Proceedings of International Conference on

HUMAN RIGHTS CHALLENGES & PROSPECTS

November 07-09, 2018

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Proceedings of International Conference on
Human Rights: Challenges and Prospects
(November 7-9, 2018)

Editors

Prof. Dr. Khalid Manzoor Butt
Muhammad Manzoor Elahi

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International Conference on Human Rights: Challenges and Prospects

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CONTENTS

Academic Session-9: *Human Rights and The World Challenges*
Chair: Justice (R) Nasira Iqbal

Academic Session-10: *Security, Peace and Human Rights Vulnerabilities in South Asia*
Chair: Prof. Sajjad Naseer

Concluding Session

EDITORIAL

Department of Political Science and Centre of Excellence China Studies, GC University, Lahore, jointly organized an International Conference on Human Rights: Challenges and Prospects (ICHRCP) on November 7-9, 2018 at Bukhari Auditorium, GC University Lahore, Pakistan.

The department has been organizing international conferences on significant themes since 2013. In addition to the aforesaid conference, the department has organized five international conferences so far i.e., International Conference on Water Resources Governance in the Indus Basin (2013), International Conference on Local Representation of Power in South Asia (2014), International Conference on China-Pakistan Economic Corridor (2015), International Conference on Inter-Regional Connectivity: South Asia and Central Asia (2016) and, International Conference on Migration and Displacement (2017).

This year, conference encompassed themes of human rights and discussed new trends and challenges to human rights in 21st century. The conference provided a platform to international and national scholars, academicians, civil rights activist, law makers, and governmental bodies to participate in discussion on human rights and (re-) conceptualize it for post-modern societal structure.

Seventy years ago, United Nations passed a Universal Deceleration of Human Rights (UDHR) to ensure the prestige and dignity of human beings. Unfortunately, the world is still passing through recurrent ups and downs in implementation of its fundamental principles. Antonio Guterres, UN Secretary General, highlighted the plight condition of human rights at 34th Session of Human Rights Council, in these words, "disregard for human right is a disease, and it is a disease that is spreading – north, south, east and west". Hence, the conference is an academic endeavor to reaffirm that "…the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

The concept of human rights coincided in the age of enlightenment which broadened its theoretical bases and later turned it into documented form under the auspices of UN. The discourse of human rights in 21st century is facing severe challenges i.e., armed conflict(s), biological and chemical warfare, political violence, rise of non-state militant actors – ISIS – ethnic cleansing, racial profiling, minority discrimination, farmers' suicides, child abuse, modern slavery, human trafficking, migration induced marginality, youth bulge crises, discrimination against women, honour killings, social exclusion of thirdgender/transgender, human security and, terrorism.

The research foci of this international conference was to present and analyse the new researched data, concepts, approaches, ideas and methods vis-à-vis human rights and to come up with a more constructive framework to revert the aforesaid daunting trends. The post-modern societal norms demand more in-depth insight and emphatic understanding of human behaviors in day-to-day social interaction. Therefore, the conference sought inter-disciplinary approach to give answers on more empirical grounds. This academic effort opened up avenues to (re-)imagine the politico-economic and social matrix of contemporary age wherein human rights are discussed, represented and enforced.

In short, the conference envisioned to promote equitable participation of women as well as inclusion of youth and marginalized groups into main stream society and to recognize thirdgender identity as a significant part of social capital. This academic initiative, therefore, has been taken up to discuss new challenges to human rights and to give some pragmatic solutions to protect and promote human dignity. Scholars presented their researches on the following multiple dimensions of Human Rights:

1. (Re-) conceptualizing Human Rights
2. Social Justice, Equity and Minority Rights
3. Women Empowerment
4. Youth Bulge: Liability or Asset
5. Human Trafficking / Modern Slavery
6. Conditions of Child Rights in Contemporary Age
7. Thirdgender/Transgender: Search for Identity
8. Dynamics of Inter-culturality, Ethnicity and Racism
9. Security, Peace and Human Rights Vulnerabilities in South Asia

10. Terrorism, Armed Conflict(s) and Violence in 21st Century

The conference received an unprecedented recognition from the academic circles, policy making community, human rights activists and think-tanks across the globe. We were overwhelmed by the response to our Call for Papers and received very interesting abstracts. The lists of received abstracts of national and foreign scholars were displayed on the departmental website. The meeting of Conference Scientific Committee was convened twice to ensure the blind review process. The committee evaluated each one of the manuscripts for the conference on very rigorous criterion i.e., the significance and relevance of the topic, clarity and quality of the research questions posed, methodology devised for the study, logical flow of the assumptions and inferences made, and originality as well as structure of the abstract. The committee made its final selection after going through all the abstracts.

Scholars from United States of America (USA), Peoples Republic of China, Czech Republic, Switzerland, Hungry, Uzbekistan, Japan, Malaysia, New Zealand, Singapore and South Africa participated in the conference. It is, indeed, a matter of pride that such a large number of foreign scholars gathered at our University.

The conference revolved around ten academic sessions on the aforesaid themes along with Inaugural and Concluding ceremonies and a Policy Dialogue session. The sessions were held simultaneously at Bukhari Auditorium, GCU and GCU Meetings Room. Prof. Dr. Mohammad Nizamuddin (S.I), Chairperson, Punjab Higher Education Commission (PHEC), graced the inaugural session as Chief Guest and appreciated the academic and research endeavors of the department. Mr. Shamshad Ahmed Khan, Former Foreign Secretary and Permanent Representative of Pakistan to the United Nations, delivered keynote address and accentuated on the significance of human rights. The academic sessions were chaired by eminent foreign and national scholars i.e., Prof. Dr. Ishtiaq Ahmed (Sweden), Prof. Dr. Saeed Shafqat (Pakistan), Prof. Dr. Mohammad Wasim (Pakistan), Dr. Muhammad Imran (New Zealand), Prof. Dr. Bilveer Singh (Singapore), Prof. Dr. Noreha Bint-i-Hashim (Malaysia), Dr. Zulkhumor Mirzaeva (Uzbekistan), Dr. Tamás Lattmann (Czech Republic), Justice (R) Nasira Iqbal (Pakistan) and Prof. Sajjad Naseer (Pakistan).

In addition, I.A. Rehman, a known human rights activist, chaired the session of Policy Dialogue at GCU Meetings Room. He called for the provision of basic rights to the people of all social, religious, cultural and, political strata. After thorough deliberations among national and international scholars, policy makers, and social activists, the house concluded following recommendations for the protection and promotion of human rights. In addition, the house paid tribute to Ms. Asma Jahangir (Late) and recognized her struggle for protection and promotion of human rights in South Asia. The policy suggestion can be summed up as:

1. Accessible, affordable and inclusive education.
2. Equal opportunities to all people irrespective of gender, faith and race.
3. Poverty alleviation.
4. Women empowerment and gender equality through representation and participation.
5. Rule of Law, accessible justice system for all.
6. All-encompassing and far reaching policies.
7. Effective execution of laws.
8. Inclusion of Human Rights Education (HRE) in curriculum at all levels.
9. Formation of a welfare state as per the vision of our forefathers.
10. Promotion of democratization and constitutionalism.
11. Formation of framework to implement UN Sustainable Development Goals (SDG's).
12. National Action Plan should be implemented in its letter and spirit.

In the end, we were honored by the presence of Raja Yasir Humayun Sarfraz, Provincial Minister for Higher Education, as Chief Guest and Dr. Samar Mubarakmand as Guest of Honor in the Concluding ceremony of the conference. The souvenirs were presented to national and foreign paper presenters in recognition of their research contribution in the conference.

To conclude, we extend our gratitude and profound regards to foreign scholars who came across the globe. We are also thankful to our national scholars. We appreciate and encourage the support of all the people

Editors

Prof. Dr. Khalid Manzoor Butt

Muhammad Manzoor Elahi

WELCOME NOTE

Prof. Dr. Khalid Manzoor Butt
Chairperson, Department of Political Science
Director, Centre of Excellence China Studies
GC University, Lahore, Pakistan.

Bismillah-ir-Rahman-ir-Rahim.

Prof. Dr. Nizamuddin, Chairman PHEC, Prof. Dr. Hassan Amir Shah, Vice Chancellor GCU, Keynote Speaker, Mr. Shamshad Ahmad, Delegates, faculty members, students, ladies and gentlemen, Assalam o Alaikum.

I am grateful to the Chairman PHEC who has spared his time from his busy schedule. Indeed, it's a matter of pleasure and honor for me to welcome Chairman PHEC here at GC University, Lahore, to the "International Conference on Human Rights: Challenges and Prospects (ICHRCP)" as the Chief Guest. Let me extend a special thanks to all the delegates who have come all the way from Europe, China, South Asia, Central Asia, and off course various parts of Pakistan to present their papers in the conference.

Ladies and Gentlemen, I am very pleased to share with you that this is the 6th consecutive international conference that the Department of Political Science is very proudly organizing. In past 5 years, we have organized conferences on the following very important topics:

1.	Water Resource Governance in the Indus Basin	2013
2.	Local Representation of Power in South Asia	2014
3.	China Pakistan Economic Corridor (CPEC)	2015
4.	Inter-Regional Connectivity: South Asia and Central Asia	2016
5.	Migration and Displacement	2017

These conferences provided platform to discuss important social and political issues of regional and global interest which can be called as Track-II diplomacy. Such initiatives generate new ideas that can lead to academic excellence for human development, security, peace, and cooperation.

Indeed, Human Rights is a product of modern age. Scholars and social activists from John Locke to Asma Jehangir have been striving to aware and educate the people about their Human Rights and to sensitize the stakeholders. In this regard, contributions of social activist as well as regional and international organizations cannot be ignored. UN Declaration of Human Rights is the land mark achievement at international level and regarded as yardstick to measure conditions of Human Rights in a society. But still a long way to go and various countries and societies have to give attention to this important aspect of human being.

Kashmir, Palestine and Rohangya Muslims of Myanmar are prime examples of Human Rights violations and international community is unable to address these challenging issues of contemporary age. Similarly, minorities and immigrants have been suffering in many countries. Women, Children, labourers and third gender are most vulnerable communities particularly in third world countries.

The themes of this conference are mostly related to vulnerable segments of the society, not only in Pakistan but in global perspective. The conference seeks to explore economic, political and social dimensions of Human Rights, covering a wide range of concerns of different stakeholders.

I expect that scholars will shed light on the topic beyond the traditional parameters of academic discussions and contribute in formulation of methodological framework that must comprehend the concept of Human Rights within the context of local and global realities and real international politics.

The basic purpose of Human Rights is to give dignity, respect, self-esteem and equality to human beings and to make a better society and to extract the best from people.

Once again, I extend my gratitude to the Chief Guest who has graced the ceremony. I am also thankful to Mr. Shamshad Ahmad for accepting our request to deliver keynote address. Mr. Ahmad is also an old student of the department of Political Science who has excelled as a renowned diplomat and scholar of Political Science. We take pride of having such alumni.

For the arrangement of this conference, we have valuable support of the Vice Chancellor, PHEC, HEC Pakistan and sponsors. This conference cannot be arranged if my faculty and students have not worked with commitment and zeal.

Last but not least Mr. Manzoor Elahi, the conference Coordinator and his team deserve a big round of applause for their untiring efforts for the conference.

I am thankful to all the participants who have come all the way from different regions and made this event very special.

I thank you, ladies and gentlemen.

VICE CHANCELLOR'S MESSAGE

Prof. Dr. Hassan Amir Shah (SI)
Vice Chancellor
GC University, Lahore, Pakistan.

Professor Nizamuddin Saa'hib, Shamshad Ahmad Khan Saa'hib, Dr. Khalid Manzoor Butt, delegates, and students

Good Morning and *Asslam-o-Alaikum*.

I would like to welcome all of you to this conference organized by the Political Science department. Let me begin by thanking Professor Nizamuddin, Chairman, Punjab Higher Education Commission for gracing this event as the chief guest. Dr. Nizam heads the Punjab Higher Education Commission and this is an extremely valuable source of support for us; in financial as well as intellectual terms. Starting with this conference, we have planned out a number of different conferences in the university. Next week, we are starting a conference on Urdu and that is a joint Pak-Turkish venture and again we have support from Punjab Higher Education Commission. There is a conference on Mathematics and a conference on Psychology and a conference on Bio-Technology, all planed in next couple of months. So, for all these activities we need support from our different government funding agencies. Punjab Higher Education Commission and Higher Education Commission of Pakistan are one of them.

I would also like to welcome Mr. Shamshad Ahmad Khan as already mentioned by Dr. Khalid Manzoor Butt, he is a veteran diplomat, one of the most famous diplomats in recent history of Pakistan. He is been foreign secretary of Pakistan and has served as an ambassador in very important postings. He of course is an old student of Government College, so, we are especially proud of him and he is a keen observer of things which are happening around us. So, we are very happy to have him here as a keynote speaker today.

I would like to extend my welcome to delegates from different parts of the world i.e., the US, New Zealand, China, Czech Republic, Switzerland, Hungry, Singapore and South Africa. Let me share our special connection with Hungary that our first Principal, Professor G.W. Leitner in 1864, was a Hungarian. He stayed here for many years and set the ball rolling for Government College. I think, all that we have today is because of Professor Leitner. He was an orientalist and knew many languages. He set up Government College and its traditions which we are still following today. Of Course, we have delegates from Uzbekistan, Sweden, and other parts of Europe and I would like to welcome all of you here. We are well represented by different universities of Pakistan and I would like to welcome the people who have come from different parts of Pakistan to attend this conference and of course our own students who are here and the other delegates who are here, a very warm welcome to Government College University from me.

I hope, this conference is going to be an important academic event for you. You are going to learn things over here and this will of course enhance your scholastic abilities in the field of political science and specifically on different types of human rights issues.

I would like to congratulate the department. They have been regularly organizing a major conference every year for the past six years. Dr. Khalid Butt gave some details of these conferences. It is quite a monumental task and of course then we suffer from the fact that from time to time the situation around us becomes unstable. Some foreign delegates drop out at the last moment however those who are here, I would like to assure you that you will be safe here, you will be looked after and hopefully nothing untoward will happen.

Thank you very much.

KEYNOTE ADDRESS

Shamshad Ahmad Khan
Former Foreign Secretary
Ambassador and Permanent Representative of Pakistan to the United Nations.

Ladies and Gentlemen, thank you very much for inviting me. I would really like to thank the Vice Chancellor, Prof. Dr. Hasan Amir Shah, and Chairperson, Department of Political Science, Prof. Dr. Khalid Manzoor Butt, who invited me.

Thank you so much indeed.

No discussion on human rights can begin without acknowledging one universal truth. It is Islam that gave humanity and the concept of human rights in all its aspects. The Last Sermon delivered by the Holy Prophet (Peace be upon him) on the ninth day of Zil Hajj 10 A.H. (Friday, 6th March, 632 A.D.) in the Uranah Valley of Mount Arafat (Makkah) was indeed the Divine Charter of Human Rights, promulgating for the first time in human history the fundamental values and freedoms as human rights to life, property, human dignity, equality and equal opportunity without distinction of race, colour, language, gender or religion and promoted social justice.

Fundamental human rights in Islam are thus well defined. The Holy Qur'an and the sayings of Holy Prophet (Peace be upon him) provide exhaustive details about social responsibility of the state with respect to fundamental human rights. Islam's contribution to human rights is best appreciated when viewed against the backdrop of world history as well as the realities of modern times. Social, racial, gender, and religious inequities continue to exist. Economic and social disparities have resulted in oppression of the lower classes.

When considering the question of human rights and Islam, it is important to distinguish the divinely prescribed rights of Islam from potential misinterpretation and misapplication by imperfect human beings. Just as Western societies still fight against racism and discrimination, many Muslim societies struggle to fully implement the rights outlined in Islam. Human rights in Islam stem from two foundational principles: dignity and equality.

The diversity of humanity into many races and ethnicities is a testament to God's majesty and wisdom. Therefore, racial superiority and discrimination is prohibited in Islam and contradicts its essence. This concept is exemplified in the final sermon of Prophet Muhammad (PBUH) who proclaimed: "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam."

"O people! Your blood, wealth and honour have been prohibited to one another forever. These things are as sacred as this day (Day of pilgrimage) this month (Month of Zil Hajj) and this city (Makkah and surrounding areas). Beware; do not go astray after me lest you should shed each other's blood. Return the goods entrusted to you, to their rightful owners. Hurt no one so that no one may hurt you."

Historically, people have sought to curtail and eliminate distinctions and discriminations based on race and colour, and to supplant the arbitrary powers of rulers with a system of laws to protect civil and political rights. But it was not until after the Second World War that the world community embarked on concerted efforts to set international standards of human rights. In 1945, emerging from the ashes of World War II, the United Nations was hailed as "mankind's last best hope".

The United Nations Charter reaffirmed faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. Concepts of "sovereign equality of states, self-determination, human rights, fundamental freedoms and collective security" were integral to the Charter of the United Nations, heralding the dawn of a peaceful, democratic and egalitarian age.

The United Nations, with its universal recognition and authority, was to imprint what is "good" and combat what is "evil". It was meant to provide a moral edifice for the re-ordering of the global system, which

would be based on justice and equity and which would be governed by rules, laws, values and cooperation. The Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, codified the basic rights and freedoms to which all women and men are entitled.

Among them are the right to life, liberty and nationality; to freedom of thought, conscience and religion; the right to work and to be educated; the right to food and housing; and the right to take part in government. The Declaration commenced with the proclamation 'All human beings are born free and equal in dignity and rights, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status'.

This brings us to the Challenges and Prospects in implementation of the various global covenants and conventions on fundamental human rights including the cardinal principle of self-determination enshrined in the UN Charter. The challenges are many, but the prospects are so very bleak. We are living today in a world that could not be more chaotic and more turbulent. Armed conflict remains pervasive. Might always considered wrong has never been claimed so right.

The Cold War is long over but the Cold Warriors are still out there in the driver's seat. There is no letup in violence and the causes that breed despair and defiance. The war on terror has not gone beyond retribution and retaliation. It is a chaotic and turbulent world with post-Cold War dynamics unleashing their own challenges to human rights across the globe. The events of the last two decades have immeasurably shaken the international system which is no longer governed by the rule of law or universally acknowledged norms.

In the emerging scenario, no other region in the world today is as volatile and unstable as South Asia with continuing Afghan turmoil with all its ramifications and longstanding India-Pakistan hostility and conflict. Peace in this region is predicated on early resolution of these issues. Somehow, the world has not paid enough attention to the genuine need for peace and development in this vast region which remains fraught with acute threats to regional as well as global peace and security.

Peace in South Asia will remain elusive as long as Kashmir remains under Indian occupation. The world must know that it's a question involving the fundamental right of self-determination of the Kashmiri people, pledged to them by the international community as well as by both India and Pakistan. Kashmir today is universally recognized as a virtual nuclear flashpoint. As one of the oldest unresolved international conflicts, Kashmir is today a somber reminder to the world that it cannot continue to ignore the legitimate aspirations of the Kashmiri people.

The Indian-Occupied Kashmir is today aflame with volcanic eruption of popular anger and frustration against India's military occupation. The indigenous Kashmiri struggle goes on undeterred with thousands of Kashmiris already laying down their lives. The Kashmiri people continue to experience untold hardships and sufferings including human rights violations. But no amount of atrocities and humiliations will stop them from pursuing their legitimate cause. This is the crux of the Kashmir situation.

The Kashmiris today feel betrayed and are out on the streets demanding to be freed from Indian military rule. Indeed, theirs is the voice of a wronged and neglected people. This is a situation without precedent in South Asia and with few parallels in the world today. India's efforts to obfuscate Kashmir dispute as an issue of terrorism will not succeed. Popular movements can never be suppressed. India is forcibly hanging on to Kashmir when the Kashmiris don't want to have anything to do with India.

They want their right of self-determination. Brutal military force brings no relief to anyone. Stark lessons are there to read in history. Even the world's sole super power today owes its existence to a long war of independence. Narendra Modi cannot deny the history in his own country. It was the War of Independence in 1857 that laid the road to India's liberation as an independent state. The world must know that there is but one fair, just, legal and moral solution to Kashmir, which was provided in UN Security Council resolutions.

India will also do itself good by seeing the writing on the wall. The Kashmir settlement has to be in accordance with the wishes of the Kashmiri people, impartially ascertained, in conditions of freedom from intimidation and coercion. The setting aside of the UN resolutions is one thing, the discarding of the principle they embodied is quite another. The underlying cardinal principle of self-determination cannot be thrown overboard. The Charter of the United Nations empowers the Secretary General to bring any matter which may threaten the maintenance of internal peace and security to the attention of the Security Council.

It is also an issue of grave human rights violations. It is time, the UN Secretary General exercises his Charter duty to put the Kashmir issue on the active international agenda. Should the Secretary General feel that the factual data at his disposal does not justify the use of his power under Article 99 of the UN Charter, he can at urgently at least dispatch a special representative of high international standing to India and Pakistan who should visit both parts of Kashmir and report back to the Security Council the facts of the situation.

In fact, 'United Nations High Commissioner on Human Rights' has already recommended sending a fact-finding mission to Kashmir to assess the situation there. If India feels that it has nothing to hide, it should welcome his mission. The US and China, as global powers with direct stakes in this region's peace and security, also have an obligatory role in facilitating a Kashmir settlement. It's indeed a colossal challenge that can be met only through dialogue and constructive engagement.

It is also time for the voices of reason and responsibility — in America, China, Russia, Europe and the Arab as well as Muslim world — to caution against militarism and demand strict adherence by all states, large and small, to the UN Charter's central principle i.e., the prohibition of the use or threat of use of force in international relations.

I wish you all the best in this conference.

Thank you.

CHIEF GUEST'S ADDRESS

Prof. Dr. Mohammad Nizamuddin (S.I)
Chairperson
Punjab Higher Education Commission (PHEC)
Punjab, Pakistan.

Bismillah-ir-Rahman-ir-Rahim.

My dear friend, honorable Vice Chancellor, Prof. Hassan Amir Shah, the conference organizer Dr. Khalid Manzoor Butt, my senior colleague in the United Nation, Mr. Shamshad Ahmad Khan, delegates and conference participants Good Morning.

I was with Mr. Shamshad when he was the Secretary General of ECO. Let me clarify I am not the chief guest although they have designated me. I am a friend of Government College University, Lahore, because I have always been coming here as a colleague and as an academician.

I am little bit confused now, should I say things from my heart or should I follow the line given in the conference themes and objectives? So, I do not know what to say. The only thing I can say that this conference has come at a very right time. What happened last week in Pakistan is a good basis to discuss human rights issues and conditions in Pakistan but whether or not it should be discussed, I do not know. I have not seen the papers yet. I have gone through the session details which are designed to discuss the plight of human rights all around the world.

