

Human rights in constitution of Pakistan

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place which Islam should occupy in the constitution. A major disagreement occurred when the resolution was discussed in the initial meetings of the Constituent Assembly. The Objectives Resolution had sought to enable the Muslims to order their lives in accordance with the teachings of Islam, allow minorities to freely profess and practise their religions and develop their cultures, and fully guarantee the exercise of fundamental rights of all citizens. While virtually all the Muslim members upheld the resolution, Pakistan National Congress, the main Opposition Party in the Assembly, objected to it on the plea that it mixed up politics with religion and that it would reduce the minorities to the status of serfs. Only Muslim member who objected to the resolution, opined that without making radical changes in the economic structure of the country, mere safeguarding the political liberty was useless. The leader of the Congress Party, S.C.

tion. While one of the objections to its report was again regarding the place of religion — the objection that it did not represent the Islamic character as envisaged by the Objectives Resolution — the other objection was raised by the East Pakistan at naming Urdu as the only national language of the country, in disregard of the majority that lived in the east wing, whose language was Bengali. Perhaps, that was the earliest beginning of the linguistic strifes that have bedeviled this country till now, although, one

stan. It generated a bitterness between the East and West Pakistan, sowing the seeds of Bengali-Punjabi crises. The provincial feelings that were generated then have done much to undermine the strength of national feelings.

That democratic process in Pakistan underwent rude shocks during the country's formative and these factors have played their role in leading the nation to the path of division and antagonism, contributing to political instability, and lowering score on human rights

record. The three long periods of military rule, during which normal freedoms guaranteed by the constitution of Pakistan were curtailed, have left the nation traumatised and scarred where human rights matters are concerned.

Before actually attempting to evaluate the situation of human rights in Pakistan during the half century of its existence, it would be worthwhile to explore some of the main Fundamental Rights guaranteed by the constitution to an individual. It is interesting to note that Pakistan

A significant change was announced in the new constitutional formula, regarded by the liberals as a step toward promotion of human rights: the job of ensuring that no law repugnant to the teachings of Qur'an and the Sunnah was passed was shifted to the Supreme Court from the Board of Ulema

tested that the resolution would make the non-Muslims in Pakistan, "drawers of water and hewers of wood." And some of the orthodox Ulema were also dissatisfied with the constitution because they thought it gave too many rights to the non-Muslims (Dr. Safdar Mahmood, *Constitutional Foundations of Pakistan*). It is clear that the two issues that emerged during those meetings — religion versus politics and status of minorities — have not yet been satisfactorily resolved, making it hard for the subsequent governments to formulate a standardised human rights policy on these matters.

Similar contentions appeared when the Basic Principles Committee, the representative committee of all parties, was charged with the duty of charting out the main principles of the future constitu-

tion of the country has been lost to the problems in which linguistic prejudice was a major factor among many others.

An important recommendation made in the report of Basic Principle Committee was for a Board of Ulema to be set up in the federal as well as provincial setup to align all rules and regulations with Quran and Sunnah, thus giving the Ulema a power of veto in the working of legislation, and raising widespread doubts.

At the same time, however, the report, by virtue of its "Parity Proposal," created a situation, the negative implications of which have come to stay. According to the proposal, the position of East Pakistan in the Central Legislature was brought on a par, with regard to the number of seats, with the combined strength of all the nine units and areas comprising West Paki-

followed the example of the United States rather than England. In England, the Magna Carta and Bill of Rights are only of declaratory nature; the liberties of the individuals are protected against the Executive by the Courts of Law, and any citizen is free to do what he likes provided he does not act against the Law. This means that in England, unlike the US, the courts cannot protect him against the legislature. Pakistan, however, following the example of the United States, declares as void, all laws in force, if they are inconsistent with the fundamental rights as guaranteed in the constitution. The constitution obliges the state not to make any laws, ordinances, bye-laws, rules, regulations, and notifications, or to enforce any customs or usages contrary to the fundamental rights provisions, and puts them under sanctions of prerogative writs and orders which may either be moved in

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a High Court, or at the Supreme Court.

The constitution ensures that all citizens are equal before law; protection of law is an inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. Equality means that there should not be any privileges for any individuals, or groups of persons, on grounds such as race, religion, birth, caste, or class, before the law and there shall be nothing in the article that shall prevent the state from making any special provision for the protection of women and children. No person shall be deprived of life or liberty save in accordance with law. No man shall be punished for an act which was not punishable when the offence was committed, or subjected to a punishment greater than it was when the act was done.

The provisions of the Constitution limit, the right of the state to keep persons under preventive detention, seeking to ensure that no person shall be detained in custody without being informed of the grounds for his arrest., and he must not be denied the right of legal assistance. The constitution ordains, that every such person arrested, must be produced before a magistrate within 24 hours of his arrest, and nobody must be de-

arrest, and nobody must be detained in custody without the authority of a magistrate. Those persons who are detained must not be kept in prison, indefinitely.

The Constitution of Pakistan forbids slavery and all forms of forced labour, though the State may require compulsory service for public purpose. It allows the right to free choice of profession, trade, or business, but reserves the right of the State to regulate any trade or profession by a licensing system and allows for a government monopoly in certain cases. It provides for political rights including freedom of speech, freedom of assembly, and freedom of association, while limiting these freedoms by legitimising restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation and incitement to an offence. ■