blasphemy laws and religious preaching. The Directive Principles and Fundamental Rights play an essential role in the Constitution. The court's position as custodian of these rights is equally important, as it is considered that the judiciary is meant to be impartial and safeguard all people' rights.

Despite the precautions, minorities are not content with their status and rights. The Pakistani Constitution of 1973 encompasses practically all of the civic and fundamental rights that the civilised world accepts and advocates for. It states that all citizens are equal in the eyes of the law and the Constitution, with no discrimination. (Chaudhury, 1969).

Suggestions

The Christian minority is a significant part of Pakistan's demography, but this community has minimal level of satisfaction. They have reservations regarding their fundamental and natural rights. In the following lines, the suggestions are presented.

1. Their religious rights should be granted not only theoretically but practically as well.
2. Their prayer places should be safeguarded to the best level.
3. The job opportunities should be attached to a merit system plus a quota system.
4. As per their satisfaction and needs, the electoral representation system should be revisited.
5. A significant community volume is below the poverty line, it should be pulled up to a reasonable level.

The international community is concernec about the fundamental rights of minorities and Christians. Therefore, the legislative bodies should take a more robust initiative in this direction.

Conclusion

The analytical approach applied on the study of the religio-political rights of Christian community reflects that although the rights are granted but still more work is needed to be

done. To address the problems of the Christian community and pull them up to reasonable standard as to washout the label of them being a marginalized community. The issue of equal rights of Christian community has been discussed on all social forums. The rights are acknowledged on theoretical grounds but have not been ensured practically, the minorities are not very happy with the state of affairs. Under all circumstances directives of Quaid -e- Azam regarding minorities be upheld and followed, as laid down in law and the Constitution of Pakistan.

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