After having a very comprehensive keynote address by Shamshad Saa'hib, it is very difficult to add something. I have the same ideas to talk about. I have thought that the last *Khutba* delivered by Holy Prophet (PBUH) was the first declaration of human rights in the human history. May be if you go back to ancient civilizations, there were some declarations to protect the life of a human being. The Sumerian and Babylonian civilizations had some declarations. I want to add that the *Sulah-e-Hudaybia* is an agreement that talks about conflict resolution. It is also a land mark agreement. I would like to give reference of Quaid-e-Azam's speech on August 11, 1947, which people make controversial. That speech set the pace for Pakistan's human rights declaration. Unfortunately, these things were not properly incorporated in our constitution.

The situation that took place a week ago would have not taken place, if they had enshrined the declarations of *Sulah-e-Hudaybia* and the last sermon of Prophet Muhammad (P.B.U.H). In the first three years of the formation of United Nations system, the declaration of human rights was adopted by the forty eight members of UN in Paris. Ever since many conferences have taken place. In a recent conference, the UN Secretary General lamented that how human rights violations are being committed throughout the world. He urged that United Nations has acknowledged the human rights violations all around the globe. So, even today there is no mechanism internationally to stop human rights violations. We can see that how many international human rights violations are still going on but no solutions have been found. It means that United Nations has failed, states have failed in maintaining the respect and dignity of human rights. Then the question is what these conferences are for and what we want to do? Do we want to repeat what has been said 70 years ago? All human rights have been enshrined but nothing has done to implement it. So, the focus and theme of any conference should be what can be done and what are the prospects of implementing it?

The question to all of us is what we can do to implement the international laws regarding human rights? What are the mechanisms that have been developed and why failed? Where is the problem? The problems lies with us as an individual, as a society, as a community and as a nation. So, from where do we need to start? What can we do? I can see that there is a big challenge for the entire system. How the supreme court of Pakistan is going to deal with the events that took place last week. This is a serious challenge for the state and its judicial system. I really wanted to discuss this kind of issue with you all and I come to Government College University, every month because every month, they organize a conference. These are international conferences and cover various themes. These themes include topics like human rights, migration, psychology, sociology, linguistics, economics and political issues.

Universities are supposed to do this. Students can learn a lot from such conferences. When I was organizing such things in the University of Gujrat, I had to bring people from Lahore, Islamabad and Karachi. I am thankful to all the international participants for coming to Pakistan in these circumstances. So, all around I think it is a very well organized conference. The participation of international delegates coming from different countries is also very commendable. But my personal question is what will you get out of this conference? Will you get something that will help our country, neighboring countries to resolve conflicts, to address human rights violations which are taking place every day and every minute?

There are human right violations in Pakistan at domestic level. We observe old kind of stories that how women rights are being violated by the panchayat system. There is a matter of extra-judicial killing. All these violations take place irrespective of the fact that we have judiciary. The panchayat system is still working. I do not know why we have not been able to stop it? It can be done by passing a single law that there will be only one superior court. All this is happening and I guess it is still happening because primarily the responsibility rests with the citizens of Pakistan. They are not taking control of their life. They are not participating. They are not talking about it. The other group which violates the rights comes out in the streets with vengeance and weapons and the law abiding citizens are not coming out and are not fighting for their rights.

I think that Dr. Khalid Manzoor Butt should be declared head of the directorate for the organization of conferences, GCU. He has been organizing conferences of international standards every year. This is an extraordinary capability to manage resources, contact with experts, invite them and make sure that all of them come to the conference. It is a great conference and I would really like to congratulate Dr. Butt, the Vice Chancellor and the students of the department of Political Science. But as a professional, I really want to initiate a debate for all of us that something should be done beyond paper reading. There should be a heart to heart talk. Something should come out of this. I think that there is nothing much to add after the comprehensive key note address. I just came to be a part of this conference.

It is always a pleasure to come to Government College University. It is a pleasant place to come. So, I just came to talk, meet and see you all. My message will be to find out what can be done to end all these violations. More concrete steps should be advised after all the deliberations. At least one session should be dedicated to discuss what could be done to address this contemporary issue.

I wish this conference a big success.

Academic Session: 1

(Re-) conceptualizing Human Rights

Session Chair: Prof. Dr. Ishtiaq Ahmed

THE NEED TO BALANCE SECURITY WITH CIVIL LIBERTIES

Ahmad Nazir Warraich[∗]

Abstract*: Terrorism and armed conflict are a threat to both human dignity and human rights, as they put in danger the life and freedoms of millions. At the same time, due to the violent nature of terrorism and armed conflicts, societies find it very hard to ensure the due process rights and fair trail to the alleged terrorists and the enemy forces. Historically, there has been an inverse relationship between civil liberties and states of emergencies. Resultantly in the post September '11 world, many new counter terrorism measures have been put in place, which in a number of ways have posed a direct challenge to the human rights regime which was incrementally put in place since the second half of the twentieth century. In addition, the number of non-international armed conflict situations has also been on the rise, leading, in many cases, to humanitarian intervention by external forces. Both of these together have led to violence and human rights violations. This paper will examine such violations and their causes with a view to better protect human rights in such situations. Human rights protections are to be provided in all circumstances and to all people, because they are 'human' and therefore have 'inherent dignity', irrespective of their actions. Significant research has been done in this area, however, the problem persists. This paper will try to explore the reasons for it, and suggest ways forward. The paper will use secondary data sources and carry out quantitative and qualitative analysis of the available sources and relevant literature.*

Keywords: Human rights, terrorism, civil liberties, due process, rule of law

Introduction

The state has a responsibility to protect the life and limb of its citizens. Terrorists through violent acts aim to terrorise a population including through killing and maiming people, to achieve some political objective. Terrorism aims at the very destruction of human rights, democracy and the rule of law. *It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. It is therefore a basic duty of a state to protect its citizens from such wanton acts of cruelty[1]*. However, a state and its agencies while providing protection to its citizens through taking action for the prevention and prosecution of terrorists and terrorist organisations, at the same time must ensure that all human rights are protected. Some of the most basic rights under threat in this regard are; right to life, liberty, protection from torture and ill treatment, freedom of movement, and to due process and a fair trial including the right to be presumed innocent until proven guilty[2]. The events of September 11, 2001, changed the legal paradigm of International Law in a number of important ways. The areas of law affected included the International Human Rights Law, International Humanitarian Law, International Refugee Law, and International Law on the Use of Force. Resultantly, state security and state's obligations to protect its citizens took centre stage and all other considerations and obligations were relegated to secondary positions.

Historically, there is an inverse relationship between state security and human rights. Human rights regimes prosper whenever; there is continued peace both within and without the borders of a country. Whenever, there is a state of emergency, either due to armed conflict or violent internal disturbance, it has always tended to curtail the space for human rights. Laws don't just exist in isolation on the statute book, but are implemented in the prevalent social, legal and administrative background. A state of emergency, generally tends to have the potential to tilt the whole legal apparatus towards fighting the apparent source of violence, with less than optimal interest in protecting the rights of the accused, or suspect; either groups or individuals. In this paper, as generally amongst the human rights advocacy groups, the term civil liberties is used interchangeably for human rights, and also for fundamental rights. However, internationally the most common term in vogue, is human rights. They all mean that there are certain rights, which are very important, and must be protected in all circumstances, and either cannot be derogated from, or when they are derogated from, then it has to be in a very limited manner and for clearly defined time limits only. The stress being that in routine, they have to be protected and upheld, and any derivation from these standards, is both exceptional and limited.

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These rights are most challenged in a situation of conflict. It is precisely here that we need to most protect them. The test is when the protection of those rights is most under pressure from the society at large, and the law enforcers as part of the overall society also tend to reflect that feeling of 'us' vs. 'them'. This situation is when the internationally and nationally guaranteed civil liberties are most likely to be compromised. It is the duty of states to ensure that this right is guaranteed precisely when it is most in danger.[3]

The Legal Paradigm within which the states' operations against terrorism take place.

Many studies and reports carried out on the effects of the fight against terrorism have shown concern about their effects on civil liberties. This has changed to quite an extent the legal landscape of many countries, including that of the United States. "Terrorism sows terror, and many States have fallen into a trap set by the terrorists. Ignoring lessons from the past, they have allowed themselves to be rushed into hasty responses, introducing an array of measures which undermine cherished values as well as the international legal framework carefully developed since the Second World War.*"[4]* There are reports that states have a tendency to resort to such tactics which violate human rights. These include, but are not limited to "torture, enforced disappearances, secret and arbitrary detentions, and unfair trials."[5] Perhaps the more worrisome aspect, as discussed above, is that it tends to categorize society into us versus them. Such an atmosphere gives rise to situation where some errant law enforcers do not always feel the need to be bound by law, as the checks over them are relaxed, thus giving rise to a tendency to induce an element of impunity. Human rights advocates feel that these measures are counterproductive.[6]

The UN Global Counter Terrorism Strategy states that the measures taken for counter-terrorism and protection of human rights are *mutually reinforcing goals, and complement each other.* The Strategy states that the states that are fighting human rights must do so in keeping with their internationally incurred obligations under the relevant international human rights treaties. And in addition, they must also fulfill their obligations under the provisions of the International Humanitarian Law or the Law of Warfare.[7] The International Humanitarian Law essentially states that all is not fair in war, the most violent of human exchanges. Even in a war, the states are bound by certain minimum standards and are only allowed to use certain methods and means of warfare, while other are prohibited. In addition, modern civil wars have forced many large sections of populations to become refugees as a result of situations of internal armed conflict. This has caused its own problems. The state parties are also required to fulfill their obligations under the Refugee Convention. It may be mentioned that Pakistan is not a party to the 1951 Refugee Convention, but many Western states are.

It is the duty of a criminal justice system to work efficiently but this duty is bound to be done within the four corners of a state's obligations under their international human rights treaties' obligations or also their own constitutional obligations.[8]

Violations of Human rights and other relevant laws during fight against terrorism

Since the dastardly and tragic event of 9/11 many studies and reports have been carried out with a view to ascertain and assess the response of the states to the threat of the curse of terrorism. One such worldwide study was carried out by a high powered Independent panel of eminent jurists for the Geneva based International Committee of the Jurists. This is a comprehensive study. The Report generally identifies the following main areas of human rights violations by countries in their fight against terrorism in the post 9/11 period.[9]

a) Broad defining terrorist offences
b) Lowering of safeguards and standards
c) The permanence of emergency laws
d) Departure from ordinary procedures
e) Persons detained or captured in civil war
f) Compromise of the Right to a fair trial
g) Torture and ill-treatment
h) Abuses of the power of arrest, detention and interrogation
i) Rendition
j) Impunity/ lack of accountability.
k) Use of Immigration laws through detention, expulsion and deportation, mainly in the West.
l) Broad definition of terrorism
m) Curtailment of freedom of expression and speech

n) Freedom of association and assembly
o) Procedural issues
p) Trial by special courts
q) Use of evidence procured by torture.
r) Reversal of burden of proof.

Many other studies and reports also in varying degrees reflect most of these above mentioned areas of concern in the fight against terrorism.

The general principle is that for the protection of people's rights, all definitions have to be narrowly constructed and courts tend to give further narrow interpretations to such definitions. The objective is to control state power in favour of individual's rights. Ms. Fionnuala Ni Aolain, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, considers that due to initial vague definitions of terrorism immediately after 9/11, and still a lack of a very clear definition, tends to leave gaps with regard to human rights protection. She feels in her Report that in earlier international documents regarding fighting terrorism, the reference to terrorism, "leaves the impression that human rights protection is a secondary consideration in the campaign against terrorism, instead of an essential component of any counter-terrorism strategy". However, the Rapporteur notes that later references have increased emphasis on human rights protection while fighting terrorism. And now it is recognized that, "effective counterterrorism measures and respect for […] the rule of law are complementary and mutually reinforcing" and that they are "an essential part of a successful counter-terrorism effort." However, the Special Rapporteur feels that such references are generic and don't contain specific guidelines on how to protect them.[10]

The emergency laws are by definition brought in only for a short time; however the worry is that those laws have started to taken permanence due to the time lapse. This is troublesome as it lends acceptability to such practices, which were only acceptable for a short period of time. Many countries have adopted special laws with special more relaxed rules and procedures for conducting investigation and evidentiary rules.

"Terrorism sows terror, and many States have fallen into a trap set by the terrorists. Ignoring lessons from the past, they have allowed themselves to be rushed into hasty responses, introducing an array of measures which undermine cherished values as well as the international legal framework carefully developed since the Second World War."[11] The legal framework that existed prior to 9/11 is extremely robust and effective: international human rights and international humanitarian law were elaborated precisely to guarantee people's security. The Panel concluded that this legal framework is sufficiently adaptable to meet the current threats; However, the Panel found that the framework of international law is being actively undermined, and many States are reneging on their treaty or customary law obligations. The failure of States to comply with their legal duties is creating a dangerous situation wherein terrorism, and the fear *of terrorism, are undermining basic principles of international human rights law.*[12] This erosion of the human rights regime which was built over half a century is particularly worrisome as worldwide evidence of state practice shows that the erosion of international law principles is being led by some of those liberal democratic states that in the past have loudly proclaimed the importance of human rights. The United States of America prides itself on having a moral dimension to its foreign policy and distinguishing its international actions from those of other nations, but the Report finds it uses many such methods.[13]

One method of administrative control of terrorism is to hold suspects of terrorism in what is called a state of incommunicado. This means that they are not allowed to talk to anyone; either their family, lawyers, etc. And this is reportedly done for long times. There have been reports of torture and cruel and degrading treatment while in custody. Another tool has been that of restriction of the basic right of freedoms of speech, opinion and assembly. An important mechanism put in place over time to check any misuse of power is that of due process and fair trial, with sufficient administrative, legislative and judicial oversight mechanism to ensure that the law enforcement agencies do not misuse their powers and respect human rights. There is a lot of concern that many of these practices are being practiced by some of the leading liberal democracies of the World, who have historically been the torch bearers of human rights and civil liberties. This exacerbates the situation and adds to impunity by those states that are traditionally under scrutiny for violation of human rights. It has to be reiterated that the Universal Declaration of Human Rights, enunciates in its Article 3, that, "Everyone has the right to life, liberty and security of person."[14]

That same framework does, however, also clearly set out minimal safeguards that must be upheld whatever the supposed threat. One aspect of the war against terrorism has been the increase in the power of the Executive. And whenever one of the three organs gains power, it generally tends to be at the expense of the other two. In this case it has the tendency to make the Executive stronger. This makes the judicial and legislative checks weaker, thereby creating an atmosphere, where the rights of the citizens suffer. This is particularly so for the minorities, the ICJ Panel of eminent Jurists reports that this was "evident to the Panel in other Hearings where members of minority groups (most particularly Muslims in countries with a non-Muslim majority) reported that they have become the target (intended or not) of many of the counter-terrorist measures." The Report continues to state that this targeting has led to grievous individual abuses and has meant that communities live in fear of their treatment by the wider society. In addition freedom of expression and dialogue tends to be affected negatively.[15]

Another area of concern is that of extraordinary renditions, the above mentioned ICJ panel in its hearings in Canada and the European Union claims to have learnt of the alleged complicity of numerous states in practices such as extraordinary renditions. The Report also claims that they received extensive testimony of torture being used on detainees. And found worrisome that apparently attempts were made by some senior government officials to defend the use of such practices. Even when the absolute prohibition on torture and other cruel, inhuman or degrading treatment was accepted in principle, sufficient precautions to prevent torture were often not taken in practice. There have been reports of the use of torture by many countries. The fact that access to lawyers is controlled can increase the use of such abuse. Judicial oversight and due process are effective ways of controlling such misuse. A duty lies with states to publicly promulgate their commitment to the proper treatment of detainees, and to ensure that, whatever measures are introduced, the right to be free from torture is guaranteed.[16]

Immigration law has become another tool in this fight. Many liberal democracies are reportedly using this to fight against terror. This allows detention and deportation. The problem with this is that there are usually less robust legal protections available to those being dealt with this way. Immigration law offers less legal protection than criminal law……evidence of immigration measures that lower the standard of proof, limit access to independent legal counsel, and reduce judicial oversight.[17]

Non- refoulement is another area where the war against terrorism has resulted in some countries not fulfilling their international human rights law obligations. Under this principle of international law, a state is prohibited from transferring a person to country where that person could face a real risk of torture or other serious human rights violations.[18] This is another area where states have fallen below internationally established principles. It is reported that they are given diplomatic assurances, however; reportedly those assurances have little value. States should insist on ensuring that torture or other severe methods shall not be used, failing which they should not deport suspects to such countries. The report discusses a range of special measures introduced in the name of counterterrorism. These measures include, but are not restricted to, the creation of new offences (often defined in an over-broad and vague way); extended periods of pre-charge or pre-trial detention; limited access to legal counsel; suspension or limitation of habeas corpus or its equivalent; restrictions on the suspect's access to evidence; increased reliance on confessions; lowering of evidentiary standards; the use of anonymous witnesses; and limitations of the right of appeal.[19]

Justice must not only be done, but also be seen to be done: this objective is particularly important in the context of the fight against terrorism. All states should strengthen their criminal justice systems. If properly resourced and strengthened, it is the criminal justice system that is best placed to address terrorism.[20] The International community which is faced with the curse of terrorism, is rightly concerned to take measures to fight it. In fact, as discussed above, it is their duty to do so. However, it is equally their duty to do so within the existing International Human Rights regime. In this regard the UN and especially the UN Security Council needs to take a lead. And insist upon member states to prioritise the upholding of all due process and fair trial rights by states while conducting their anti-terrorism actions. The main UN body entrusted with human rights protection and promotion, that is the Human Rights Council, should develop model standard operating procedures and plans of action for member states to follow in this regard. The Council should also ensure their compliance and the Council should also push states to follow the various recommendations coming in this regard especially from the office of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. At the level of individual states, each state should ensure that they review their own national policies and laws and make them compatible with the protections, about due

process and civil liberties, provided in their own Constitutions. A robust accountability mechanism should be put in place for overseeing the actions of the various state agencies in fighting terrorism. It is reiterated that fighting terror is a national duty and state obligation. However, the fundamental rights should be not violated in this fight. The laws should be reviewed with a view to narrowing the 'broad' definitions of terrorism.[21]

Emergency laws are allowed under the relevant international conventions and national constitutions, however, such laws that derogate from them should have sunset clauses and be subject to clear time-limits;. The measures adopted should be considered periodically for re-evaluation as to their continued necessity, in accordance not with just their need, but also their proportionality in response to the threat.[22] And any derogations from the basic civil liberties should be only for as long as they are needed and not beyond.

Conclusion

States have a duty to protect the life of their citizens, and must take all lawful measures in this regard[23]. However, states need to realize that, "safeguarding persons from terrorist acts and respecting human rights both form part of a seamless web of protection incumbent upon the state". The international legal framework has been developed precisely on the premise that emergencies will occur, and that basic civil liberties may on occasion be curtailed. Human rights Law, and where applicable the International Humanitarian Law regime was developed with a view to be able to deal with emergency and special situations. Strengthening the international legal architecture by promoting the rule of law, respect for human rights and effective criminal justice systems, constitute the basis of the common fight against terrorism. The regime in place was meant to be strong enough and flexible enough to deal with all kinds of emergency and special situations. In this regard there is a need for states to conduct their operations against terrorism in a manner that is commensurate with their human rights law and international law obligations. The UNSC and Human Rights Council and the Office of the United Nations High Commissioner for Human Rights should put increased emphasis on this. And play an important role in setting and monitoring such measures.[24]

The comity of nations has decided to uphold and *ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism*, in the above mentioned United Nations Global Counter-Terrorism Strategy adopted by the General Assembly through its resolution 60/288. States have in the Resolution declared that they will take measures to address the situations that give rise to terrorism and all the steps they take to fight terrorism shall be in keeping with rule of law and in *compliance with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.*[25]

The United Nations Global Counter-Terrorism Strategy states that, "The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing."

States should commit to abide by all international law and international human rights law provisions in their efforts to fight terrorists and protect their citizens from their nefarious and cruel designs. In this regard the criminal justice system should be strengthened as it is the best guarantor of rule of law. The normal criminal justice systems are better equipped with due process and judicial oversight mechanisms and can therefore be more compliant with human rights compliance. It is clear that the threat from terrorism is likely to be a long-term one, and solid long-term responses are needed. Last but not least, world leaders should, at national and international level, develop a comprehensive strategy committed to combating terrorism, that will inter alia – repudiate torture and all other serious human rights violations, restore respect for well-established principles of international human rights and international humanitarian law, and insist on the effective integration of human rights law into counter-terrorist initiatives.[26]

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Academic Session-1: (Re-) conceptualizing Human Rights

EDUCATION FOR RELIGIOUS AND SOCIAL TOLERANCE IN PAKISTAN: POLICY REVIEW AND RECOMMENDATIONS

Dr. Fatima Sajjad [*]

Abstract: *In June 2014, the Supreme Court of Pakistan issued a special ruling for education sector in Pakistan, calling for the development of appropriate curricula at educational institutions 'to promote a culture of religious and social tolerance'. The court ruling appeared in the backdrop of increasing incidents of religious intolerance reported in the country. In keeping with the Supreme Court ruling, the government sent a directive to educational institutions recommending a revision of Social Science curricula to promote tolerance of religious, ethnic and cultural diversity in Pakistan. Prior to the aforementioned ruling by Supreme Court, the content of social, political and civic education in Pakistan was already a subject of debate amongst academics since 9/11, owing to its perceived link with religion based radicalization. A plethora of academic and policy papers scrutinized curricula and pedagogies in madrasas and public schools in Pakistan to identify the risk factors and suggest reforms to counter radicalization. More recently, this debate resurfaced in the media, with detection of alleged linkages between certain terrorist networks and students belonging to the mainstream and elite universities in the country. Drawing on a systematic review of policy literature, this study probes two key question; a)What is it in education that counters radicalization? b) What kind of education we are imparting on ground? The study uses the lens of critical pedagogy, particularly the ideas of renowned American cultural critic Henry Giroux ,to critically evaluate global education trends and their impact on local education policies in Pakistan .The current HEC higher education policy document entitled 'Vision2025' is examined through critical pedagogy perspective. The study argues that an increasing emphasis on economic value of education is undermining the critical function of education that nurtures human intellect and helps build tolerance for diversity and resilience against extremism.*

Keywords: Tolerance, extremism, fundamentalism, education, reforms

Introduction

In June 2014, the Supreme Court of Pakistan issued a special ruling for education sector in Pakistan, calling for the development of appropriate curricula at educational institutions 'to promote a culture of religious and social tolerance'. The court ruling appeared in the backdrop of increasing incidents of religious intolerance reported in the country. The Supreme Court ruling referred to *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, pointing out the need to foster 'a spirit of understanding, tolerance, friendship among peoples'.[1] In keeping with the Supreme Court ruling the government sent a directive to educational institutions recommending a revision of Social Science curricula to promote tolerance of religious, ethnic and cultural diversity in Pakistan. Prior to the aforementioned ruling by Supreme Court , the content of social, political and civic education in Pakistan was already a subject of debate amongst academics after 9/11 , owing to its perceived link with religious extremism. A plethora of academic and policy papers scrutinized curricula and pedagogies in madrasas and public schools in Pakistan to identify the risk factors and suggest reforms to counter extremism. More recently, this debate resurfaced in the media ,with the detection of alleged linkages between certain terrorist networks and students belonging to the mainstream and elite universities in the country.[2]

The current study examines how the term extremism has been defined in policy literature, how it has been linked to education and how education may be helpful in countering extremism.The study uses the lens of critical pedagogy, particularly the ideas of renowned American cultural critic Henry Giroux, to critically evaluate global education trends and their impact on local education policies in Pakistan .The current HEC higher education policy document entitled 'HEC Vision 2025' is briefly examined through critical pedagogy perspective.

