

ASSESSING THE LEGAL SYSTEM FOR RELIGIOUS MINORITY COMMUNITIES IN PAKISTAN

Policy Brief

ACCORDING TO THE 2017 POPULATION CENSUS, RELIGIOUS MINORITIES MAKE UP APPROXIMATELY **3.51 PERCENT OF THE TOTAL POPULATION**[1]. 1.73 PERCENT OF THE POPULATION COMPRISES HINDUS, 1.27 PERCENT OF THE POPULATION ARE FOLLOWERS OF CHRISTIANITY, WHEREAS SCHEDULED CASTES AND OTHER FAITHS MAKE UP THE REST[2].

The Constitution of Pakistan guarantees citizens of **all religions the right to profess, practice and propagate their religion**[3], the right to **receive an education** in which no religious community is required to study other communities' religious beliefs[4] and the right to be **free from religious discrimination** in public appointments[5]. But systemic discrimination against religious minorities has long been embedded in the socio-political landscape of Pakistan. This begins from the time that minorities are children in school and continues well into their adulthood as they attempt to join the workforce, participate in politics and claim basic rights of citizenship. It is important to recognize, however, that the extent of marginalization faced by each individual may also be dependent on other factors such as gender and socio-economic class[6].

An in-depth study into the legal barriers faced by religious minorities residing in Pakistan reveals that while numerous basic rights of citizenship in Pakistan are linked to having a National Identity Card (NIC), a significant number of religious minority communities (RMCs) are reported to either have **difficulties in obtaining an NIC** or be **unable to obtain** an NIC at all[7][8].

It is also important to note that the **laws that protect** the rights of religious minority communities are either **outdated or non-existent**[1]. For instance, the Christian Marriage Act of 1872 and Divorce Act of 1869 are archaic colonial legacies that do not properly address or provide legitimacy for divorce[2]. Meanwhile, even where updated legislation like the Hindu Marriage Act has been introduced and passed, its implementation and enforcement leave much to be desired[3]. To make matters worse, while there is an urgent need for a law that criminalizes forced conversion, it has not been tabled in Parliament to this date.

Key Findings:

1. Lack of knowledge of specific laws and processes relating to RMCs
2. An inclination and/or preference for Islamic principles, laws and beliefs to be used to govern the personal lives and choices of RMCs
3. Otherization of RMCs i.e. Us vs Them

Even in cases where the law is up to date it is, however, observed that the letter of the law is not followed properly. For instance, a thorough **case-file analysis** of criminal cases demonstrates that problems plaguing police investigations also apply to cases pertaining to religious minority communities. This includes **non-compliance with Section 103** of the Code of Criminal Procedure , **delays in investigations, arrests without probable cause**, proceedings in flimsy cases etc.

Additionally, a comprehensive assessment of the knowledge, attitudes and practices of Muslim administrative and justice sector actors reveals a **lack of knowledge of specific laws and processes** relating to religious minority communities. While actors in the administrative and justice system are required to go through extensive training so as to ensure that they practice the correct application of the law, it is, however observed that administrative actors are largely unaware about the intricacies of the law and procedures which arguably contributes to direct and indirect discrimination faced by religious minority communities.

An **inclination and preference for Islamic laws** is also observed amongst justice sector actors, even in cases where personal law should be used. While Islam is the official religion of the State, and the Constitution requires that all enacted laws be subservient to the sharia, it is not binding on religious minority communities. However, it has been noted that when questioned about the legal issues faced by religious minority communities, justice sector actors have a tendency to refer to sharia.

In-group vs. out-group mentality has also been observed within the language used by justice sector actors. Religious minority communities are usually referred to and framed as the Other. Arguably, it is this otherization that eventually leads to a denial of rights.

Where indirect and direct discrimination exist to such a large extent, it also becomes important to think about how religious minority communities gain access to justice. Research into conflict resolution methods for civil cases reveals that religious minority communities residing in Pakistan prefer to resolve their issues through mutual agreement between the parties, particularly when it comes to issues like debt and family issues due to a lack of trust in the State.

Way Forward

- Bridging legal gaps through the institutionalization of comprehensive legislation aimed at catering complex issues, for e.g. forced conversion.
- Updating outdated and archaic laws such as the Christian Divorce Act of 1869
- Establishment of systems of accountability to facilitate and improve investigation. This may be achieved either through District Criminal Justice Coordination Committees formed under the Police Act 2014 in Sindh for instance, or a statutory committee that specifically monitors cases of religious minority communities.
- Formation of a statutory commission to protect, promote and uphold constitutional rights of religious minority communities
- Capacity-building and sensitization of Judges at the District Court Level on personal laws pertaining to religious minority communities to bridge knowledge-gaps.
- Formalized engagements between Pakistan Bar Council and lawyers for capacity-building aimed at improved legal representation of members of religious minority communities.