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The Notion of Extremism

Before exploring the link between education and extremism, we need to examine what is it that we call extremism. An interchangeable term used in literature is radicalism or radicalization. Both refer to somewhat similar phenomena. Radicalization, according to Arthur (2015), can be seen as 'a process by which someone adopts an extreme position, but it may not involve violent behaviour in support of the position adopted'. [3]'Extreme' may refer to 'holding a fixed set of views outside the norm that may prevent compromise and exclude other perspectives'.[4] The study however points out that there is a lack of consensus on the meaning of both terms and hence they remain open to misinterpretation. The question of who gets to define extremism or identify someone as 'extremist' remains pertinent . Macaluso (2016) also points to the problematic nature of the term radicalization arguing that historically the term *radicalism* has been used to refer to innovative and revolutionary ideas. In this sense radicalism has been the driving force behind the historical labour and civil rights movements in the West. Whereas, nowadays the tendency is to associate radicalization only with religious extremism or *jihadism* (2). According to Macaluso (2016) the present day use of the term radicalization began with a European Commission Report titled "Terrorist recruitment: Addressing the factors contributing to violent radicalization," which appeared after Madrid train bombings in 2004 and London bombing in 2005. The term became instantly popular in the West as there was a security need to identify potential terrorists before they could launch an attack. For similar reasons, the term *extremist* is currently used in the West to refer to Muslims 'who are perceived to radically criticize Western culture or politics'(3).[5] The report points out that despite ample discussion on evolution of radical ideas, the connection between these ideas and violent actions has not been properly established or understood as yet.

The discourse on terrorism in Pakistan also adopted the terminology used in the West. In Pakistani context however, the meaning of extremism and radicalization takes a slightly different twist. Yusuf (2014) surveys various definitions of radicalism prevalent in the security studies concerning Pakistan. He summarizes multiple definitions of youth radicalism as ' youth perceptions/responses on religiosity , their exclusionary thinking , religious intolerance , a level of sympathy for – or at least lack of active opposition to Islamist violence among pockets, an "us vs. them" conception of the world and frustration with the conditions in the country as worrisome.'[6] Recognizing that radicalization is an amorphous concept, Yusuf (2014) attempts to place it on a broad continuum beginning with a peaceful and tolerant outlook to actual involvement in violent activity.

Siddiqa (2010) detects traces of *latent or passive radicalism* in educated Pakistani youth in an opinion survey. She defines *latent radicalism* as 'the tendency to be exclusive instead of inclusive vis-à-vis other communities on the basis of religious belief,' resulting in bias against other individuals, communities or nations (25). She warns that latent radicalism may keep youth vulnerable to extremist ideologies.[7]

The Link between Education and Extremism in Pakistan

Links between extremism and education have been keenly explored in post 9/11 policy literature. Education in Pakistan received special attention owing to its perceived connection with militant groups and ideologies. Initially there was a fierce debate on the role of *madrasas*[8] in Pakistan in promoting religious militancy. A multitude of academic and policy studies intensely scrutinized this traditional institution of learning and raised alarms about its connection with religious militancy.[9]Later studies however, termed the statistics and alarms about madrassas as largely exaggerated .[10] Christian Fair (2007) argued that contrary to popular belief, madrasas are not directly linked to militancy, however they may provide networking opportunities to militant groups , religious ideologues and potential recruits.[11]

The academic focus on madrasas thus shifted to public education in Pakistan in the following years. Concerns were raised about the poor quality of mainstream education system and the content of national curricula and textbooks. Poor school performance across Pakistan would seem an obvious area of inquiry as a risk factor for conflict. Yet to date, the focus has been almost exclusively on madrasas and their role in the mounting violence.[12] With a curriculum that glorifies violence in the name of Islam and ignores basic history, science and math, the public education system [in Pakistan] has become a major barrier to US efforts to defeat extremist groups.[13]

Studies point towards poor governance , alarmingly low literacy rate, inaccessible education and poor quality of existing education, as risk factors that create widespread grievances, negative perceptions and hence opportunities for militants to pull young people into their fold.

The content of curricula and textbooks is highlighted as another risk factor. The concerns raised earlier by Nayyar and Salim (2003) were highlighted again by a number of fresh studies on textbooks in Pakistan.[14]A study titled ' Connecting the Dots: Education and Religious Discrimination in Pakistan' sponsored by United States Commission on International Religious Freedom (USCIRF) and International Centre for Religion and Diplomacy (ICRD) published in 2011, highlighted textbook material and teaching practices that promoted religious intolerance and discrimination against religious minorities in Pakistan especially Hindus and Christians.[15]

An International Crisis Group report in 2014 noted that national textbooks on history , literature and even sciences were being used to create a discourse on national identity that emphasized 'national cohesion at the expense of regional diversity' (3).[16]Yusuf (2014), while synthesizing information on youth radicalism in Pakistan for a UNDP report observed that 'Pakistani youth are prone to the state's version of history and depiction of Pakistan as a victim of negative externalities' (9).[17] Afzal (2015) observed that ' Pakistan Studies textbooks forge an identity exclusively based on Islam and derived in opposition to India'(1) , she warned that such an education led to the growth of radical attitudes and intolerance towards the 'other', be it religious minorities within the country , India or the United States.[18]

What Type of Education can Counter Extremism?

A recent global literature review on 'Education and Security' complied at Mc Gill University for Tony Blair Faith Foundation, warns that schools and universities around the globe are unable to develop 'resilience in students to resist the pull of extremist ideology and narratives' (Ghosh et al. 2016, 5).[19] The review points out that 'education in general will not prevent extremism – gaining knowledge and skills for a career or on a topic – is different to an holistic education that develops critical thinking, values for citizenship and respect for diversity.' It recommends governments and teacher training institutions to learn from best practice of existing education programs for Counter Violent Extremism (CVE) and 'ensure that critical discussions around social justice are included in schools and that teachers are prepared for them' (7) . The review maintains that education is a vital component of CVE yet it emphasizes that 'type of education is important' (5). Education must be able to develop resilience in young people against extremist ideas, propagated through informal channels such as social media . Such resilience can only be fostered through an education that incorporates open and critical pedagogy, student centered learning, critical and reflective thinking. Referring to multiple sources reporting varying levels of schooling among extremist leaders, the review points out that quite often, even higher levels of education fail to deter young people from adopting extremist ideologies. The report emphasizes that 'knowledge and understanding are necessary but not sufficient conditions for removing prejudice…the opportunity to question and challenge through dialogue , and to relate learning to lived experiences, are essential for developing empathy.'.[20]

The policy literature on education and extremism in the West recognizes the importance of developing critical thinking skills of students to make them *resilient against extremism*. Ghosh et al (2016) for example acknowledges that Education should aim to develop in students the ability and the disposition to arrive independently at critical and informed opinions' and recommends critical citizenship education in schools.[21]

The policy literature however does not advance further to probe the existing education priorities and examine how the critical function of education has been undermined and civic education has been marginalized by neo liberal education policies . The long list of potential risk factors which may cause resentment in students and push them towards extremism never includes neo-liberal education policy as a cause of resentment or at least a hindrance in the way of preventing extremism through education.

What Type of Education We are Imparting on Ground

A cursory look at contemporary global education policies and systems reveal the dominance of the economic model of education which many scholars refer to as the 'neo-liberal' education. Joel Spring in his book titled '*Globalization of education'* introduces the concept of 'global corporatization' and economization of education . He contends that multinational corporations all across the globe are influencing global education policies with the goal of 'shaping human behavior and knowledge for corporate workplace. This economization of education involves investment in education to produce efficient human capital which in turn shall accelerate economic growth (Spring 2014).[22] Following are some key features of economic model of education identified by Spring.[23]

- Education considered as an investment in the workforce

- Students are considered as human capital to be educated for work

- Skills-based instruction

- Accountability of school programs using student test scores

- The goal of education is educating workers to compete in the global economy

- The value of education is measured by economic growth and development.

Critical Pedagogy (CP) has remained a vital perspective in education which questions dominant education practices that tend to favor the dominant classes. It vows to reclaim education as a source of human emancipation. The Critical Pedagogy scholars have been raising their voice against the growing corporatization of Western education for the past thirty years. Three leading voices of critical pedagogy include *Paulo Freire* , the Brazilian philosopher who saw education as a means of developing critical consciousness in individuals. Education, according to Freire , has the power to transform reality. He challenged the dominant modes of education that aim to 'transmit' knowledge in the minds of passive students. Instead he advocated education that promotes dialogue, breaks the culture of silence , engages with the voices of the marginalized people , raises awareness and transforms oppressive political and social structures.[24]As a contemporary scholar of Critical Pedagogy , Henry Giroux presents the most pertinent critique on existing trends in education especially in the American education ; Referring to the growing trend of running of universities as business, Giroux warns that continuation of this trend may lead to the death of critical thinking . Higher education in this case would become an apparatus to train rather than to educate, to stifle critical inquiry rather than nurture it and to kill imagination rather than cultivate it. He asserts;

"The ideal of the university as a place to think, to engage in thoughtful consideration, promote dialogue and learn how to hold power accountable is viewed as a threat to neoliberal modes of governance. At the same time, higher education is viewed …as a space for producing profits, educating a docile labour force and a powerful institution for indoctrinating students into accepting the obedience demanded by the corporate order.".[25]

Pakistan Higher Education Vision 2025

A review of the draft of Pakistan's Higher Education vision (2025) reveals a vision that is largely 'borrowed from the economic model of education in the West'.[26] The prevailing neo liberal goals and terminology shape the higher education vision of Pakistan. The higher education goals have been defined within the 'framework for (economic) growth and development'. The ultimate vision of this framework is to make Pakistan 'the Next Asian Tiger'.[27] This is a vision of education sees the economic value of education and place education in the framework of economic competitiveness, comparison and ranking rather than a reflection of peculiar conditions, problems and issues of Pakistani society.

The study further emphasizes the national and international systems of ranking universities. The draft highlights a system of ranking developed by Shanghai University in 2003 to enable Chinese universities to meet and exceed the global standards. [28] According to this criteria universities are primarily ranked on the basis of 'research indicators in natural sciences and English'. The inclusion of 'English' as standard criteria for judging value of education in Asian universities needs to be questioned. Such questions are raised in universities. But in the race for economic competitiveness there is seldom a reflection on the ranking criteria and systems and how they meet our people's needs. The role of higher education in developing critical consciousness and intellectual ability of students, which was once a hall mark of universities, is rarely included in the future vision of higher education.

Conclusion and Recommendations

Coming back to the question, what type of education may counter extremism, our education and security policies have to pay attention to what Ghosh et al (2016) pointed out in his work, cited earlier, *education that keeps a narrow focus on skill based learning will not be helpful in building resilience in students against the pull of extremist ideologies*. Instead, '*education should aim to develop in students the ability and the disposition to arrive independently at critical and informed opinions'.*[29] The value of the so far 'marginalized' Social Sciences is vital in developing the critical thinking skills in students which may help them evaluate extremist ideas and ideologies critically and independently. Narrowing down the scope of Social Sciences and the space

for critical scholarship would deprive higher education of its greatest value – nurturing of human minds and improving human conditions.

- If education is to play a role in countering the menace of extremism in Pakistan, the education policy in general and future vision of higher education in particular should pay specific attention to the subjects of Social Sciences and Humanities which not only deal with human conditions and social transformation but also fosters students' critical and intellectual abilities.

- The aim of promoting Social Sciences should be to secure a space for free thinking , questioning dialogue and debate rather than promoting official and dominant narratives from the top, to create images for the outside world or to support economy. Extremism can only be countered through providing and securing spaces for free dialogue and open enquiry as per the tradition of the institution of universities.

- The policy vision for country's education should focus on indigenous problems in a holistic manner rather than borrowing dominant ideas from the West without reflection.

- Education policy in general and higher education policy in particular should engage with perspectives of critical studies in education and critical pedagogy that challenge the dominant business model of education around the globe.

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RESPONSIBILITY TO PROTECT IN THE 21ST CENTURY: AN ANALYSIS OF THE ENGLISH SCHOOL OF INTERNATIONAL RELATIONS' ENGAGEMENT WITH HUMAN RIGHTS

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Abstract: The Responsibility to Protect (R2P) is a global commitment recognized at 2005 World Summit by all member states of the United Nations to prevent four primary concerns relating to human rights: war crimes, genocide, crimes against humanity, and ethnic cleansing. The objective of this study is to analyze current status of the Right to Protect in light of human rights debate of the English School theory of international relations. The state centric theories of international relations have disparaged the potential of human relations from local to global level culminating in rendering human rights as under-researched topic in the international relations. The English School is the only mainstream international relations theory which deals human rights in its theoretical framework. A central conflict in the English School has always been the debate between pluralists versus solidarists, in which the pluralists preferred order over justice while the solidarists championed the cause of justice and even allowed humanitarian intervention to stop massive human rights violations. The finding of this paper is that even after thirteen years of its adoption, the Right to Protect is still an incomplete project in contemporary world as authorization of use of force is still not welcomed by the Security Council because of states' sovereignty concerns. This study is divided in three sections. The first section explains the theoretical background of English School (ES) theory. The second section deals with the human rights through comparing the distinct stances of the pluralist versus solidarist debate about human rights. The third section presents the Right to Protect R2P debate in contemporary global politics by commenting shortly on humanitarian intervention in Libya and non-intervention in Syria.

Keywords: the English School, human rights, pluralism, solidarism, Right to Protect

Introduction

The first gathering of the British Committee in 1959 can be regarded as the starting point of the English School.[1] The participants of the first meeting were scholars having expertise in diverse subjects like international relations, history, political science, philosophy, and practitioners from Foreign Office and Treasury departments.[2] The distinguished personalities in the British Committee were Herbert Butterfield, Hedley Bull, Adam Watson and Martin Wight.[3] The two most dominant IR approaches in post-World War 2 era were the so-called 'first debate' and 'second debate'. The first debate was the difference of opinion between the realists and the liberals about global politics; while theoretical and epistemological issues about international relations were discussed between the behaviorists and traditionalists during the 'second debate'.[4] English School soon became a complete third debate of international relations having roots in works of Grotius, Locke, Hume, De Tocqueville and Burke.[5]

The English School makes the primary claim that sovereign states can develop an anarchic society without surrendering their sovereignty before a higher power. The English School suggests that in fact such a society, to some extent, has been achieved as in contemporary global politics, there is high level of cooperation and low level of conflict.[6] Barry Buzan is of the view that factors that make the ES as a distinctive IR theory are methodological pluralism, historicism, and interlocking of three concepts: international system, world society and international society.[7] The concept of international system is similar to realism which explains global politics as power politics among the sovereign states, therefore, is outside of framework of the ES. World Society is parallel to Kant or liberalism which emphasizes the increased role of sub-national and global social identities in mainstream IR discourse. International Society is influenced from ideas of Grotius or concept of rationalism which is the process of constructing identities at international level through institutionalizing mutual interests among states.[8]

Martin Wight called 'international society' as middle ground or the *via media* between realism and liberalism.[9] Chris Brown also presented similar view when he said that the idea of 'international society' enjoyed a central place between 'international system' of realism and 'world community' of liberalism.[10] However,

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Richard Little suggests that from the very start, ES was committed to methodologically and ontologically develop pluralistic approach to IR.[11] Therefore, English School considers international relations as world not only of domination, power, wealth, capability or prudence but also one of reciprocity, association, rights, recognition, equality of legitimate interests, agreements and disagreements, injuries, offenses, and reparations.[12] The essential claim of English School is that states are rooted in societal setting[13] like human beings who shape societies to live and are themselves shaped by, similarly states occur in an international society which they shape and are reshaped by.[14] Martin Wight argues that international society can be regarded as the social contract among societies themselves each constituted by their own social contract.[15]

Human Rights and the English School: Pluralism versus Solidarism Debate in the English School

Usually international relations is considered as a subject that focuses on relations among the states rather than the relations among the people. This makes international relations as a subject that is hardly ready to deal with the complexities of globalization in an interconnected world at national, sub national and international level. The link between local and international is highly problematic in international relations as Martin Wight said that the emphasis on international society had hided the real 'society of men and women'.[16] However, as compared to other IR approaches, the English School seems better equipped with theoretical tools to discuss the topic of human rights, especially in its pluralist versus solidarist debate. Rengger is of the view that the topic of human rights is 'lingua franca' in the discourse of ES.[17]

The primary focus of the ES is the system in which states are transformed into a society of states through institutionalization of norms which prevents civil global order from collapse. The ES is interested in the emergence of a system which can promote justice for individuals as well as their mutual associations.[18] Hedley Bull is of the view that the goal of persevering states' sovereignty often comes in clash with the goal of preserving the peace and international balance of power.[19] The main problem in this discourse is that states are not agreed on the definition of justice and, sometimes, have different and conflicting ideas about justice, therefore imposition of concept of justice of one state or region can undermine the whole edifice of international society.[20]

Pluralism/solidarism debate in the ES is a conflict in ES scholars that how states should relate with the people. Hedley Bull thinks that the concept of solidarism in the ES stands for solidarity among the states or international society regarding enforcement of law. On the other hand, pluralism suggests that the states do not have such type of solidarity as states are only capable of forming agreement for minimum purposes which are much short than the enforcement of law in global politics.[21] The solidarists are in favor of just cause and just conduct of war within the scope of international law to save the humanity from the massive violation of human rights. While the pluralists do not favor this just cause war because according to them war does not fall in the domain of international law as war is not a legal phenomenon but a political phenomenon.[22]

Barry Buzan suggests that Pluralism is rooted out in European history from 1500 to 1945 when the modern system of sovereign territorial states emerged out of religious wars of the 17th century. This Westphalian system which was based on system of sovereignty imposed itself on the less developed world through the channels of colonialization and de colonialization. Hedley Bull sought out five factors that are basic characteristics of pluralistic society: diplomacy, the balance of power, international law, great power management and war.[23] The pluralism version of the ES focuses on the maintenance of international order and is based on state-centric model of global order that is limited to coexistence. Pluralism views that states are the dominant player of human society and non-intervention is the logic of coexisting in international society in which there is low level of institutionalization of shared norms. The focus of pluralism is on orderly coexisting and management of mutual problems. The pluralists give primacy to the states over people; therefore they are more sovereigntist and nationalist than internationalist.[24] In fact, Hedley Bull draws a clear line of distinction between states and the individuals.[25]

When the pluralists see international order as sovereigntist, state-centric, culturally diverse and exclusive; the solidarists do not take states as the dominant actor in global politics but view the states as agents of their population.[26] Solidarism is concerned towards human rights, justice and humanitarian interventions. Solidarism has roots in Kantian rationalism and cosmopolitanism. Solidarism suggests that protection of the rights of the individuals are pertinent for the existence and stability of international society. It means that global order cannot exist without strictly following justice and global human rights. They favor limitation of use of

force through cooperation and institutionalization of shared norms and rules, thus providing justification to interventionist international order.[27] John Vincent opines that sometimes intervention becomes unavoidable as sometimes violation of human rights is at such a threatening level that states should set aside principles of non-intervention in internal matters of other states.[28] Some solidarist scholars are of the view that the end of bio-polarity had provided an extraordinary chance to states to make interventions as an important norm of international system. Tim Dunne thinks that 'good citizen' should be ready to intervene in societies where the regimes are responsible for ruthless violations of human rights.[29] Hedley Bull regarded that solidarism is committed to guardianship of human rights and enforcement of international rules.[30] In solidarist model, individual is entitled of certain human rights like not to be killed and harmed indiscriminately. If the harm is done on a massive level by the state or the state is helpless in preventing that harm then solidarism suggests that the international society has the duty to intervene.[31]

Right to Protect in the 21st Century

The Responsibility to Protect (R2P) is a commitment endorsed by the UN member states in 2005. The R2P addressed four primary areas: to prevent war crimes, genocide, crimes against humanity and ethnic cleansing. This principle suggests that states are bound to protect their citizens from violations of human rights and mass atrocities. The topic of humanitarian intervention has been the most controversial topic in the ES discourse. It is still very complex and contested in the contemporary world. The divided opinion regarding NATO led intervention in Libya is such an example in which Russia and China criticized the decision and especially Russia strongly presented its reservation of the intervention and vowed not to repeat such precedent in Syria where a Russia friendly regime is in power. Because of such divided opinion, especially among the great powers, culminated in the indecision of the Security Council towards the charges of atrocities reported against the Assad regime.

The R2P is dependent on three equally important pillars. The pillar one suggests that states are bound to protect their citizens from ethnic cleansing, war crimes, genocide and crimes against humanity. The pillar two considers the international society as duty bound to help the states in fulfilling these goals. The pillar three emphasizes that the international community should take timely and decisive actions if some state does not follow the pillar one. The use of force is not desired, however, military action can be taken as the last option to stop massive violation of human rights.[32] The concept of security is changing as human security paradigm and respect for human rights is emphasized in contemporary debates. This means that global security is dependent on the individuals' security. Furthermore, individuals should be the focus of security debates not the states, therefore international security will be threatened if the security of an individual is imperiled.[33] The R2P presents a transformed version of state sovereignty as 'sovereignty as responsibility'. This concept is a criticism on Westphalian model of sovereignty as it does not allow the veil of sovereignty to be used by the states to hide their violations of human rights. States are answerable to international community through internal and external sovereignty. Internal sovereignty means that the states should devise programs of social welfare for their citizens and externally it means that states should cooperate closely with the international community for the promotion of shared norms and institutionalization of common interests.[34]

This debate is inextricably related to the pluralist and solidarist dispute in the ES. The solidarist account of the ES gained momentum in post-Cold War period when Security Council was unable to unanimously act to stop genocide in Rwanda in 1994 and in Srebrenica in 1995. The General Secretary of the UN, Kofi Anan, had to say that no government had the right to conceal behind sovereignty to violate fundamental human rights.[35] The critics of pluralism suggest that the sovereign model has failed to guarantee global because of persistence of wars in the 20th century. Similarly, the promotion of concept of non-intervention emboldened the repressive regime to commit violation of human rights without being answerable to international society.[36] However, still it can be argued that there is no consensus among the states and especially among the great powers about the R2P. While some states consider humanitarian intervention pertinent to stop regimes from committing massive violations of human rights, but at the same time some countries consider the humanitarian action as way to perpetuate the rule of the powerful states.

This version of solidarism is highly critical of presenting Eurocentric version of international order. Hedley Bull had already cautioned about 'revolt against the West' that non-European countries would be uneasy in accepting this model of Europe led international society. Limits to R2P can be witnessed in case of humanitarian action in Libya and inaction in Syria. Russia was highly upset because of NATO led regime

change in Libya in pretext of humanitarian intervention. However, Russia stood adamantly with another regime in Syria that was charged of ruthless disregard of human rights violations. However, in this case Russia suggested that the propaganda against Assad is being spread through a special goal that was to encourage anti-US regime changes throughout the world. Furthermore, despite of valuable research in the ES, states seem to think through the logic of national interests. For example, some of the researchers are of the view that Russia lost billions of dollars because of regime change in Libya and another regime change in Syria could prove a nightmare for Russia as Russia has sufficient national interests in Syria like naval base in Tartus, energy interests, sale of weapons etc. Therefore, it shows that the hopes which were attached with the end of the Cold War that now a genuine international society could be materialized and the world could be shifted from pluralist to solidarist model in which the international society would guarantee respect of human rights at global level, has yet not become a mature idea.

Conclusion

This study was intended to present an analysis of the topic of human rights in the English School theory of international relations. This research suggested that the ES is in better shape to deal with human rights than other IR approaches. The pluralist versus solidarist debate in the ES is especially more relevant to the topic of human rights. The pluralists prefer order over justice in global politics as they are aware of the cultural multiplicity and think that humanitarian intervention can imperil the global order; while, the solidarists are normative in their approach and consider justice as the pertinent part of international society. They strongly argue that international society should stop violation of human rights whether through use of dialogue or force (as the last option). Furthermore, the topic of Responsibility to Protect R2P has been presented here and it has been suggested that R2P in contemporary global politics is directly related to the ES debate. However, in the last section, it has been argued that progress towards international society is very slow and agreement on humanitarian intervention among the powerful countries has not been materialized yet which is manifested from the humanitarian intervention in Libya and no action in Syria.

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PIETY IN "ATHEISM": REPRESENTATIONS OF RELIGIOUS BELIEFS IN JADID DISCOURSE (IN THE EXAMPLES OF ABDULRAUF FITRAT'S WRITINGS)

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Abstract: In the beginning of XX Century, when Turkistan entirely became a Russian colony, Soviets tried to separate people from their roots of religious faith and encourage the European culture. In 1925 and 1940s a number of organizations, newspapers and journals which focused on atheism, such as *Khudosizlar* ("khudasizlar"-atheists), were founded and several articles strengthening of propaganda against religion were appeared in other journals such as *"Yangi qishloq", "Maorif va oqituvchi"*. Propaganda of atheism was spread among writers. The authors of the best atheistic works were appointed to high governmental positions and received state awards. Abdurauf Fitrat (1886-1938) also wrote the works touching on faith "Qiyshiq eshon" (Unfair Ishan), "Zahroning iymoni" (Faith of Zakhro) (1920), "Qiyomat" (Judgment Day) (1923), "Shaytonning tangriga isyoni" (Revolt of Satan against God) (1924). In accordance with the title and presumable topic of these works critics of soviet literature assessed him as pieces written under the spirit of the struggle against religious prejudice and accepted him as a person "loyal to the Soviet position", who had "changed his faith". Such early interpretations paved the way for Fitrat to be canonized (before his repression) as a genuine atheist. Khabibulla Qodiriy, the writer's son, in his book "About my father" mentioned that in 1936-1937 Abdulla Qodiriy translated 14 books against religion from Russian and submitted the list of those atheistic works. Yet both Fitrat and Abdulla Qodiriy were faithful Muslims, brought up under Islamic teachings. Is it possible that they could so easily and quickly reject their religion and faith? After all, Fitrat in his books "Munozara" (Discussion) and "Hind Sayyohi" (Indian traveler) Abdulla Qodiriy in his novels "Mehrobdan chayon" (Scorpion in behind the altar), "O'tkan kunlar" (Days gone by) (none of which were addressed in assessing the author's atheistic leanings) each show their commitment to Muslim teachings and faith through the creation of their authorial personas. It is necessary to reread the so-called "atheistic" jadid works with an eye towards the intentions the two authors might have concealed as they wrote.

Keywords: Human rights, literature, fitrat, jadid movement.

Introduction

The nature of Soviet colonialism has been a topic of discussion since the dissolution of the Union in the 1990s. When the Central Asian states achieved independence, literary critics dubbed the Soviet era a period of mankurtization, a process that describes how Soviet modernization separated people from the roots of their religious faith, and encouraged the imitation of the culture and traditions of other nations. Uzbek literary critics placed the beginnings of this mankurtization, in part, in the 1920s. In November 1925 the Bolsheviks held a Republican conference of atheists and out of that conference emerged a Union of Atheists of Uzbekistan. In 1928 the magazine "Khudosizlar"("*khudasizlar*"- atheists) began circulation and a decade later in 1939- a newspaper "Khudosiz" (*khudasiz- atheist*). At the same time articles propagating atheism appeared in other popular Uzbek magazines as "Mushtum", "Yangi qishloq", "Maorif va oqituvchi".

The Bolsheviks spread atheism among writers and poets by way of competitions like "best atheistic work", "best atheistic poem", "best essay against religion', "best caricature of religious beliefs". Uzbek intellectuals who spoke the language of atheism received appointments to high governmental positions and state awards, while those who refused faced arrest and even execution.

In the early 1920s, Abdurauf Fitrat (1886-1938) wrote the several works related to Islam: "Mi'raj" (Mirage), "Oqmozor" (White cemetery), "Qiyshiq eshon" (Unfair Ishan), "Zahroning iymoni" (Faith of Zakhro) (1920), "Qiyomat" (Judgement-Day) (1923), "Shaytonning tangriga isyoni" (Satan's revolt against the God) (1924). As the Bolsheviks ramped up their anti-religious campaigns, they turned to these texts of Fitrat's as tools for anti-religious agitation even as Uzbek socialists condemned Fitrat as a "bourgeois nationalist. "Surmising from the title and presumable topic of these works, socialist critics assessed them as pieces written under the spirit of the "struggle against religious prejudice" and accepted him as a person "loyal to the Soviet postion" who had "changed his faith". Such early interpretations paved the way for Fitrat to be canonized (before his repression) as a genuine atheist[1].

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According to of the OGPU archive of Uzbekistan, the other jadid intellectuals, including Abdulla Qodiriy (1894-1938) likewise expressed his loyalty to Soviet power after 1923 and in his works "Obid ketmon" (1933-1934),"Kalvak mahzumning xotira daftaridan" (In memoirs of Kalvak makhzum), "Toshpolat tajang nima deydi?" (What did Toshpolat tajang say?) (1923) Qodiriy allegedly criticized mullahs, people of faith and religious tradions, while actively participating in the struggle of Soviets against religion.[2] Even in the early 1990s with glasnost' and calls for independence from the Soviet Union, Uzbek literary critics Western scholars as well did not reassess earlier conclusions about Fitrat and Qodiriy's works written in religious way.[3] For example, Umarali Normatov in his work "Qodiriy's garden" wrote that: "Beginning in 1923 in a merciless struggle against religion, religious doctrines, religious people and many intellectuals were initiated, and writers were also mobilized in this struggle. Such faithful person as Qodiriy owing to will of circumstances voluntarily or forcibly or under influence of doubt and spiritual hesitationsfor some period participated in this struggle, wrote works which accuse and disclaim religion and religious traditions, keenly and unilaterally said critical words about religion and religious people."[4]

It cannot be denied that as a result of the campaign against religion, jadids had to deviate from their religious faith for a time. Besides that, Khabibulla Qodiriy, the writer's son, in his book "About my father" mentioned that in 1936-1937 Abdulla Qodiriy translated 14 books against religion from Russian and submitted the list of those atheistic works.

Yet both Fitrat and Abdulla Qodiriy were faithful Muslims, brought up under Islamic teachings. Is it possible that they could so easily and quickly reject their religion and faith? After all, Fitrat in his books "Munozara" (Discussion) and "Hind Sayyohi" (Indian traveler) , Abdulla Qodiriy in his novels "Mehrobdan chayon" (Scorpion in behind the altar), "O'tkan kunlar" (Days gone by) (none of which were addressed in assessing the author's atheistic leanings) each show their commitment to Muslim teachings and faith through the creation of their authorial personas. It is necessary to reread the so-called "atheistic" jadid works with an eye towards the intentions the two authors might have concealed as they wrote.

In this article, I argue that during the 1920s and 30s in order to avoid repression Abdulrauf Fitrat[5] discovered new ways of struggling against Soviet colonialism. Through their so-called "atheistic works" they succeeded in spreading their truth. The supposedly anti-religious nature of these jadid works distracted Soviet censorship such that the authors could communicate their socio-political and vital ideas.

What was the Jadid Movment?

At the beginning of the nineteenth century Central Asia was the center of a rich and ancient culture. As one of the colonial regions targeted by tsarist Russia, it was rich in natural resources. This situation held both advantages and perils for the socio-cultural life of Turkistan.

The 20th century was not only the most devastating and at the same time tragic history of the development of civilization in the history of the Uzbek people and generally in the whole human life. One of Uzbek historian Bobur Alimov said the followings on the life of tragedy of Central Asian people: "according to our historians, the 20th century left as a hundred- year tragedy in the world history. There is no doubt that there were millions of Uzbeks who have been repressed for various aggression, oppression, and violence in this century. Hundreds of our self-sacrificing intellectuals were among of those repressed Uzbeks. In fact the social phenomenon, which we proudly proclaimed as the Jadid movement today, was the beginning of the struggle for today's independence[6]".

The "jadid" is an Arabic word means "new" and this word is related to a new kind of schools which Ismoilbek Gasprinskiy founded in 1884 in Bakchasaroy (Boqchasaroy). The jadid movement took place in Turkistan in the late 19th century, and led Turkestan people , who were politically, economically and culturally devastated by colonialism to independence. Uzbek scholar Begali Qosimov emphasized that jaded movement: 1. Attracting all layers of society. He served as the Renaissance ideology. 2. It   fought for independence. The autonomy of Turkistan which saw the world with its zeal and initiative was the first outcome of this practical movement on this path. 3. It has adapted education and culture to the socio-political goals of the press[7].

At the beginning of the twentieth century, the intensification of aggression, injustice, and inequality of imperialism based on the colonial policy of the Russian Empire led Central Asian peoples to parabolic life (disarrangement). This was one of the important factors for the success of the true leaders of the Jadid movement, such as Makhmud Khoja Behbudiy, Abdulla Qodiriy, Cholpan and Fitrat. Their works have played

an important role in awakening the people from oppression, ignorance and bringing the nation's mind to new heights. Naturally, it was impossible that literary-aesthetic criteria which were in use because of the certain social-political conditions not to impact to the root social -ideological goals of the writers. And belles-lettres fiction as the life mirror of the society has an objective to be the main tool on soaking great aims into the brain and spirit of nation. The best artworks created those years as the literary depiction of the ideas of National Renascence had played an important role on identifying the fate of the nation. Moreoiver Jadid literature was the main part of development of national literary art with its own new genres, innovations in content, new tendencies in expressing socio ideological idea.

The representatives of the Jadid literature could not openly refer their reforms which would lead to the political and social independence of the Turkestan, because of strict censorship. In the meantime, jaded writers who considered themselves as a responsible for supplying the nation with freedom were always harshly persecuted by proletarian critics. It was not easy for them to commit political as well as social goals even through the ambiguity. The writers of this period were compelled to explain the meaning of symbolic images used in their work. Therefore, they tried to hide their ideological conceptions in the inner life of the text. But this kind of approaches also couldn't safe their life and from 1925-1930 s Jadids freely started to express motives of independence in their works and they all were executed as an "enemy of nation"

From Atheism to Anti-colonialism

The 20th century left scars on Uzbekistan just as it did the rest of the world. Two sets of repressions, those during the first five-year plan and the Great Terror, struck fear into the intelligentsias of Russians and non-Russians alike. However, the spirit of self-sacrifice and courage in the activities of Abdurauf Fitrat, Abdulla Qodiriy, Abdulhamid Cholpan had a significant role to create scientific literary climate. In their synthesized views of their progress in the world literature and enlightenment, they reflected the enthusiasm for humility, hatred of fanaticism. The literature, which is the mirror of the nation's thinking, people's lifestyle, traditions and spiritual and psychological world, has tried to find "the way" of internal and external struggles for national liberation.

Abdulrauf Fitrat[8], one of the most active Uzbek litterateurs in the 1920s, played an important role in the development of national identity as a poet, dramatist, historian, and musician. Fitrat's work projected the Uzbek nation into the past and put it at the center of world history. He saw himself as an enlightener, lifting his people from ignorance and to national consciousness. The "Debate" ("Debate between a Bukharan Teacher and a Europen") which is written in 1911 in Istanbul by Fitrat, dedicated to the discussion between the mudarris (teacher at an Islamic theological school) from Bukhara and French man who met in India during his way for haj[9]. Fitrat criticized ignorance and dogmatism through his protagonist (European Farangi). Farangi (Fitrat) commented on Karan as long as he completely knew Koran well[10] and the Islamic principles, he commented on giving examples from Hadis - the sayings of our prophet Muhammad, passages (oyat) from surah.[11]

Observations from the details above mentioned I think that Fitrat reflects his Islamic reformer views of his Muslim society as backward and having declined from a previous civilization greatness and this confirmed that Abdulrauf Fitrat was one of the scholarly of Islam religion, who knew Farsi and Arabic and who learnt Koran by heart. The effect of Soviet repression, even in the early years of the Bolshevik state, however, was such that Fitrat could not openly express his ideas.

There are various contradictory interpretations in the analysis of Fitrat's religious writings, particularly his "Judgment Day" (1923) and "Satan's revolt against the God (1924). In the 1930-1940 s "Judgment Day" (1923) and "Satan's revolt against the God" were completely read as atheistic works. According to those views Fitrat ironically criticized superstition (The prejudice, by virtue of which much is happening, is a manifestation of supernatural forces and foreshadowing the future) and fanatics, Mullahs whom are from point of official literary politics. The representatives of official Soviet censorship assessed those works as pieces written under the spirit of the "struggle against religious prejudice" and accepted Fitrat as a person "loyal to the Soviet postion" who had "changed his faith". Such early interpretations caused to get " Judgment Day" (1923) and "Satan's revolt against the God" published several times. Those thoughts on Fitrat's religious works appeared in the smaller research of some scientists even in the beginning of 1990s when the socio - political situation has completely changed in Uzbekistan. For instance, Uzbek scholar G. Rayimova in her article "Fitrat's religious works" states: "The religious myth has appeared as a dramatic piece of art that has created a deep socio-ideological essence through the poet's talent.... Fitrat correctly recognized that his trust that he has used for was

miserable. Understanding that he is in wrong way he could renounce and fought against the religious and follows others (jadids Z.M) too[12]. Ilhom G'aniyev strongly criticizes G. Raimova and says that her conclusions on Fitrat's religious works are very subjunctive and she couldn't reach the real essence of the works.[13]

In the post-Independence years, a new kind of interpretations has appeared According to this research Fitrat depicts ignorance, Russianization through harsh criticism and ridiculing, These approaches to author's works were first step to understand reality of Fitrat that he wanted to say. The first study of Fitrat's aesthetic ideals was an article by Ninel Vladimirova. She in her small study, says Munkar-Nakir (angels of Allah who questionnaire people on their good and bad proceedings after the death) is typical officials-bureaucrats. The totalitarian state is, of course, a violent organ, and it must have its executives, in the role of such executors in the "Judgment Day" was depicted – Munkar and Nakir as Malowian officials. Ruzikul-Pochamir's replies are the protection of ordinary people from the abuse of their rights ... The state is, of course, a violent body, and it must have its executives, in the role of such executors as the image of the malignant officials – Munkar and Nakir. The scene of Pochamir and Juma Mama is a tragedy of ordinary people, who believe in a paradise prepared by many Bolsheviks, but who does not know what to do with all the investigations and other cues".[14]

Ninel Vladimirova's article on the "Judgment Day" focuses on the symbolic essence of images, such as Munkar and Nakir, the discovery of mockery and perjury, and invites truths closely related to the essence of the work. One of German scholar Zigrid Klaymichel's views on "Judgment Day" is very close to Ninel Vladimirova's. She also focuses on symbolic characters of the play and says that "Fitrat expressed in his play "Judgment" the role of the revolution in the life of the peoples of Central Asia, the doubts about the positive or negative impact of the revolution on the life of the people, by the motive of Heaven and Hell. What will the revolution give the nation: Hell or Paradise.

In the second decade of the Independence of Uzbekistan, a number of studies have emerged that have developed the concepts first pioneered by Ninel Vladimirova. [15] Although these interpretations were more ideologically oriented than poetic analysis standards, the focus was on the issue of expressionism, particularly in the mockery, the discouraging of the subject, and the reaction to artistic texts from poetic principles.

One of American scholar Edward Allworth[16] also research works by Fitrat on religious mythology. Edward Allworth who carried out a number research on Jadid literature was the first as a foreign scholar to analyze "The Judgment Day" and "The Satan's revolt against the God" from point of contextual approach (the general idea of Fitrat's works, the entire creation, is to expose the essence of the Jadid movement, Reforming, Force, and the ideas of Enlightenment) and socio- cultural aspect.

American scholar mostly paid attention to symbolic and allegorical images, metaphorical expressions which Fitrat concealed his reality on social and political reforms in colonial Turkistan and proved his thoughts through William Empson's theory[17]. According to William Empson author's real conceptual ideas have been interpreted in the form of a mystery, external meaning of text functions just a mask. This hidden ideas are revealed by textual analyze of the work. Tajnis (paronomasia), contrasting expressions, ambiguity and multilingualism - the words and sentences that simultaneously perform various functions are consciously and unconsciously reflected in artistic literature, and creators are protected from threats by using such method.[18] Edward Allworth draws his attention to simple details that are so vague and unusual, and he tries to reveal the author hidden idea through the conceptual , linguistic and structural approach[19]. For example, Edward Allworth says that "Fitrat successfully used from linguistic elements - passive and plural form of the verb such as "why the wing was given if one can't be flown", "one can't be grown", "one can't be blossomed", "one can't be risen up", "one can't be created", "one can't be faded" [20] . We can see such observations in the "Judgment Day". For instance, " once the door was opened, some dozy sound was heard": Brother, come. Here is a good tea for the guest ... Tea was brought. Poppy was provided in a few minutes. That is what he called "pochamir"[21].

According to Edward Allworth, Fitrat didn't t accidently use from passive form of Uzbek language. This approach does not permit official censorship to identify a participant or a cause of any reality. Thus, through the method of intellectual abstractedness the author can easily hide his ideological objective into a poetic text.

Also Allworth focuses on the symbolic expression of the process of nationalization of the nation in the events related to the word "ochirat", expressed in the main image of the work, is reflected. Indeed, Malawi's Munkar and Nakir images also carry a certain ideological burden. This is N. Vladimirova says Munkar-Nakiri

is typical officials, bureaucrats and officials Ruziqul-Pochamir's replies are the protection of ordinary people from the abuse of their rights ... The totalitarian state, of course, is a violent body and must have its executors, The role of the officials of Munich-Nakir is shown by the Maloque officials. Twenty-two years ago, Edvard Olvorth's thoughts were echoed by the story of Pogamir and Juma Mama, who believed in the paradise prepared by the Bolsheviks, but the tragedy of ordinary people who did not know how to go through all the investigations and other cues.[22]

As we have seen above E. Allworth highlighted how Fitrat successfully used from the opportunity of Turkic language and national literary expression to integrate his social and political ideology. Creating modern works based on religious themes is characteristic of the World and Uzbek literature. Particularly, Dante's "Divine Comedy", A. Ahverdeev's "Letters from Hell", H. Jovid's "The Devil", J. Milton's "Lost Paradise", was created during the social and political unrest -political turmoil and the course of great historical revolutions. Fitrat also created his works on religious mythology when atheist movements, ideologies, political oppressions, repressions and censorship strengthened in Turkistan. The religious images have helped Munkar-Nakir demonstrate the actions and behaviors of the Soviet bureaucracy.

Pochamir's harassment between hell and paradise is a common with disorder, chaos, ignorance, different kind of troubles in Bukhara (in a wide sense in Turkistan) which appeared because of soviet empire. It is well known that *the title* is considered the main part of composition of literary work. *The title* is a tiny work which brings writer's literary intention, idea of the work, structure of characters and all other elements to the single point. So there is another question: Why does Fitrat call the work "Judgment Day"? Why did he use religious mythology to explain his ideological purpose? Was it a coincidence that Ruzikul-Pochamir, the ordinary people who understood the daily life of the ancient city of Bukhara at the beginning of the 20th century, was brought as the main figure in "Judgment Day"?

Usually, when reading any art or poetry, we do not pay attention to its headline or title, it is only limited to the eyesight, but in the title of a particular artistic work the author's purpose and idea are fully reflected. The title is definitely an important element of literary art, which serves to reflect the purpose and idea of the author. Jonothan Culler speaks about extrapolating[23] of the literary text in his book "Structural Poetics". In his opinion thematic extrapolation (in Russian *тематическая экстрополяция*) is directly related to the symbolic concept in the literary art. An external reality or image is based on the cause of the extrapolation. It is evident that extrapolation focuses on the form and content of the poetic text. So Fitrat also successfully used the title, especially in "Judgment Day", to express his own ideological conception and he purposefully opposed the colonial policy and targeted it with a clear objective. In this way he firstly used the abstract category, second, Turkic language capabilities, and thirdly ambiguities. In colonial countries literature, in particular national literature, is a fast and effective means of fighting towards alien ideologies and cultural forms. Without the symbolic forms of this kind of struggle literature, which is opposed to the ideas of the hegemony of the imperialist government can not be succeed in reaching its own political as well as social mission. An American scholar Edward Allworth says the followings about structural inter –connectedness between the title (The Judgment day) and story's plot: "Fitrat aimed two things in his religious works, including "Judgment Day". First, he expressed his real attitude (trust and respect Z.M) to Islam through this specific approach; second, he successfully got officials confused in criticizing a new ruling system of Soviet Empire"[24].

One of German scholar Ingeborg Baldauf also has studied Fitrat' s "Satan's revolt against the God" and she has described Satan't revolt as "existential refutation." She thinks that Satan's revolts is Fitrat's Revolt. She equals Satan with Fitrat. According to Baldauf the essence of the problem is the interpretation of man as nature, society and the inner world and alienation from his life. Everything that exists outside of man and his emotions is a denial of God. The only person who is free or who has right to choice can deeply realize the real meaning of his life. From this point of view he rejected the Allah that was inconceivable.

From Baldauf's views of point the cause of sin is the knowledge. She would prefer to live and to be present in the life rather than to know the significance of the life. She considers the primary power (God) metaphysics and denies it and the freedom of the inner world, peace and calmness of the soul is a great global power. Here the original verse from the play

> *Hech bir jajo berolmaydi u menga,*
> *omon-eson so'ylab turib man senga.*
> *Na yondirdi, na yilonga yutdirdi,*

na boshimga alangalar to'kdirdi.
Tamug'lari qaynamadi, toshmadi,
Laqqum olov daryolari oshmadi.
Qizib mendan olgan narsasiga boq
Bir kirli toj, ikki qanot, bir tayoq[25]
I can't be punished by Him
I am talking to you
Neither he burnt nor he got snake swallow
Nor he could pour flame over my head
His hell didn't boil, didn't overrun
His river Laqqum with fire didn't overflow
Look, what did he take back from me:
Jut one dirty crown, two wings and one stick

From the given text I can say that Baldauf uses Satan's speech towards the Author- Abdulrauf Fitrat. She analyzes Fitrat's attitude to beliefs, national values not from its national-genetic roots and literary-aesthetic traditions. She analyzes the leading creative concept of Fitrat on the basis of the views of European measures, in particular philosophy of existentialism, such as Karl Theodor Jaspers, Martin Heidegger, Jean-Paul Sartre, Albert Camu. In the position of I. Baldauf lies the view such as "Is it reasonable or opposite to rational logic". But from the point of Fitrat's strong belief and his literary reputation we could say that Baldauf's conclusions on "Satan's revolt against the God" by Fitrat couldn't completely open the author's aesthetic purpose.

There is another main reason of *why Fitrat's religious works such as "Judgment day" and "Satan's revolt against the God" kept reading in Soviet period and weren't denied by censorship.* The rebellious that Fitrat refers through the Satan is also reflected in the Uzbek poet Mashrab's lyrics.[26] Our science recognizes that such a rebellious worldview philosophy has been leading in the creative heritage of Boborahim Mashrab. However, the legacy of dozens of literary and cultural figures, full of mystical truths, such as Ahmad Yassaviy, Sheikh Najmiddin Kubra, Sufi Olloyor, and poetical thinking, imagination, and the world of the former Soviet Union were completely denied. Surprisingly, during Soviet period, such as in the 1950-1980 s this is due to the fact that the rebellious spirit manifested in Mashrab studying and teaching his works continued uninterruptedly and Soviet ideologists used it for their own ideological interests concerning with historical area. From the same point of view, it is clear why the works of Fitrat were not denied.

It is evident that the study of these two (Mashrab and Fitrat) literary heritage, which is not so close in the context of their period of life and their creative-aesthetic ideals, is precisely related to the fact that their leading creative concept is proportional to the ideological principles. However, the poets and writers, who were promulgated as "religious deniers," were conceptually represented deficiency of fanaticism. Indeed, the main reason of Satan's rebellion is also seen in his selfishness. When Allah orders Angels to genuflect Adam Satan urges the Angels not to kneel Adam and not to admit themselves to be insulted. Satan proudly continues that although he was against the Allah He couldn't chastise him.[27]

Hence, the misinterpretation of judgment of "Adam's honesty" throws Satan into suspicion and eventually leads him to revolt. It turns out that the same rejection from the point of rational logic is coincidental with ideology of Soviet literature related to refutation of   religion and Sufi views.

Conclusion

It is known that the literary-ideological policy of scientists during the period of their existence served as an important factor in the expression of their views. The objectivity of the interpretation is based on the objective conditions and capabilities. Approved and even inclined views of their own policy have been closer to or far from poetical standards, to the national interests, or to contradictions, Fitrat's aesthetic ideals.

It is known that the literary-ideological policy of scholars during the period of their existence served as an important factor in the expression of their views. The objectivity of the interpretation is based on the objective conditions and capabilities. Approved and even inclined views of their own time policies are closer to or far from the poetical standards, to the extent that they are consistent or contradictory to national interests, Fitrat's aesthetic ideals, whether alienated or non-existent, with impartiality and equity. Unfortunately, in all of these

thoughts there is some kind of unilateral (subjective) approach to the issue. So such discussions confirm that the real essence of Fitrat's religious work isn't still completely investigated.

Observations that I argued on Fitrat I could say that the Jadid writer's attitude towards Islam can be found in their characters, in the speech of those images and in the symbolic events of the works. For example , both these authors and other contemporaries used the theme of **Judgment day** to communicate what critics have commonly read as an atheistic message. But Fitrat's "Satan revolt against God" and "The judgment day," undoubtedly make use of the Quranic end times to voice opposition to Russian imperialism – the authors map the internal and external chaos of encroaching "modern life" to scriptural events to warn their fellow Muslims in a familiar language –but the choice of Judgment day and the interpretation of it, as determined by dialog and the characters, demonstrate the authors' loyalty to Islamic teachings. They simply disguised their faith through a set of obvious "atheistic" allegories.

In accordance with abovementioned views and previous Soviet and Uzbek literary criticism I would like to reiterate my **conclusion** with the following:

The "retreat from faith," as Soviet and modern literature critics suggested, indeed was a struggle against the chaos that resulted from the imposition of another nation's culture and a step to a different expression of **faith in the atheistic period**. To be precise, Fitrat criticized colonialism – a tact acceptable to the Soviets who at that time also condemned Russian colonialism – but through the language of religion, which went unnoticed or misinterpreted by Soviet critics as atheism.

During the 1920s and 30s in order to avoid repression, to discover new ways of struggling against foreign ideas Fitrat and Qodiriy by means of so-called "atheistic works" succeded in spreading their truth by way of the Soviet-sponsored fight against colonialism. Religious works of jadids based on these "hidden messages" distracted Soviet censorship for the communication their socio-political and vital ideas.

In confrontation with hegemonistic ideas of colonial power both Fitrat and Qodiriy in their works written during the atheistic period successfully used Aesopian language. Their success was so great that they were canonized as masters of atheistic aesthetics. Most of scholars analyses of such anti-religious works critics missed the mark, ignoring the language of Fitrat' s pieces in favor of the meaning found in the allegorical form.

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[8] Abdulrauf is his original name, Fitrat was his pseudonym which means "talent"

[9] Haj means obligatory pilgrimage to a holy place making a religious pilgrimage

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INTER-FAITH DIALOGUE, GLOBAL PEACE AND HARMONY: AN ANALYSIS IN ISLAMIC PERSPECTIVE

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Abstract: Discussion and dialogues are key to obtaining clarity and consensus on a topic, an issue or dispute. The inter-faith peace, harmony, tolerance, understanding, universal peace,belief in oneness and unity; and basics of other equal values can be obtained through debate and dialogue. It is imperative to make this world as abode of peace. Through positive dialogue, antagonism and distances could be diminished followed by an end of estrangement. This element is proved in history and Islamic teachings are evidential of it that enemies' hearts can be won by love and sincerity. This research study has analyzedthe teachings of Islam in dealing with other religions of the world vis-à-vis the mandatory Islamic principles and conditions. The material studied for this paper includes modernday literature of the western world and the fundamental Islamic sources i.e., the Holy Quran and Hadith. The study has analyzed that Islam promotes, inter-faith harmony,global peace and prosperity among all the religions and states of the world.

Keywords: Inter-Faith Dialogue, Holy Quran, Hadith, Peace and Harmony

Introduction

The connotation of inter-religious (interfaith)Dialogue is negotiation, discussion, discourse, communication, and exchange of thoughts, ideas and opinions among world religions. The substitute of it is 'Hawar' in the Arabic, 'Muqalma' in Urdu and 'Dialogue' in English. Nowadays the terms 'Dialogue', 'Hawar'and 'Muqalma' are generally used in interfaith.Hawar is infinitive and derived from Hor that is called MarajiulKalamand also used for debate, discussion and battle[1]. It is mentioned in the HolyQuran:

{قَدْ سَمِعَ اللهُ قَوْلَ الَّتِيْ تُجَادِلُكَ فِيْ زَوْجِهَا وَ تَشْتَكِيْ اِلَي اللهِ وَاللهُ يَسْمَعُ تَحَاوُرَكُمَا اِنَّ اللهَ سَمِيْعٌ بَصِيْرٌ} . [2]

"Certainly, Allah (SWT) heard voice of that woman which is having argumentation with you and appealing to Allah. Allah is seeing and listening both of yours's communication"

Hawar is different both from debate and discussion. It is favorites whereas others (Manazra and Mujadila) are not much liked acts in general, as they end in hatred, contempt and fight. The word Mujadila (Jadal) has been used 29 times in the Holy Quran giving sense of deprecation, whereas Hawar has been mentioned thrice as exchange of thoughts, ideas, and points of view with one another[3].

The Oxford Dictionary defines Dialogue as, "to give, to meet, to exchange view or to negotiate[4]. So, there is no doubt in it that Islam not only lays stresses upon negotiation and values it high but also enforces it. Regarding Islamic teaching for peace and harmony, the Holy Quran and the best ethics of the last Prophet of Allah Muhammad (SAW) withstand the proof. There is Allah's command rewardingly:

{وَلَاتَسْتَوِي الْحَسَنَةُ وَلَاالسَّيِّئُ اِدْفَعْ بِالَّتِيْ هِيَ اَحْسَنُ فَاِذَاالَّذِيْ بَيْنَكَ وَبَيْنَه عَدَاوَكَاَنَّه وَلِيٌّ حَمِيْمٌ} [5]

"and O Prophet! Good and evil are not similar. You dispel evil with best act of kindness. You will witness who hated you will be your best friend.

The Need and Importance of Interfaith Dialogue

The door for an inter-religious dialogue of interfaith harmony has always been opened ever since in Islam. The Muslim History bears witness to it that Muslims have maintained good relations and tolerance with other religions and nations of the world. Even in the state of war, such practices had not been shunned.

After the 9/11 event, attacks were stormed against Islam, and anti-Muslim and anti-Islamic countries perceived the Muslims being terrorists, fundamentalists and narrow-minded. The need of interfaith dialogue

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increased for international relations pertaining to diplomatic and consular relations in particular. Therefore, this point may be focused in the light of good example of the Holy Prophet (SAW) and his teachings may be strengthened in contemporary times.

Islam, a religion of righteousness and invitation, encompassing the world because of its invitation, makes it mandatory for every Muslim to deliver or convey the universal message to the world. It is the only religion among all other faiths of world which has not only ordered for its global level spread but also elucidated formal principles to have communication and dialogue with other people, nations and cultures[6].

The examples of dialogue and negotiation are present in the Holy Quran and pure conduct of the last messenger from individual to collective level. The Holy Prophet (SAW) had dialogues with Arabian polytheists, Quresh's chieftains, from Warqa Bin Naufil to Christian scholars of Najran both individually and collectively. Similarly, the charter of Medina carried out during Prophet Muhammad (SAW)'s life at Medina was a kind of dialogue in the shape of a pact between Muslims and Jews[7].

It can be well estimated out of this that magnanimous Prophet (SAW) ordered His companions to learn other nations' languages so that language of invitation could be easy and comprehensible; as such impressions and impacts cause loveAnd fraternity. This was the reason that the holy Prophet (SAW) himself provided training to his companions in this regard[8].

The ambassadors sent to kings /monarchs   of the world had been communicating with them in their local language, which is miraculously a clear proof of dialogue in the same language of them[9].

People blessed with rational thinking and attitude, know it very well that a dire need of interfaith dialogue at the moment of globalization is more important than previous century. This is the only solution that will be fruitful for bringing both the opponent and addressee to a same platform and further directly diverted towards consideration where arguments can be completely explained.

This dialogue can occur from every aspect like individual, collective, religious and cultural etc .Allah (SWT) has declared all human beings as one family and commanded its every member to be well-wisher of another. In this connection, he further declared:

"All creatures are family of Allah (SWT) and he who does well with His family is His most favourite[10].

"At this time, it is the best act of kindness

With the other creatures of Allah (SWT) that they may be saved from extinctionand benevolence is to cause someone with permanent blissfulness. For whichthe interfaith dialogue is the best means.One of the major targets and objectives ofdialogue is to establish argument and proof so that no any suspicion remains. This is a divine order from Allah (SWT) declaring that:

[11] { قُلْ هَاتُوا بُرْهَانَكُمْ إِن كُنتُمْ صَادِقِينَ }

"Present an argument ifyou are righteous.

Besides this, removing doubts are also mandatory which are coming against expressing and accepting truth as declared by Allah (SWT):

"Call people to path of Allah with wisdom and exhortation [12]".

Islam emphasizes on search for actual reasons of unrest and turbulence and division. It should be main target and aim of interfaith dialogue's targets and aims to identify which are causes behind turbulence, division, unrest and terrorism and extremism. Determining actual causes behind all these through dialogue is actual meaning of dialogue. Every human is worried of unrest in the world in current time, conflict and disruption. In this global village, interfaith dialogue may be utilized as shield for remedy and cure of political, financial, intellectual, moral, religious and social violation, cruelty and injustice. Islam has given so importance to peace that if foe is in condition of war but if he desires peace, then divert with peace to him.

Brief History of the Interfaith Dialogue

There are many forms of Hawar (Dialogue), for example, individual and live dialogue, by correspondence, meetings, gatherings, conferences, discussions and debates. It had been established in the time of Holy Prophet (SAW) if studied from point of view from Islamic history. Its examples, record, commentaries, samples andpatterns can be found in the practices of the Prophet (SAW). His (Prophet Muhammad) negotiations with either Christians of Najran or Warqa Bin Naufil, with Jews of Medina after migration and business dealings or correspondence with monarchs of that time, all pertain to interfaith dialogue in different forms. The scope of these dialogues seems to be vast from ordinary people to great scholars and then to government level (Caliphs of the time).

Apart from this, the dialogue has been continued through formal correspondence of letters as well. The dialogues from the early prophetic time to later rise/dominance of Islam consisted of topics like beliefs and conversations. But these dialogues never put pressure, narrowness, and restriction on polytheists of any kind whereas on the contrary, they got free, tolerant and broad-minded society which has been actually temperament/nature of Muslims and Islam. Nevertheless, a special change has been observed in these dialogues along with expansion in its scope in 20th century. Acceleration in flow of life, diversity, progress in science technological development, modernity and advancement in latest terminologies, close relation and contact (amalgamation) in international community have caused expansion in it. Some of names of such high-level scholars are: Shaikh Tahir Aljazaer, Shaikh Abdullah AlIlmiAlghaziAldamshaqi, Shab Muslim, Shaikh Jhaj Albetar Lebnani, Shaikh Syedi Ghaaz Laba Indoneshi, Shaikh Ahmed Widat African, Mufti Shaikh Ahmed Kuftar Washam, Moreover, Shahikh Rahmat Allah Kiranavi, and Dr. ZakirNaek Hindustan etc. Arrangement of dialogues have often been made at the level of governments or kingdoms or then under ministries or religious congregations and under societies. In history of 20th century's journalism, such dialogues have been arranged time and again. It must be keptin mind that these kinds of dialogues have often been arranged generally by western world[13].

In the light of principles, manners, aims, targets, objectives of dialogue, today's interfaith dialogue has been losing its significance and majority of scholars view it a fruitless effort. This means, achieving a mission and fruitful results for few selfish individuals, institutions and some countries. The opponents have succeeded

Somehow in their aims, which has been an agenda of globalization of international colonial powers that seems constantly moving forward to achieve their material and political gains by working against inter-faith dialogue. Since the direction of interfaith dialogue has changed, it has been concealed under unclear and ambiguous field. It's not an effective and sincere effort for solution of problems of the world. Because the problems or subjects on which dialogue has taken place, the recommendations haven't been adopted despite being crystal clear. It looks that both Eastern and Western world has been wasting time and money especially the developing countries. The suggestions and recommendations at the end of first international Muslim Christian Conference (1974) were compiled as follows:

- Both Muslims Christians communities should allow each other to learn their faith in theirown compliance.
- Both Muslim and Christian communities should be freed, and violence may be stopped against them.
- Brutality and injustice must be stopped in Palestine and struggle for protection of Palestinians' rights is necessary to be strived for[14].

However, it has been observed that no significant step has been taken by the developed and developing states to practically implement the above mentioned recommendations.

The Principles of Interfaith Dialogue

Holy Quran has explained the principles of dialogue for the preachers and arbitrators. There is Divine command:

{ٱدْعُ اِلِي سَبِيْلِ رَبِّک}[15] {بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِٱلَّتِي ٰهِيَ اَحْسَنُ}

"Call people to your lord with wisdom and good exhortation and argue with them in an excellent way.

Syed Suleman Nadvi has expounded the distinctive feature of Islam in the words How to invite people to accept "that: truth, was the major principle and teaching which came into action through last messenger of

Allah (SAW). The religions, which claim to be revealed and missionary, cannot hold that their scriptures do not explain crucial principles of preaching for them. In the same way, Muhammad (SAW)'s scripture has been revealed in comprehensive and summarized way of it to its followers that how it ought to be delivered to people and how to invite them to truth [16]. Islam has not only commanded to its followers for spread and promotion but also given education of basic doctrines of dialogue. Magnanimous Prophet (SAW) has presented those principles to world.

Preference of Islam and Interfaith Dialogue

It has been assessed from historical events of Islam that whenever the great Prophet (SAW) got options to choose between peace and war, he preferred peace over war. For example, the treaty of Hudaibiya can be referred in which the noble Prophet (SAW) truced on such terms and conditions despite companions felt disheartened that ostensibly showed defeat of Muslims. But this event of peace provided free atmosphere of dialogue so that Muslims and polytheists of Makkah listened and understood each other's point of view.

According to Imam Zahri after this event, the Companions of Prophet (SAW) became more confident, used to meet freely with each other and had free discourse regarding Islam. This wise move pushed many people into the domain of Islam[17]

In short, it can be summed up that mutual dialogue and peaceful society is a requirement of Islam. This is Allah (SWT)'s promise that whenever there will be communication on basis of arguments then victory will surely be in favor of Islam and its followers.

The order of Allah is:

$$﴿هُوَالَّذِيْ اَرْسَلَ رَسُوْلَهُ بِالْهُدِي وَدِيْنِ الْحَقِّ لِيُظْهِرَه عَلَي الدِّيْنِ كُلِّهِ وَلَوْكَرِهَ الْمُشْرِكُوْنَ﴾^{18}$$

"It is that Allah who sent His apostle with true religion and instruction so that he may dominate Islam over all other religions then why it does not feel unpleasant to polytheists.

Solid and sound argumentations of Islamic teachings are key tools and techniques of Muslims in interfaith dialogue. Opponents in such dialogues are often defeated mainly due to this tool that's why they have been adopting cheap methods and tactics. It was due to Prophet (SAW)'s dialogue with Najran's scholars (Christianity) that debate was won by Muslims and few of their scholars accepted Islam. Therefore, it has been analyzed that the doors and options of dialogue should never be closed by the Muslims.

Interfaith Dialogue and Search of Collective Values

Being Muslims, it is imperative on all of us that for the betterment and development of human race, commonalities in dialogue with other religions may be emphasized. Allah (SWT) declared:

"Say o people of book! Come to such word which is common between you and us. That is, this that we may neither worship anyone else except Allah (SWT) nor hold any partner to him[19].

Giving reference of this verse by Holy Prophet (SAW) in dialogue related letters to kings of different countries and conversing of Islamic ambassadors according to prevailing laws to listener is enough proof for validity of interfaith dialogue[20]. This is more than sufficient argument for interfaith dialogue that one of the patterns of prophets regarding invitations has been the dialogue as; Prophet Noah (AS) had a dialogue with his nation to the extent that they named him as controversy.

$$﴿ قَالُوْا ايانُوْحُ قَدْجَدَلْتَنَافَاَكْثَرْتَ جِدَالَنَافَأْتِنَا بِمَا تَعِدُنَا إِنْ كُنْتَ مِنَ الصَّادِقِينَ ﴾^{21}$$

Allah said: "They said, O Noah (AS), you have debated with us and even debated too much, now bring upon us (the punishment of Allah-SWT) what you threatened us, if you are one of the truthful.

Similarly, the dialogue of Hazrat Ibrahim (AS) with his nation and Moses (AS)'s long dialogue with Pharaoh has been mentioned everywhere in Holy Quran as adornment. To sum up all, dialogue is best means of inviting towards right. Because Allah (SWT) has declared the invitation towards right as best invitation: "And whose talk will be better than that person's talk who called towards Allah (SWT) and did good and said I am Muslim .

Every religion appreciates good manners and deprecates bad manners. Therefore, such qualities or traits may be highlighted in interfaith dialogue which come under domain of good ethics. These are for example,

justice, honesty and sincerity, sympathy, truthfulness, promise keeping, self-control and dutifulness etc., and abstain from bad manners and vices like selfishness, theft, robbery, bribery, embezzlement, injustice and cruelty etc.

Method of Interfaith Dialogue

The Holy Quran has declared certain set principles and methods of holding dialogue with scholars of other religions. Therefore, it emphasizes upon adopting following methods in this regard.

Direct Dialogue for Invitation towards Monotheism is the fundamental principle of Islam which cannot be compromised in any case. There is a clear order of Allah (SWT): Say, "O People of the Book, come to word common between us and between you, that we worship none but Allah (SWT) [16]". On one common thing means, that we should agree on worship of one Allah only. Therefore, it is clear that no compromise can be made on the oneness of Allah (SWT). Pattern of Dialogue should be Moralistic and Reminder: According to the Islamic principles, the moralistic approach along with reminding the blessings of Allah (SWT) should be adopted during dialogues. As there is Allah's order:

{ يا بَني اسرائيل اذْكُرُوا نِعْمَتِيَ الَّتي أَنْعَمْتُ عَلَيْكُمْ وَأَنِّي فَضَّلْتُكُمْ عَلَي الْعالَمينَ }[22]

"O children of Israel! Remember my bounty with which I had conferred upon you and to this thing that I have blessed you with virtue and supremacy over all other nations of world. Therefore, it is one of the best strategy to be used in debate and discussions during dialogues with other religions.

Encouragement & Pattern: One of Quranic methods for goodness of mankind is sometimes through encouragement and sometimes through inculcating fear in the minds (tarhib) and invitation pertaining to imagination maybe given. As it is mentioned in this verse: "If they had upheld the Torah and the Injil and what had been sent down to them from their Allah (SWT), they would surely have had plenty to eat from above them and from beneath them. Among them are moderate people as for most of them, evil is what they do [20]". Therefore, it can be analyzed that the 'People of Books' may be encouraged with different techniques and adapting different patterns of advice, to follow the teachings of Islam.

Method of Denial and Rejection: Besides other above mentioned methods, Holly Quran has also adopted method of denial and rejection in methodologies being used in dialogue as displayed in this verse: "O People of the Book, why do you confirm the truth with falsehood, and conceal the truth when you know (the reality) [23]. So, it is clear that the 'People of Books' can be questioned on the basis of the clear evidence regarding truth and falsehood of the religions. On the basis of clear arguments, their claims and beliefs regarding the religions other than Islam can be denied and/or rejected.

Manners and Aspects of Interfaith Dialogue

Besides above mentioned methods of inter-faith dialogue with other religions, Islam has also given certain set manners and aspects to be adopted during such debates and discussions. From the perspective of 'manners of dialogue' some of the useful interfaith dialogues have been presented below:

Adherence to Truthfulness and Honesty: Islam has zero tolerance for those who does not adhere to the truthfulness and honest in dealings either at individual level, family, group, or in relations with other states. Allah (SWT) and His Apostle are true. Therefore, believers have been commanded to be true and side by truthful. There is an order of Allah: "O Believers! Fear from Allah and stand by side of honest and truthful[24]. It clarifies that believer shall not have a formal relation with or extend their support to those who are dishonest and untrustworthy. Moreover, dialogues shall be held on the basis of honesty and truthfulness whatever the circumstances may be.

Justice and Kindness: Allah (SWT) has ordered to maintain justice and kindness towards known and unknown individuals. Another aspect of kindness is that an impartial attitude may be applied towards everyone. There is an order of Allah (SWT): "…. and be just when you speak, even though the one (against whom you are speaking) is a relative; and fulfil the covenant of Allah (SWT). Therefore, it is understood that Muslims shall ensure justice and kindness during their dialogues with other scholars, irrespective of their religions or any other relation.

Adopting Scientific Method: It is evident from Islamic teachings that narrating, following or copying someone's words or work (naqil) with proper source is encouraged. If a person is defendant or plaintiff, then he

should present arguments for proving act and wording. Allah (SWT) declared on this: "Say, bring your proof, if you are truthful [11]." It proves that in otherwise case one must take care of originality, correctness, and righteousness in his words especially during dialogue with scholastic personalities of other religions.

Shunning from Difference in Words and Deeds: It is necessary for useful dialogue that there may not be contradiction between ones words, speech and/or logic given in proof of certain argument or statement. If either of these will be lacking, then trust upon that person is lost. As words of Makkah's polytheists had turned to be ineffective because they sometimes called Prophet (SAW) to be magician, sometimes wizard and sometimes used other terminologies. Now a day's the dialogue of claimers of culture and civilization has been victim of this practice also. Muslims have often been victims of contradiction in their words and deeds across the globe. Moreover, they have been alleged of being violent and terrorists whereas a section of Muslim and none-Muslim scholars believe that the case is otherwise.

Affirmation and Acceptance of Proved Affairs: It is in etiquettes of interfaith dialogue that matters proved according to Shariahand Religious postulates cannot be subject to a dialogue. There is no possibility of denial from this principle. In otherwise case, the relations between individuals and/or sates may get worsened. As a result, the dialogue would become aimless thus causing further harm to the peace and prosperity of human being.

Condition of Capability for Dialogue: One of the foremost principle of holding dialogues is that the persons concerned must be knowledgeable thus having absolute command over their domain of knowledge. This is because it is not possible to defend righteousness with the weapon of falsehood. It will be blunder holding dialogue without capability. Therefore, for useful dialogue presence of specialists is necessary so that truth could depict clear picture of itself and false could waste.

Accepting Result of Dialogue: There should be a prior understanding that the dialogue will be ended in a peaceful manner. Whatever results are drawn in the light of interfaith dialogue, the parties concerned should admit them with open heartedness. In otherwise case, all the efforts and work done will go in vain. It may stop the way for such future dialogues, which may be harmful for bringing peace and harmony among different religions. For successful dialogue, experiences and emotions of scholars of others religion must be honored. Every individual has a right and may think that his viewpoint is better than others.

Recognition of Ijtihad and Intellectual Results: Intellectual results if based on ijtihad should be recognized by the parties concerned without going into further difference of opinion. It is important because the views of Ijtihad may pertain to relational thinking which contain a possibility of accuracy and inaccuracy on both sides. Compelling the opponents in such affairs on a particular viewpoint is like failure of the dialogue process.

Suggestions and Recommendations

Keeping in view the above mentioned discussion and analysis, following key suggestions and recommendations have been given to ensure that the dialogue Process is fruitful and may produce peace, prosperity and harmony among different religion of the world.

- Avoidance from unnecessary and unrealistic communication during dialogue;
- Abstinence from allegations and accusations on one another during discussion;
- Refraining from use of ambiguous and unclear terminologies;
- Talking with each other in the best possible tome and an acceptable manner;
- Avoiding mockery, contempt, anger and objections during the debate;
- Adopting a respectful and benevolent behavior while addressing each other;
- Avoiding selfish and ego-centric approach towards the opponent scholars;
- Avoiding pride of having knowledge and giving less value to knowledge and capability of others;
- Listening to each other's arguments with cool mindedness and patience;
- Confession of mistake and admission of errors and omissions.

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NECROPOLITICAL AND BIOPOLITICAL UNDERCURRENTS OF PAKISTANI STATE AND SELECTIVE DEVELOPMENT OF HUMAN CAPITAL: AN EXPLORATION OF BODIES DEPRIVED OF HUMAN RIGHTS IN RABBANI'S INVISIBLE PEOPLE

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Abstract: *Human rights in Pakistan has been a topic of much controversy and debate in the past few decades owing to the stark contrast in the international standards and the local manifestation. This study focuses on the idea of human rights as a complex domain, determined within any society by its respective operation of bio-power which 'naturalizes' certain human bodies while mediating violence against others. This control of bodies and the subsequent violation of right to life and health for some acts against the grain of what is advocated by a universal appeal of human rights. For this purpose, our study seeks to investigate the contours of the failures of such a bio-power prevailing within Pakistani state's social institutions which, instead of providing human rights for all, recognizes citizens as merely legal and not human entities freeing the state from any moral obligation towards them. Following Michel Foucault and Giorgio Agamben's train of thought on the regulation and correction of development of bodies, we furthermore draw upon and integrate Achille Mbembe on necropolitics and Anne Orford who posits human rights like a 'natural force' operating upon the masses in our society today and regulating the social institutions working to "mak[ing] live" and "let[ting] die" the 'invisible' poor of the society. (Foucault 2003) Our investigation is primarily based on the literary textual analysis of Mian Raza Rabbani's poignant collection of stories Invisible People that serves as a microcosmic reflection of our society and serve to suggest ways of (re)conceptualizing human rights in our dire times.*

Keywords: human rights, bio-power, necro-power, healthcare, right to life and human dignity, legal issues

Introduction

This paper is inspired by witnessing the challenges encountered by human rights in the Pakistani social and political context. Owing to the state being in a constantly destabilized mode of functioning, human rights are one area that lacks serious attention and enforcement. Much to our dismay, on top of that, human rights has always been a topic of contention as domestically and internationally it has been perceived in a different light and is applied differently as well. Our laws may have been shaped and based upon English legal system, but much of what transpires into the state operation through its institutions is negotiated principally by the beliefs and the social realities of our people. This research thus seeks to identify the underlying functioning of state and the legal basis for human rights enforcement within the state institutions that like all modern states, advocate a biopolitical mode of operating and enhancing the quality of life for its people but ends up privileging the lives of some over a vast majority of population.

Mian Raza Rabbani has thoughtfully written this collection of short stories which is aptly named *Invisible People.* Having been a chairman of the Senate of Pakistan and a man who has studied law himself, he has a keen eye on the social, political, and legal issues most pertinent to Pakistani society today. His stories reflect the bitter truth of the underprivileged and the class of society which has no influence or voice. His stories represent the multifaceted view of a kaleidoscope of Pakistani social and legal issues and the tragic realities of the masses. While the stories do reflect multitude of legal and social issues, our focus is particularly the violation of Article 9 (right to life-security of a person) primarily in conjunction chiefly with violation of Article 14 (inviolability of human dignity) while also mentioning Article 10(A) (right to fair trial). Oxford Dictionary of Law defines human rights as the rights and freedoms every human is entitled to. They are so fundamental that they are understood as part of natural law. Marcus Arvan quotes in his paper "Reconceptualizing human rights" that the human rights quite simply would mean rights that are earned by all human beings "simply by virtue of being human;" however, there cannot be a neat definition in the practical sense of the term.[1] Arvan distinguishes the domestic and international human rights and that how moral claims can legitimize coercion within the two types. The issue that is perceived in this study is that these rights are conferred upon the individuals as the

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citizens of the state but the implementation of the rights despite the moral claims to the rights as justifiable, are not challenged. The state institutions rooted in the status quo, only concern themselves with the welfare of a few specially in providing healthcare. This is fundamental to valuing and improving the basic care for "making live". The story selected for fortifying the discussion primarily within this paper is "The Flower of Dust". It deals with a factory worker who is brutally injured in an accident in the factory and is denied any medical aid at a government hospital due to his underprivileged class however this privileged employer is treated with value.

Pakistani constitution clearly charts out some fundamental human rights among which those that are being investigated in this study are the Article 9 in the constitution which states, "no person shall be deprived of life or liberty save in accordance with the law." Article 14 (1) and (2) further states, "The dignity of man, and subject to law, the privacy of home, shall be inviolable." and "no person shall be subjected to torture for the purpose of extracting evidence". Moreover, all the citizens of the state are entitled to the right to fair trial by Article 10(A) which states that "for the determination of his civil rights and his obligations or in criminal charge against him a person shall be entitled to a fair trial and due process." The right to life is not merely a right to let the citizens live within the state but as a biopolitical ideally, it is promised that the subjects shall earn the rights to means of sustenance of life and better quality of it. In a judgment on lack of clean drinking water case in Sindh High Court the judge explicitly states in the report that the people are entitled to "basic health care" under the eyes of law and thus any violations of that are not sanctioned constitutionally. However, making such violations as the basis, this paper seeks to expose the failures of state institutions in provision of healthcare as an integral part of the right to life to a greater percentage of human beings in need of it within Pakistan and also their inaccesibility to justice within the legal system.

A great part of the contribution this paper seeks to make thus is by reinforcing the human rights as the regulatory force for the biopolitical operation of state institution instead of the necropolitics that reserves the rights for some and moreover, proposing that the understanding of healthcare needs to be revised within our social praxis. For this study, a nexus of human rights and healthcare which is essentially undermined by the biopolitical state structures has been reinforced. The researchers seek to show that the right to life extends to the healthcare provision being extended to all bodies and that legally this is not administered emphatically. The questions that will be dealt with in this paper are: How biopolitical state institutions are morphed into necropolitical manifestations of state power? In what ways are the state institutions of welfare such as health and judicial apparatuses violating basic human rights? How certain bodies are not given human rights while some are entitled to them and the legal issues within our constitution? Also, is healthcare recognized as integral to the manifestation of the spirit of right to life? What are the legal issues underpinning this claim?

MacGregor in his paper establishes that law functions as a tool of bio-power that monitors the provision and access to right to life.[2] This right to life is part of the constitutional and legal framework, so the human rights are inculcated as the regulatory tool of the potential of the state as a bio-power. However, the social institutions in Pakistan are not in tandem with the legal injunctions as quoted in Anne Orford and as per the constitution of Pakistan Article 14, the spirit of human rights and the operation of the biopolitical state stands at odds on the issues of healthcare.[3] This is because the latter tends to objectify the bodies regulated within its control. For human rights, there is a homogenized potential and thus entitlement to rights for all human beings. But this disparity is seen in the selective provision of health services to the people of the state. For the scope of the paper, the focus remains upon the monitoring of the bodies by the state institutions and sustaining the right to life for all individuals equally as are all citizens constitutionally entitled.

Violation of the Human Within Necropolitical State

The right to security of a person which entails healthcare is a constituent unit of "life" for all citizens in biopolitical regimes. Based on the enhancement and sustenance of life such societies must demonstrate the healthcare as being a fundamental provision for all humans. And yet, we claim in this paper, that necropolitical actions take place when the institutions acquire such sovereign power under the influence of capitalization at the hands of the ruling class that it reduces a particular part of the population to 'bare life'. This happens when certain people are privileged as their life has more biopolitical value than others. Fassin in this regard says that talking of biolegitimacy instead of biopower leads to a construction of the meaning of life instead of the exercise of force and strategies to control it.[4] Biolegitimacy here means that instead of "to (make) live" the state institutions also hold the power to value life as in a choice "over who shall live and what sort of life and for how long".[5] So the state here has power on not only the quantity but quality of life of its subjects as well. It brings a

sharp contrast between citizens of the state who in theory are equal to each other but in practice are privileged due to their privileged class in the society. In the story "The Flower of Dust", the evidence of the elite capitalizing on health institutions is quite vivid the main protagonist on multiple occasions reflects upon the petty condition of the so called government hospitals reflecting state sovereign welfare institution's necropower at work, "during British occupation it was a hospital for subject people, but since independence, it has served the higher grades of the civil bureaucracy, as well as their families and friends, while professing to be a government hospital for all."[6] The state welfare institutions of health and security are co-opted by the capitalist ruling class, representing the wealthy few who get to legalize exception and relations of enmity as a normative right to kill, they create the fictionalized notion of the enemy who might be a threat to their capital held by the ruling class.[7]

In Michel Foucault's understanding the biopolitical mechanism are the study of the strategies and regulation by which the authoritative power (i.e. the state) manages human life. These biopolitical mechanisms become problematic when the state starts practicing necropolitics i.e. "the condition for the acceptability of putting to death".[8] Hence as a result a radical reification of human being occurs, reducing them to an object of the state welfare institutions. This diminishes the value of life of the underprivileged making "the subordination of everything to impersonal logic and [reducing everything] to the reign of calculability and instrumental rationality".[9] This helps in justifying the sovereign's capacity in order to kill its citizens.[10] Further Mbembe elaborates that this logic is radicalized to such an extent that "one's horror at the sight of death turns into satisfaction that it is someone else who is dead... each killed... makes the survivor feel more secure".[11] In the story "The Flower of Dust", the patient on the bed next to the one protagonist was finally admitted to, tells him that the man who previously occupied the bed had been admitted last night and had just died for him to receive the bed and says, "Perhaps the doctors were waiting for his death".[12] So, the death of one man secures the life of another. The ruling class hence looks at this practice of necropolitics as a technique of survival, in other words this logic of survival justifies violence against the underprivileged. Following Foucault's claims on biopolitics, another theorist Henry Giroux affirms the logic of biopolitical exposure and neglect when he brings forth that how the subaltern and marginalized masses are structures at the intersection of race and class, are rendered disposable.[13] Here in our selected short stories the poor section of the society due to class distinction suffers at the hands of the state institutions. This is the result of the necropolitical practices by state endorsed institutions of welfare i.e. health and law. Giroux believes that in contrast to the sovereign right to kill, the biopolitical form of exposure of governmentality exercised in these state welfare institutions is a more diffused form of necropolitics.[14] The operational logic of this power is one of destruction hence it is necropolitical in nature i.e. here death is privileged over life.

What this paper seeks to do is to reaffirm the right to health or healthcare recognized as a human right in the context of Pakistan's constitutional and social framework and that social institutions especially health system must develop a potential of unrestricted access to people of all strata of society. The idea is just how human life is managed politically. And how are subjects seen by state and how knowledge is formed around them to assert this power. The basic ideals of how life is managed and sustained and multiplied politically are challenged by the selective operation of state institutions. Foucault actually set out to see the underlying power in biopolitics as being positive and life enhancing but the stark truths within the Pakistani social context do highlight the dark underbelly holding and exercising thanatopolitics on its own people through life destroying practices that operate under the same political framework.

We shall observe in the analysis that the only option for the poor as a form of salvation is death itself. "Necropower, hence becomes a practice that "either decimates populations through massacres or else commits populations to unbelievable conditions in which they are continually exposed to violence and deprived of a properly human life, where they are destined to a "death-in-life".[15] This results in extreme forms of violation of human rights on state's part as we can witness in our stories that the poor man is left to die without immediate health care. "The biologization of ethics of health and security become interfaced with new modes of policing bodies and populations" in the stories about to be discussed.[16] This is an increasingly authoritarian politics which governs through economic, rather than operating on the indictments of the human rights. The politics of death results in a form of social death. The relationship of masses with power was made always reducible to one of hospitality and disposability. Henry Giroux sees biopolitical as 'social disposability' which also results as another particular form of necropolitics.

Healthcare: An Integral unit of Right to Life

Human rights must be re-conceptualized as the focus and as the regulator of biopolitics in our state. Failure of our state institutions to enforce human rights leads to the tragic demise of a vast half of human life in Pakistani society as aptly explored by Senator Rabbani. Furthermore, it would be argued by the researchers that in the absence of the enforcement of human rights by the state that other social factors (poverty etc.) end up chipping away at the states hegemony over biopolitics. The sanctity of human life entitles it to the human rights standard but human rights are ascribed selectively owing to socio political, historical and legal issues that surround it.[17] However, it is tragic to see that the lack of humane treatment of life is visible, bodies without sufficient capital to fall back on are not valued equally to the bodies that are otherwise richer. "The doctor discharged him from the hospital. He happily accepted the doctor's decision, because his bed was needed by a laborer working in kiln........his master had turned the factory watch dogs on him.[18]

In Foucault's opinion bio-politics works through the division of people into who must live and who must die, hence we will observe in the analysis how the elite few decide by co-opting the health and law institutions of state through wealth and influence to elevate the value of their life above the unorganized, unimportant masses. The invisibly of the life of the masses is quite visible form his boss's lack of acknowledgment of his existence, "He recognizes the driver- it is his boss's car. "He must have come for me".....then he slumps back as the car stops in front of the VIP block. Without a glance in his direction, his boss strides in with flowers, perhaps for some bureaucrat or useful politician.[19] The practices of necro-politics in the texts work on this particular mantra "for a few to be immortal many must die" (In Time) i.e. disregarding life in general. In theory the state institutions of health and justice are there to preserve the lives of its citizen. Hence medical and judicial logics are derived in order to regulate the distribution of death and to make possible the murderous function of the state institutions of welfare.

The undercurrents for human rights treatment of all human beings in their full capacity as acting political entities, Orford has elaborated at length, is at odds with the democratic treatment of citizens as objects to administer rights to.[20] In our view human rights are regulating it so giving the state power to e.g. take someone's life but "only in accordance with law". So in this paper this interrelationship of human rights with biopolitics is being scrutinized with the help of a textual literary analysis of the selected short stories from Mian Raza Rabbani's collection *Invisible People* in which the social and political issues of access to justice, healthcare as a fundamental right etc. are being explored at length. In its operation within the healthcare system and even the legal provision of human dignity and bare right to life, the state institutions stingily withhold it from people who are too 'poor' to be of value to the state.

Conclusion

In this paper thus, we sought to review the state of human rights within the Pakistani society and the failure of the biopolitical state to live up to its promises of the sustenance and enhancement of quality of life. The domestic human rights that are provisions of the constitution must be inculcated within the state institutions without disparity. The character in the story questions the illusion of the false sense of security and equality state blatantly promised all of its citizen regardless of their differences, "Am I not a citizen of this state, do the constitutional rights of 'from each according his ability, to each according to his work' not apply to me? Are my children also destined to be chattels?"[21] Their bare life here is stagnant in its existence and it has no hope of any kind of improvement. The poor of the society hence are not only struggling to make both ends meet but are also at a loss to have the basic healthcare that is still offered generously to those with wealth to offer. Human rights can be a regulatory potential of the biopower and it must keep in check the welfare potential of the law. The stories are a microcosmic reflection of our society where the human rights remain in dire need of being reconceptualized as the state's regulatory potential fails to deliver the basic right to life, health and human dignity which is crucial to all citizens of the state. The characters in the story expose the underlying predicament of law of implementation of the legal provisions of human rights within the constitution owing to the necropolitical functioning of the state. What we need is more awareness to channelize the human rights potential to view and treat subjects of the state as being entitled to welfare, proper health care and treatment as equal human beings in the eyes of the law and state institutions.

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Academic Session: 2

Terrorism, Armed Conflict(s) and Violence in 21st Century

Session Chair: Prof. Dr. Saeed Shafqat

HUMAN RIGHTS IN THE CONTEXT OF THE CHALLENGE OF TERRORISM, ARMED CONFLICTS AND POLITICAL VIOLENCE IN THE 21ST CENTURY: FOCUS ON SOUTHEAST ASIA

Prof. Dr. Bilveer Singh *

Abstract: *Despite Mankind's constant quest human rights over the last few centuries and especially since the 1948 Declaration of Human Rights, respecting human rights in all its forms remain a constant challenge. This is especially in zones of conflicts, be it due to terrorism, armed conflicts or the perpetration of political violence due to various reasons, old and new. While the 21st century can be said to be only 18 years old, yet the litany of conflict that have encompassed the less than two decades of the century is startling. The objective of this research paper is to analyse the nexus between human rights and armed conflicts in Asia with a focus on Indonesia. The approach adopted is to embrace a qualitative approach in understanding a number of conflicts in Asia and how human rights have been sacrificed in the process. While armed conflicts tend to have a heavy toll on human rights, these often are downplayed due to geopolitical interests of the key major powers. While Indonesia has been subjected to continuous terrorist attacks since 1998, the response of the anti-terrorist units has also called into question the efficacy of its methods, with it often described as a 'legal killing machine'. What this means for the threat of terrorism and the approach adopted in counter-terrorism in Indonesia will be discussed in this study. .*

Keywords: Terrorism, counter-terrorism, Indonesia, human rights, Densus 88.

Introduction

> *"there is no trade-off between effective action against terrorism and the protection of human rights".*

Mr. Kofi Anan, Secretary-General of the United Nations

> *"The activities of counter-terrorism must not fuel more grievances and hence, the security community must be careful and handle this delicately. It must not repeat what has been done in Myanmar as it can be counter-productive. In the name of counter-terrorism, Southeast Asian states must not provoke a new dangerous situation from rising".*

Liew Chin Tong, Deputy Defence Minister, Malaysia, in a speech on 4 October 2018 at The 2018 Southeast Asia Counter-Terrorism Symposium: A Collective Approach, Singapore.

In the context of rising security threats from terrorism, armed conflicts and political violence, one of the greatest challenges facing Mankind today is its ability and need to strike a balance between the obligation of states to protect their citizens from threats and the need to comply with human rights obligations which these states have committed themselves at the national, regional and international levels. This is especially in counter-terrorism activities since the 911 Incident that brought Al Qaeda-based terrorism into the heart of the United States and unleashed George Bush's 'global war on terror'.

This paper looks at the tension between the need to promote and safeguard human rights, on the one hand, and the need to take effective counter-terrorism measures to neutralise what has emerged as a global security threat, on the other. Following the discussion of these issues, the paper will focus on the situation in Southeast Asia, especially Indonesia and how the manifold human rights abuses have called into question the efficacy of counter-terrorism, counter-radicalization and de-radicalization measures. In the light of these measures and the ensuing debates, some have even argued that the manner a state's counter-terrorism agency carries out its policies may in fact exacerbate the rise of terrorism and radical ideology with the security situation worsening and not improving. These issues will be addressed in the paper.

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The Challenge of Definitions

While states have faced the challenges from armed conflicts and terrorism for a long time, defining these have remain highly contested, due to various political, economic, social-cultural, ideological and even geopolitical considerations. The inability to agree on, say what is terrorism, has also created the problem of not just how to address the threat but also the associated human right abuses that are seen to be associated with them. While some states have seen terrorists are combatants and criminals, some have seen them through political lenses as 'internal political and ideological challenges', in the same way, some regimes used to view dissidents in the Cold War by labelling them as 'communists' and hence, deserving to face the full spectrum of a state's policies, from a legally sanctioned arrest, to illegal detentions, brutal tortures, 'disappearances' and even outright murders.[1]

While armed conflicts between states are quite clearly discernible, say the Sino-Indian and Indo-Pakistani wars, either total or limited, when these take place within the geographical spaces of a state, then it becomes murkier, being seen as a civil war, a separatist struggle, etc. However, it is the challenge of defining terrorism and acts of terrorism that have detained the attention of states, officials, lawyers and even scholars. Clearly, terrorism is a political act and usually involves the use of violence to achieve a political goal. Still, it has the 'elephant in the living room' challenge. Everyone knows that terrorism is a big challenge and cannot be ignored but not only do many find it uncomfortable to discuss it but also are unable to reach a consensus of what it is, why it started, who is responsible for it and more important, what is to be done to resolve the issue.

In its common usage, terrorism encompasses a number of elements: the deliberate use of violence, intimidation or the threat of violence against a person or a group with the clear objective of achieving a political, ideological, social, economic or religious goal by putting pressure or intimidating another group of people or individual to carry out actions they would have otherwise not undertaken. In terrorism, the people who are targeted to be influenced can be vastly different from those who are targeted for violence, even though they may be members of the same state, political community, race, religion or economic class. Hence, the most common modus operandi is to target innocent civilians in 'soft target' attacks in order to influence the government to undertake a particular policy or change a policy position, either at home or abroad.[2] In general, the ultimate aim of terrorism is to create a state of fear to compel the target to undertake what the terrorists would want them to do with the terrorists usually justifying their action on their interpretation of a religion, ideology or trying to alter what they perceive to be an unjust political, economic and socio-cultural order.[3] The Parliament Assembly of the Council of Europe defined terrorism as follows:

> any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society, or the general public.[4]

Still, what does terrorism encompasses, and it would seem that any act that involves violence and has a political agenda that a community and state views as a threat can be defined as terrorism. Traditionally, this had a more restrictive meaning and encompassed the following: attacks on life and integrity of persons; seizure of aircraft and ships; kidnapping or hostage taking; causing destruction of government property or infrastructure; manufacture of weapons of mass destruction; interfering with a country's resources with the effect of endangering human life. Now, attacks on private properties such as hotels, etc. would also be regarded as terrorism. Since the 911 Incident, many more acts have been included as parts of terrorism or acts that facilitate terrorism such as teaching of radical Islam in Islamic boarding schools, etc. and the spreading radical Islamic messages via the Internet and social media now dubbed as online radicalization that can result in a phenomenon called 'self-radicalization'. In short, there has been a broadening of the concept of what entails terrorism even though there is still no universally acceptable definition as a consensus on defining terrorism that continues to defy the international community to this day.

Probably more important is the need to understand the sources and causes of terrorism. Clearly, terrorism finds fertile ground in an environment of poverty, humiliation, dejection, discrimination, oppression and especially political repression, extremism of the state and its supporters and most importantly in human rights abuses. These primers can be domestic or international in origins. For example, many Muslims have been radicalized and support the cause of violent jihadi by the images they see of the United States' invasion of

Afghanistan, Iraq and Syria, as well as treatment of detainees at Abu Ghraib and Guantanamo. In this regard, the observation that "the current 'war on terrorism' has in some instances corroded the very values that terrorists target: human rights and the rule of law", and thereby, has helped to worsen the security situation.[5] In short, states and their counter-terrorist policies and agencies, instead of solving the problem, have indeed become part of the problem.[6] The result is, as was stated by a UN panel on the issue of the challenges facing safeguarding human rights in the context of rising threat of terrorism:

> that 'approaches to terror focusing wholly on military, police and intelligence measures risk undermining efforts to promote good governance and human rights, alienate large parts of the world's population and thereby weaken the potential for collective action against terrorism'.[7]

This in a way captures part of the crux of the problem of human rights and terrorism in the 21st century.

Human Rights and Terrorism

While the 911 attacks and the subsequent proliferation of attacks by the Al Qaeda and the Islamic State and groups affiliated with them have made the fight against terrorism the top political priority of most states, at the same time, with the surfacing of a litany of human rights abuses in various counter-terrorism operations, be it in the developed or developing world, the concerns relating to human rights have also concomitantly increased. Without doubt, terrorism is a clear human rights abuse and terrorists must be held accountable for the violence and crimes they commit, regardless of whatever justifications they resort to. Still, the 'security first' approach has tended to dominate and trump over human rights concerns in most cases. Following the 911 attacks, the United Nations Security Council (UNSC) adopted Resolution 1373 under Chapter VII of the UN Charter in 2001, calling on states to undertake robust counter-terrorism measures at the national and regional levels.[8] Resolution 1373 also led to the establishment of the Counter-Terrorism Committee (CTC) to monitor states' implementation of the resolution. Resolution 1373 provided a major impetus for states worldwide to undertake aggressive measures against 'terrorists' nationally, leading to in effect the launch of the 'war on terrorism' worldwide with immense consequences for all concerned. Parallel to Resolution 1373, the UNSC also passed Resolution 1456, adopted in 2003, calling on the CTC to observe the importance of human rights in its tasks, to desist from undertaking repressive measures in the name of counter-terrorism but this has largely been ignored.

Since the 911 Incident and UNSC Resolution 1373, many issues relating to human rights in counter-terrorism policies of states have emerged in the context of security challenges facing states and the international community in the 21st century. A key issue in the tension between counter-terrorism and human rights is the definition of terrorism. As was argued by a report by the Icelandic Human Rights Centre:

> Despite a plethora of instruments addressing terrorism, it has been difficult to reach an International consensus on a definition of terrorism. A clear definition is necessary as without it, oppressive governments violate human rights with reference to security; opponents of governments policies may be categorised as terrorists in the same way as for example, some states in the 1970s labelled perceived 'dissidents' as communists.[9]

More important, again and again, international meetings, conventions and gatherings of eminent persons, politicians, etc. have reaffirmed that counter-terrorism must be lawfully conducted and not at the expense of human rights. This has, however, remained a howl in the night! While terrorists and terrorist organisations are dangerous and must be neutralised for the sake of public security, there should not be a competition as to who is a better terrorist – the terrorist or the state agency undertaking counter-terrorism operations? The indiscriminate use of the term 'terrorism' and 'terrorist', and the state's prepared to ignore the non-derogability of certain rights of individuals, including terrorists, have helped to worsen the problem and hence, the rising importance of the problem associated with human rights and terrorism.

Since the 911 Incident, even though these abuses existed before that, various UN bodies have documented extensive human rights abuses that have been perpetrated in the name or pretext of combat terrorism. These abuses include: arbitrary detention, racial profiling, breaches of privacy rights, violations of due process rights, inhuman and degrading treatment, torture and other cruel acts, and enforced disappearance through outright murder. Even developed states and champions of human rights such as the United States have been involved in these acts, including partaking in torture, holding detainees in Guantanamo Bay, and in secret

detention centres called 'black sites' where the individuals are held in deplorable conditions, without access to basic rights and usually tortured in the name of gaining 'actionable intelligence'.

The International Commission of Jurists, in 2009, published 'Assessing Damage, Urging Action', a report on Terrorism, Counter-terrorism and Human Rights. The list of human rights abuses listed was astounding for states living in the 21st century, including:

- Individuals have been abducted and held in secret prisons, where they have been tortured and ill-treated;

- Terrorist suspects are held incommunicado for extended periods before being charged and before they have access to lawyers, courts and the outside world in conditions that are conducive to, and have led to, torture and cruel, inhuman and degrading treatment;

- Individuals charged with terrorism are often tried before special or military courts, which lack the requisite guarantees of independence and impartiality, and do not offer essential fair trial guarantees;

- Deportation, detention and administrative measures adversely affecting persons suspected of being involved in or supporting terrorism are often ordered on the basis of secret intelligence which is not disclosed to the affected persons;

- Broadly framed anti-terrorist legislation has encroached upon fundamental freedoms of speech, opinion and assembly;

- Many counter-terrorist measures lack basic safeguards such as due process and adequate oversight mechanisms;

- A culture of secrecy is becoming pervasive and, in the case of secret detentions, suspects are being placed beyond the basic protections afforded by human rights standards, international humanitarian law and all domestic constitutional guarantees;

- The secrecy demanded for the work of the intelligence and security bodies frequently amounts to impunity for wrong-doing, and innocent victims of human rights violations find themselves with no avenue for redress.[10]

The net value of these reports and research is that more and more states, judicial agencies and the society at large are coming to be aware of large-scale abuses of human rights in the name of countering terrorism. Clearly, the initial widespread support and endorsement for governments' robust counter-terrorism measures are coming into question as grave human rights abuses and violations such as unlawful and indefinite detentions, torture and extrajudicial renditions and killings are becoming public knowledge. The criticisms from the general public and even courts in the West are helping to put pressure on governments to uphold and respect human rights while undertaking counter-terrorism measures, giving hope that states would, under public pressure, be compelled to adopt a more proportionate and balanced approach to counter-terrorism that also includes the respect for human rights. The central thesis is a simple one: the massive human right abuses of the terrorists and terrorism must not lead to responses by states that causes more human rights abuses to take place. This is no clearer than in Southeast Asia where there has been a 'war on terrorism' long before the 911 Incident took place in the United States.

Counter-Terrorism and Human Rights in Southeast Asia – the case of Indonesia

Southeast Asia has long experienced terrorism, be it of the religious or non-religious kind. Religious-based terrorism in Southeast Asia has a long history. There are Islamist-based insurgencies and acts of terrorism in Indonesia, Southern Philippines and Southern Thailand for more than a century. To this can be added the communist insurgencies that afflicted Southeast Asian such as Malaysia, Singapore, Thailand, South Vietnam and Philippines that also wreak havoc on human lives and properties. However, the focus on this paper will be the threat caused by Islamist terrorism in Southeast Asia with a focus on Indonesia (see Table 1). While there are many reasons why an individual would turn towards terrorism, the question that this study wants to answer is the nexus between terrorism and human rights.

Indonesia's Counter-Terrorism Policy with a focus on Detachment 88

While Indonesia has long being threatened by jihadi terrorism, it was only following the first Bali attack in October 2002 that Indonesia was catapulted into action and among others, this led to the development of a comprehensive counter-terrorism policy and strategy that eventually succeeded in neutralizing the threat of the pro-Al Qaeda (AQ) Jemaah Islamiyah (JI) group to some extent. Following the October 2002 Bali attack, the government of President Megawati Sukarnoputri quickly passed presidential decrees to highlight its determination to deal with the threat, namely, Presidential decree No. 4/2002 that established the Anti-Terrorism Desk in the Coordinating Ministry for Politics and Security; and Presidential decree No. 5/2002 that emphasized the need for coordination between the police, military and intelligence agencies, providing the legal basis for Indonesia's anti-terrorism strategy.[11] The two presidential decrees were built on the Southeast Asia's regional grouping's declaration, the Association of Southeast Asian Nations (ASEAN) Joint Action to Counter-Terrorism of November 2001 that was made in Bandar Seri Begawan, Brunei. Later, the epicenter of Indonesia's counter-terrorism legal basis was the National Law No. 15/2003 on Eradication of Terrorism. After much debate, fifteen years later, on 25 May 2018, the Indonesian Parliament passed a new counter-terrorism law that gave wide-ranging powers to the police and military to counter the threat, especially following two violent incidents in May of that year, following a prison riot holding terrorists and multiple suicide bombings in Indonesia's second city, Surabaya.[12]

While in terms of declaration, much of Indonesia's focus was on the 'hard' and 'soft' approach to countering terrorism, clearly the former has been the emphasis of Indonesia's counter-terrorism agencies. This is especially the primary task of a special force that was created under the Indonesian Police called Detachment 88 (Densus 88).[13] Densus 88 came into being after the October 2002 bombing in Bali. Legally, Densus 88 was created by a special order of the Chief of Indonesian Police No. Pol: Kep/30/VI/2003 and was later strengthened with additional powers by Presidential Decision No. 52 2010. The actual date for the establishment of Densus 88 is 30 June 2003. It is funded, equipped and trained by the United States and Australia. It receives bulk of its financial assistance under the United States' State Department's Diplomatic Security Service and the 500-strong unit is trained in Megamendung, near Jakarta by the CIA, FBI, US Secret Service and the Australian Federal Police with many of the American instructors being ex-US special forces personnel trained in neutralizing 'enemy personnel'. Many members of the Australian Special Forces and intelligence elements are also involved in training Densus 88.

Since its establishment it has become a potent 'killing machine', also referred to as a 'death squad', with the unstated philosophy that the best approach to de-radicalization and counter-radicalization is the death of the alleged perpetrators. When discussing the issue of terrorism and human rights in Indonesia today, the main focus is the manifold abuses Densus 88 has perpetrated over the years. With many non-Muslim members in Densus 88, it has come under sharp criticisms from Indonesia's civil society and major Muslim organizations that Densus 88 is not just an anti-terrorist 'killing machine' but more importantly, out to humiliate, hurt and undermine Islamic sensitivities in the world's largest Muslim state and what more, to champion the political, security and strategic causes of its main funders and trainers, the United States and Australia.

An important factor and consideration in Densus 88 high killing rate were due to the United States' 'post-911' anti-terrorism strategies at home and abroad and where foreign governments were persuaded to join in the 'war against terrorism' through the passage of national laws and regulations as well as acceptance of American counter-terrorism training philosophy and practices, best evident in the establishment of Densus 88. Since its establishment, not only has Densus 88 killed more than 150 so-called terrorist suspects (see Appendix 1), it has also successfully detained nearly 1500 alleged terrorists. This has had, to some extent, the effect of neutralizing the threat posed by some terrorist groups, with many groups organizational structure disrupted, their leaders killed and detained, and many members of the various groups killed and detained. However, terrorism still continues to threaten Indonesia, showing clearly that while Densus 88 has been successful to some extent, it has been unable to eradicate the danger totally.

Densus-88 and the Killing of Siyono

Siyono, 34, a father of five and the alleged leader of a group referred to as Neo-Jemaah Islamiyah, was allegedly killed by Densus-88, under interrogation through torture. He was arrested on 8 March 2016 and lost his life on 11 March, within three days of being arrested, after carrying out his sunset prayers in Klaten, near the city of Solo, central Java. Siyono's father and brother saw three men leading Siyono away and as the men were also in the mosque, they did not suspect anything unusual. When Siyono was arrested, he was healthy but his corpse bore serious injuries, including two black eyes, a broken nose and bruises on the right side of his face. According to a family member, "He was still bleeding from the back of his head and there were traces of dried blood. His legs were swollen and blackened, and one of his left toenails was almost detached".[14] Siyono was arrested by Densus 88 without a warrant, in violation of police procedures.

According to a published report, following Siyono's death, "media reports and statements from Komnas HAM (Indonesia's Human Rights Commission) and the Asian Human Rights Commission have traced the unravelling of the initial police accounts of Siyono's death. The reports point to a blatant cover-up that has been exposed only because of the intransigence of family members".[15] Later, Siyono's wife, with the support of civil rights groups, filed a report against Densus-88, accusing two of its officers of murdering him. Siyono's wife was supported by a legal team from the Humanitarian Defence Team, a subset of the Advocacy Coalition for Siyono (KASUS), made up members from Muhammadiyah, the Legal Aid Institute (LBH), the NGO Forum of Yogyakarta and PAHAM, Jogjakarta. Siyono's family also alleged that two female Densus-88 members gave Rupiah 100 million (US$7,600) when Siyono's body was returned, as an attempt to impede the law so that the family will not file a suit against Densus-88.

Siyono's family also alleged that the National Police hospital had falsified the cause of Siyono's death in its autopsy report. The police statement announced Siyono died from a brain haemorrhage after attempting to escape after fighting with the officer escorting him by car. However, an independent autopsy initiated by the National Commission on Human Rights (Komnas HAM), Muhammadiyah's youth wing and the Forensics and Physicians Organization, revealed that Siyono died after a fractured breastbone had pierced his heart, contrary to conclusion reached by the National Police. Clearly, autopsy reports indicated that Siyono died as the result of blows delivered by a blunt object that smashed six ribs, one of which pierced his heart. Even though there was a head wound, there was no sign of a brain haemorrhage and this wound was not the cause of death.[16] Siyono's family also filed a report against the investigation conducted by the Police Internal Affairs Division that rejected allegations that Siyono was violently tortured to death by Densus-88 interrogators. The Siyono case clearly documented the impunity with which Densus 88 operates in Indonesia and the litany of human rights abuses it is alleged to have chalked up.

Indonesia, Terrorism and Abuses of Human Rights

Many factors and developments have led to a situation where Indonesia has emerged as an important case study where there are serious conflicts between the adoption of a robust counter-terrorism policy, on the one hand, and the quest to champion human rights since 1998, on the other. First, it has to do with the laws of the country that does not clearly define what is terrorism, with old, New Order laws being used as all-encompassing caveats under the rubric of threats of live and property as being the basis of what constitute terrorism. Even the passage of a new anti-terrorism law in May 2018 did not resolve the problem. For instance, according to the 2018 law, Article 1(2) defines terrorism as any act that uses "violence or threat of violence to create a widespread atmosphere of terror or fear, resulting in mass casualties and/or causing destruction or damage to vital strategic objects, the environment, public facilities, or an international facility" while Article 1(4) defines "the threat of violence" as including any "speech, writing, picture, symbol or physical, with or without the use of electronic or non-electronic form which may incite fear in a person". The concern with the lack of clarity on defining terrorism can lead to all kinds of abuses, as it can provide a carte blanche license to target anyone, be it peaceful political activities of indigenous groups, say in Papua, environmental advocates and religious or political organizations as well as target anyone the state or the anti-terrorist agencies such as Densus 88 desires it would want to apprehend, interrogate, torture or even terminate through extrajudicial killing.[17]

Second, there is also the issue of the existence of Densus 88 as an anti-terrorist organization. Strangely, long before Densus 88 came into existence, Indonesian military which was in the forefront of counter-terrorism operations for more than 50 years, had well-established, experienced and well-trained counter-terrorist units.

But somehow, as part of the internal and external politics, mainly to undermine the role of the Indonesian military (TNI) in the post-Suharto, post-New Order era, the police were given priority, partly through the establishment of Densus 88. The alleged excuse was, "the TNI was involved in human rights abuses', the very sin that Densus 88 is accused of undertaking today, albeit a special force trained and funded by Western champions of human rights such as the United States and Australia.

A key criticism of Densus 88 is that not only has it failed to eradicate the terrorist threat in Indonesia, it has also not undertaken cooperative actions with the country's established anti-terrorist units. These units include: Anti-Terror Detachment of the TNI; the Anti-Terror Unit of the Indonesian Army called Group 5; the 81st Detachment of KOPASSUS, Indonesia's special forces; the Detachment Jalamangkara or Denjaka of the Indonesian Navy operating with the Marine Corps; and Bravo Detachment of the Indonesian Air Force. While the Indonesia military's anti-terrorist units are well-trained and experienced, the unwillingness of Densus 88 to cooperate and collaborate with its military counterparts is not just an issue of 'turf warfare' but also due to personalities, issue of access to funds and resources as well as influence of external players that bankroll and to some extent, influence the working of Densus 88 in Indonesia.

However, it is the final criticism that is the most serious and the key fatal blow to Densus 88's reputation and potentially of its future existence, namely, its perpetration of serious human rights abuses in the conduct of its anti-terrorism policy. Densus 88 has been alleged and there is sufficient evidence that has been documented to verify that the police-based anti-terrorist unit has been involved in serious crimes relating to human rights including cruel, inhuman and degrading treatment of prisoners, arbitrary arrest, detention, torture and worst of all, wanton killing of alleged terrorist suspects, some of them in front of their family members and even in mosques. Even wrongly identified people as terrorists have been killed with no real consequence to Densus 88 and its perpetrators.

Indonesian civil society and religious organization leaders have consistently pointed out that Densus 88 has been involved in serious human rights violations including killing individuals who have been wrongly identified as terrorists. It is argued that what Densus 88 has and is doing is a serious crime, especially as the Indonesian government has ratified 2 key human rights covenants in 2005: UN Covenant on Civil and Political Rights and UN Covenant on Economic, Social and Cultural Rights. In 1998, Indonesia has ratified the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. The 1945 Indonesian Constitution and National Ideology also promised the protection of human rights of all Indonesians.[18]

While there are many cases and records of Densus 88 killing so-called terrorist suspects who have not been charged and proven to be terrorist, the infamous case of Siyono is one that has gripped the Indonesian nation and brought the spotlight on Densus 88 for being a 'death squad' and a 'killing machine'. In the light of Siyono's murder by Densus 88, Harits Abu Ulya, Director, The Community of Ideological Islamic Analyst, argued that:

> It is extremely sad, especially if one knows the chronology of events that led to the killing of an innocent person [Siyono]. This was an act of pure barbarism…He was brought in [into custody] in an extremely healthy condition and a few hours later, he was dead. This 100 percent does not make sense. It clearly shows that there was a systematic act of brutality and violence. The behavior of the security apparatus is always over-acting and once this is discovered and exposed, it tries to cover-up their acts of violence through various arguments that aims to prove that Densus 88 is always right and had never committed any wrongdoings. Every human being has a right to life and no one has the right, on whatsoever grounds, to take away that human life, unless it can be truthfully proven.[19]

In view of these circumstances, the Head of the Youth Committee of Muhammadiyah, one of the two largest Muslim social organizations in Indonesia, Dahnil Anzar Smanjuntak stated that the task of Densus 88 so far is not one of de-radicalization but more to promote radicalization, whereby through killing innocent people and suspected individuals involved in terrorism, it hopes to convert more people towards the cause of terrorism and hence, prolong Densus 88's existence and its continued policy of killing so-called terrorists.[20] He argued that Densus 88 may have been involved in up to 134 extrajudicial killing from 2003 to 2016.[21]

In the same vein, Harits Abu Ulya, Director, The Community of Ideological Islamic Analyst, argued that Siyono was killed only on grounds that "it was alleged, a suspect, possibly involved" in terrorism but no

evidence was ever produced to prove the case. He and leaders from the Indonesian Ulama Council of Indonesia have argued that Densus 88's anti-terrorism policy is nothing more than an excuse to hurt the Muslims, especially those who are championing the cause of Sharia Islam and an Islamic State.[22] This also partly evident from the fact that Densus 88 kills indiscriminately and even in sensitive locations such as mosques and where religious education is being undertaken by children, and uses as evidence of radicalism and terrorism the presence of holy books such as Al Quran, books on jihad, flags with Islamic writings, etc. The trauma these acts of Densus 88 have on children and Muslim adherents is obvious and unhelpful. Harits reckons that Densus 88 has been involved in more than 120 extrajudicial killing. In the case of Siyono, Harits noted that Densus 88 gave 100 million rupiah to the family of Siyono in order to persuade them to keep silence and not to bring up a legal case against Densus 88 for the death of Siyono. Instead, Hadits called on Densus 88 to be audited as it is not only involved in wanton killing but also sucks up massive state funding. For him, the manner Densus 88 operates, it is not clear if the anti-terrorist agency views suspects as criminals, prisoners-of-war or a special case of human beings to whom anything can be done. For him even though there are many laws in the 'books' in Indonesia but these are not being implemented and hence, the continuous violations of human rights in the name of counter-terrorism. For Harits, the best solution to address the challenge of human rights in Indonesia as far as counter-terrorism is concerned is to disband Densus 88.

In May 2018, following Indonesia's decision to give wide-ranging powers to the police and military to undertake its counter-terrorism policies, concerns have grown that the human rights situation in the context of terrorism is likely to worsen. Following the review of the 2013 anti-terrorism law, the new legislation greatly strengthened the hands of the law enforcement agencies. Inter alia, the new counter-terrorism law has a number of new features:

- Allow the police to detain suspects for 21 days for an initial examination instead of a week
- From the initial 180 days, the new law allows police to keep a terror suspect in custody for a maximum 290 days after being officially charged
- Permit the authorities to prosecute people joining or recruiting for militant and terrorist groups
- Those convicted of smuggling explosives or other chemicals and weapons into or out of the country for terrorism will face a maximum penalty of death
- Under the new law, fighting terrorism will become part of the military's operations outside of war, but it can only get involved upon a request from the police and with presidential approval

As in the previous anti-terrorism laws, Indonesia has been unable to address the problem of 'what is terrorism', leading to fears that it could lead to abuses and further aggravate the human rights situation. The new rules and regulations have raised concerns that terrorist suspects are more likely to face torture and extrajudicial killings compared to the past.[23] In a letter to President Joko Widodo of Indonesia, Brad Adams, Asia Director, Human Rights Watch listed the following human rights concerns as far as the new law was concerned: overbroad definition of terrorism; lengthy pre-charge and pre-trial detention periods; anonymous witnesses in terrorism prosecutions; overbroad surveillance powers; deployment of Indonesian Armed Forces in counter-terrorism operations; expanded application of the death penalty; problematic aspects of measures to protect victims of terrorism; and ensuring preventive measures do not violate human rights.[24]

In toto, in its over-zealousness to undertake counter-terrorism policies, mainly due to the philosophies, strategies and operational tactics of its foreign funders, the United States and Australia, Densus 88 is accused of undertaking a number of human rights violations. These include the following: failing to follow established procedures in arresting alleged terrorist suspects and not presenting warrants of arrests; failing to inform family members for a long period of the whereabouts of the detained suspects; undertaking a systematic practice of brutal torture to extract information and where it has also led to the death of many suspects and where these suspects are accused of being shot while to escape or of having died due to illnesses such as 'heart attacks'; shooting to death unarmed alleged terrorists, including some in front of their family members; the constant and consistent over-use of force to neutralize terrorists including those who are unarmed; consistently practicing a policy of 'shoot-to-kill' rather than 'shoot-to-paralyze' an individual, leading to the many deaths at the hands of the anti-terrorist unit; and adopting an attitude that Muslims who are linked to certain political and religious groups and associated with certain mosques and boarding schools are 'enemies of the state'.

Conclusion

Terrorism is a scourge that needs to be wiped out as it is a serious violation of human rights. Due to the clandestine manner most terrorist groups operate, states have established powerful armed groups, both police and military, to neutralize the threat. However, the key concern of this paper and many other researches has been a simple one – the ultimate aim of counter-terrorism is not to promote terrorism. This can happen if the counter-terrorist units lose their moral authority and behave as terrorist units themselves or as state-sanctioned death squads, in the name of eradicating the terrorist threat. Hence, the rising concern in Indonesia that the tactics of the police and especially its counter-terrorist spearhead, Densus-88, is actually spearheading militancy and adding to the feelings of Muslims that they are under siege By adopting a policy and practice that violates national and international laws which Indonesia has ratified, such as the anti-torture convention as well as undertaking extrajudicial killing of suspects, not only will this discredit Indonesia internationally as a fledgling democratic state that is condoning un-democratic behavior but may actually spur more individuals, whether out of revenge or total disapproval, especially if Densus-88 actions are seen as a cat's paw of its foreign funders. If police officers are hunting down alleged militants for the purpose of avenging the death of their colleagues killed by terrorists, then Indonesia is likely to enter into a cycle of violence that will not end and where the threat of terrorism will continue for a long time to come. This is unless human rights are respected as a key article of faith in the conduct of counter-terrorism operations.

Table 1: Al Qaeda (AQ) and Islamic State (IS)-linked Attacks in Indonesia, 1998-2018

Date	Attacks
11 Apr 1998	Bomb explodes in Atrium Plaza, Senen Shopping Centre in Central Jakarta; bombing linked to Jemaah Islamiyah (JI) group associated with AQ
19 Apr 1999	Bomb explodes in Istiqlal Mosque, Jakarta; JI involved.
1 Aug 2000	Bomb explodes outside residence of Philippines Ambassador to Indonesia in Jakarta; JI involved [2 killed, 21 injured]
14 Sept 2000	
24 Dec 2000	Car bomb explodes at the Jakarta Stock Exchange. No one claimed responsibility. [many deaths]
12 Oct 2002	Multiple bombings in Indonesian cities by JI. [18 killed]
5 Aug 2003	First Bali bombing by JI [202 killed and 240 injured]
31 Dec 2003	Suicide bombing at JW Marriott Hotel, Jakarta by JI [12 killed, 150 injured]
9 Sept 2004	Bombing at a concert in Aceh. Aceh Freedom Movement blamed [10 killed, 45 injured]
13 Nov 2004	Suicide bombing outside Australian Embassy in Jakarta by JI [9 killed, 150 injured]
28 May 2004	IED planted on bus in Poso, Sulawesi. No one claimed responsibility [6 killed, 3 injured]
1 Oct 2005	2 IEDs explode in market in Tentena, Sulawesi. No one claimed responsibility. [22 killed, 40 injured]
31 Dec 2005	Suicide bombings in Bali by JI. [20 killed and 100 injured]
17 Jul 2009	IED explodes in market in Palu, Sulawesi. No one claimed responsibility. [8 killed, 53 injured]
15 Mar 2011	Suicide bombing at JW Marriott and Ritz-Carlton Hotels in Jakarta by JI.
15 April 2011	
25 Sept 2011	7 killed, 50 injured]

17 Aug 2012	A book bomb in Jakarta by unknown group. [1 injured]
16 Oct 2012	A suicide bombing in a police mosque in Cirebon, Java. [1 killed, 28 injured]
14 Jan 2016	A suicide bombing in a church in Solo, Java. [1 killed, 14 injured]
13 Nov 2016	2 policemen are killed and 2 others injured in Solo by gunmen on motorcycle.
24 May 2017	2 policemen are brutally murdered in Poso, Sulawesi, believed to be killed by men belonging to a terrorist group, Mujahidin Indonesia Timur
25 June 2017	4 terrorists supporting IS detonate suicide vests in Jakarta, killing three civilians
30 June 2017	a terrorist detonates a Molotov bomb in front of a church in East Kalimantan, killing 1 toddler and injuring 3 others.
9 May 2018	2 suicide bombings take place in Jakarta, killing 3 policemen and 2 militants with 10 injured.
13 May 2018	2 militants stabbed a policeman to death in Medan, North Sumatra and one of the assailants is killed.
14 May 2018	A militant attacks two police officers in a mosque in Jakarta.
16 May 2018	Terrorist inmates in a Jakarta jail kill 5 police officers and one inmate.
	A suicide bombing family bomb 3 churches, killing 27, including 13 perpetrators.
	A suicide bomber kills 10 policemen and 4 civilians, with 4 suicide bombers dying.
	5 militants attack a police station in Pekanbaru, Sumatra, killing 1 police man and injuring 2. 4 of the attacks were later killed.

Source: Author.

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[6] During a recent United Nations Global Counter-Terrorism Conference, 'human rights was listed as the 'fourth pillar' in countering the threat as violations of human rights are not only unlawful but they can backfire and fuel terrorism. Even the UN Secretary-General, Antonio Guterres noted that "No one is born a terrorist, but we know that factors such as prolonged unresolved conflicts, lack of the rule of law, human rights abuses, poverty, lack of opportunities and socioeconomic marginalization can all play a part in transforming ideas and grievances into acts of terrorism. So, preventing and resolving conflicts and promoting the rule of law and social and economic progress are our first lines of defense". Yet, very little has discussed on the issue of human rights. As was argued by Letta Tayler

from *Human Rights Watch*, "there is an enormous disconnect between those lofty words and the reality on the ground. Around the world, countries are routinely rolling back human rights protections in the name of countering terrorism. Victims of heavy-handed policies include bloggers, peaceful protesters, civil society activists, and people targeted because of their religion, ethnicity or nationality". In short, only lip-service is paid to human rights by states in the 'war against terrorism'. See Letta Tayler, "Lip Service Paid to Human Rights During UN Counterterrorism Week", *Just Security*, 9 July 2018. See https://www.hrw.org/news/2018/07/09/lip-service-paid-human-rights-during-un-counterterrorism-week

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IMPINGEMENT OF POST 9/11 COUNTER TERRORISM OPERATIONS ON HUMAN RIGHTS: CHALLENGES AND THE WAY FORWARD

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Abstract: *Omnipresence of post 9/11 terrorism and ensuing counterterrorism efforts represent classical fourth generation warfare with a predominant hybrid façade, resulting into ubiquitous and all-pervasive sense of insecurity. With suicide bomber and drone attacks as respective pervasive strategy, this facet of 21st century warfare became overwhelmingly dehumanised. Important instruments of international law like: UN Charter, "Universal Declaration of Human Rights", "International Covenant of Civil and Political Rights" (ICCPR) and a whole range of Geneva Conventions and other instruments of international law of war are busted with impunity, by both sides. While non-state actors representing terrorism had no legal and moral obligation towards these legally binding laws, the states conducting counter terrorism also frequently set aside these commitments. Use of disproportionate force, no serious effort to separate combatants and non-combatants as well as their properties resulted in equally stampeding Human Rights of non-combatants as well as combatants. Human Rights activists, at individual and entity levels, have all along been expressing discomfort about the impingement of Counter Terrorism effort on Human Rights. However, one must acknowledge that States conducting the counter terrorism operations were beset with serious challenges: instant melting down of combatants with civilian population made determination of who's who impossible; collection of forensic data for a credible prosecution presented another nightmare; neither was it easy to have secure venues for trial, nor was ensuring security of witnesses. At international level, counter terrorism operations soon became carrier of hidden political and strategic agenda by individual states ostensibly fighting terrorists. Moreover, the available body of international law on war had by and large focused on third generation war fare while challenge was fourth generation warfare, occasionally embracing few streaks of fifth generation warfare; hence lacunas and voids were numerous. This paper reviews the major flaws in post 9/11 counter terrorism strategy resulting into violation of international law of war leading to serious impingement of Human Rights; and suggest ways and means to plug the gaps.*

Keywords: Counterterrorism, Human Rights, combat, UN Charter, victimhood strategy, international law of war.

Introduction

Politicization of terrorism and counter terrorism is a strategic reality and a universal phenomenon[1]. Out of the two, politicization of terrorism has a snowballing tendency accompanied by sympathy wave springing-up victimhood despondency, and urgency to avenge through ruthless counter terrorism actions; whereby caution is thrown to wind. This emotional push leads towards act first and think later mind-set. This alongside fog of war creates Machiavellian space for machinations with regard to planning the course of counter terrorism effort by inaudibly playing with change of focus, excessive use of force, deviant direction and varied end objectives.

Two opposing roles of Countering Terrorism and guardianship of Human Rights are vested in a typical Nation State; this often leads to an interesting conflict of interest situation. From functional perspective, undue claim to victimhood, false flag operations, and blaming the neighbour for own counter terrorism failures are indicators as well as manifestations[2] of not so well intentioned counter terrorism campaigns and their unrelated clandestine strategic objectives. Employment of suicide bomber by terrorists and killer drone by counter terrorism forces have dehumanized the conflict, both these tools do not incorporate a mechanism to pre-warn the innocent non-combatants, hence both equally impinging on fundamental right to life.

Victimhood to terrorism, both at state and non-state levels sells well, it attracts instantaneous sympathy[3]; conversely being labelled as terrorist, rightly or wrongly, is generally sufficient to seriously undermine even a just cause. A state accruing the tag of terrorism loses the moral high ground even for acting meaningfully against organized crime and separatism, as targeted person(s) and or group(s) invariably claim innocence and victimhood.

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What, How, and Why of Terrorism

There is no universally recognised definition of terrorism[4]. This empirical difficulty comes to play because the term terrorism is politically as well as emotionally loaded"[5]. A generally accepted domain of terrorism implies "an operational technique where violence or threat of using violence is used to convey a message to a wider target audience"[6]. Another common interpretation of terrorism is "the killing of combatants, civilians, government officials, military commanders by violent non-state actors with the objective of instilling fear in wider society"[7]—both these versions do not talk about state terrorism. Current perception of terrorism is opposite of what it stood for during French revolution era: the word "Terrorisme", was referred to "acts of violence to instil fear amongst the French population by the French government"[8].

Notwithstanding other conceptual gaps, non-availability of an accepted characterisation of terrorism leaves sufficient space to label or not to label any kind of violence as terrorism. Hence, a whole range of issues—terrorism, counter terrorism, political dissonance, effort for self-determination, multi-national organised crimes etc.— stands mixed up, with confusion galore.[9]

Post 9/11 focus on terrorism and counter terrorism has generally been on non-state versus state dynamics[10]. Exploiting hazy divide between political violence and terrorism, some states become Machiavellian in labelling political violence with terrorism, and turn to opportunism to unleash state security apparatuses, with undue harshness, to suppress the aspirations of the people. Violence by non-state elements is overwhelmingly presupposed as terrorism, and nation states have developed a tendency to justify—albeit dishonestly— their harsh actions against political dissidents as part of counter terrorism effort, even against those individuals and groups whose look mild actions of violence legally fall outside the domain of terrorism. Contemporary international systems tend to support the State, even at the cost of stampeding Human Rights like right of self-determination. Moreover, both terrorism as well as counter terrorism have turned out to be a struggle of competing politicized narratives—mixture of factual and fictional[11]. Claiming victimhood of terrorism for own side, while blaming the opponent as perpetrator and practitioner of terrorism has become an accepted norm.

Politicization of terrorism is a double edged sword. Phenomenon has an embedded snowballing tendency; it waters down counterterrorism effort by changing its focus and direction. Conducting false flag operations and blaming these on neighbours, and encouraging neighbours' separatist elements are increasingly becoming acceptable tools of statecraft.

Terrorism like actions have since long been employed by groups championing a wide assortment of causes, both right and left sides of politics, as well as religious extremism. Guerrilla warfare or revolutionary wars have some interesting similarities with contemporary terrorism, at least at tactical level. Transnational segment of terrorism has increasingly been playing substantial role in throwing up a puzzling counterterrorism environment. This has inhibited the evolution of meaningful regional mechanisms to counter terrorism.

Wilderness of Counter-Terrorism Effort

Almost entire world with its military might supported by unrestricted UN mandate under chapter VII of its Charter on one side and comparatively minuscular rag tags, present no match. Even then, proverbial Tom and Jerry like terrorism and counter terrorism theatrics go on. After every major terrorist attack there is a new concocted story, exalted talk of resolve, more bombs are dropped, more innocent lives are lost and more non-combatant properties are destroyed, yet there is no closing of terrorism in sight. Eighteen years is not a small period— 8 years longer than World Wars I & II combined.

What happened? Both terrorism and counter terrorism have become politicised; they have evolved into a mutually perpetuating and self-generating industries. Like widely popular icons Tom and Jerry, both appear to fight each other while ensuring that both survive each battle to fight the next one, some other day.

Terrorism and counter terrorism have also become accepted tools of statecraft employed as vehicle to achieve undeclared strategic objective[12]. If one digs-in little deeper, both terrorism and counter terrorism are found joined at hips with regard to their resource mobilisation and facilitation. Cooperation between lead champions of counterterrorism and Al-Qaida in Libya, Syria and other places as well as unearthing of a billion dollar scam of fake explosive detectors in Britain[13] are indicators that counterterrorism effort, even though unwittingly yet systematically, is being constrained lest the terrorism is incapacitated in toto.

What led to this sorry state of affairs? Could be lack of political will, absence of visionary stewardship, (in)sincerity of purpose; or a mischievous combination of all of these. Immediately after 9/11 the counter terrorism effort became expediency driven and politicised. Though all hijackers of ill-fated flights of 9/11 were of Arab origin, yet Afghanistan was chosen for first invasion. And now after eighteen years, none of the citizens of countries chosen by President Trump for his flagship "travel ban" and "enhanced scrutiny" has been involved in any terrorist attack inside the United States!

Furthermore, lack of unanimous definitization of terrorism has pushed the counter terrorism into wilderness, as there is uncalled for leeway to declare or not to declare anything as terrorism. Imperfect governance capabilities at government level and lack of combat proficiency of law-enforcement agencies alongside moans about pervasive corruption, underdevelopment, socioeconomic exclusiveness, and at times, erratic role of the state, make terrorism related conflict zones eye-catching lodging bases for terrorist entities. It constrains the ability of governments to effectively handle counter terrorism campaign. Pointing fingers towards neighbour state(s) for political expediency and to cover-up inefficiency of own state's law enforcers are also a popular approach. Some states have become dishonest in labelling legitimate political dissent with terrorism aimed at casting terrorism related aspersions on legitimate political opposition and equating legitimate right of self-determination with terrorism.

Moreover, terrorism and counter terrorism have turned out to be a struggle of competing narratives—both actual and fabricated. Conducting false flag operations and blaming it on neighbours, is yet another facet of politicization of terrorism. Within minutes of a violent occurrence, it is attributed to a neighbour.

Human Rights and Counter Terrorism: Post 9/11 Setting

Aftermath of 9/11 generated urgency for potent counter terrorism measures. A number of new laws have been enacted at national level, and a whole range of resolutions and legal instruments adopted at international level for combating terrorism at these two levels. Out of these procedures, some were in direct conflict with fundamental human rights; some of these instruments were enforced without due regard for mandatory dealings under various international human rights conventions[14]. Protection of universal standards such as Human Rights in a stressed environment due to terrorism alongside time compressed counter terrorism environment throws-up severe challenges to a typical nation state as well as international institutions at regional and global levels.[15]. Mr Kofi Annan, former UNSG, had strongly condemned the "collateral damage" caused by counterterrorism operations on human rights.' Findings and comments by by Amnesty International(AI), Human Rights Watch (HRW) and the International Helsinki Federation for Human Rights have vehemently criticized HR violations, all over the world, "just for the sake of counterterrorism"[16]. Eminent writers like Samuel Ignatieff and David Luban portrayed continuation of counter terrorism effort as the end of human right[17] . Parliamentary Assembly of the Council of Europe's President declared on 30 November, 2001, that "If our response to terrorism is to lower our standards of human rights, then the terrorists have won"[18]. Seventeen autonomous specialists of the UN Commission on Human Rights (UNCHR) also articulated their anxiety through a joint statement on December 10, 2001:

> "...over the adoption or contemplation of antiterrorist and national security legislation and other measures that may infringe upon the enjoyment for all of human rights and fundamental freedoms and deplored human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media."[19]

"Guidelines on Human Rights and the Fight against Terrorism", espoused by the "Committee of Ministers of the Council of Europe" at its 804th session on 11 July, 2002[20], prescribed a wide range of very vital and supportive rules to correct the situation. UNHCHR Report entitled "Human rights: a uniting framework" stated that:

> "…ensuring that innocent people do not become the victims of counter-terrorism strategy should be an important component of the anti-terrorism strategy"[21]. The "balance between human rights law and security", through "respect of requirements and principles of international law, such as legal requirements for derogation, and international humanitarian law, as reflected in jurisprudence and general comments of human rights bodies, is absolutely essential to ensure that States combat terrorism in accordance with their international obligation. There should always be a fair balance

between legitimate national security concerns and respect for fundamental human rights. Even during an armed conflict, measures derogating from provisions of treaties are permitted only to the extent that the situation constitutes a threat to the life of the nation."[22] Though perpetrators of terrorist acts which constitute "crimes against humanity" must be punished, at the same time "rights, such as the right to life, the prohibition against torture or cruel, inhuman or degrading treatment, the principle of legality in the field of criminal law, the recognition of everyone as a person before the law and the freedom of thought, conscience and religion, may not be derogated from under any circumstances"[23].

International Criminal Court (ICC) ought to perform a pivotal role in this regard. A strong reaction against this very important UN organ has been led by the US. Since setting up of ICC, the US has applied all possible pressures to immune itself from the ICC jurisdiction by the way of UNSG resolutions and shady consensual agreements. Rather than standing by the ICC, the USA issued the "Presidential Military Order" on November 13, 2001; and after Congressional approval, it formed special military commissions for trial of its military persons accused of terrorist acts. Order "excludes access to any international tribunal or committee seeking redress for any human rights violations that may occur during arrest, detention or prosecution". Establishment of these commissions and the whole procedure of prosecution of people suspected of involvement in terrorist activities had abolished several fundamental rights[24].

Monitoring committee of the ICCPR has "specifically considered whether Article 14 of this Covenant permits trials of civilians by special military courts". Committee resolved that, "although it is not expressly prohibited, the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14"[25].

Subsequently, even the US citizens' rights did not remain intact. The US Congress legislation entitled: "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act" (October 26, 2001, commonly known as the "USA Patriot Act"), which became applicable to the Americans citizens as well who were presumed enemy combatants. This Act granted domestic and international intelligence agencies blanket powers that effectively ended courts' intervention to ensure that these powers were not misused[26].

Similarly, the "British Anti-Terrorism, Crime and Security Act 2001" assigned additional authority to police, for extracting financial data and other information. Moreover, "communications service providers were to preserve information about their respective communications. And an arrest could be made within the United Kingdom without judicial warrant, and detainees could be interned indefinitely[27].

American and British legislative models of antiterrorist policy effectively abolished fundamental human rights. But the real climax in the disproportionate abolition of most human rights is the series of interventionist wars promoted by the USA and the UK. Indeed, anti-terrorist wars, particularly preventive ones, provoke more extended violations of almost all the human rights of the entire populations of attacked countries - beginning with the right to life and finishing with destruction of whole range of material and technical infrastructure - on the grounds of preventing an alleged terrorist danger. It is obvious that the extent of killings and devastations resulting from such a war are incomparably greater than those of even the most massive terrorist act. Furthermore, people around the world are not convinced by the justification offered for undertaking such wars.

Silver Lining: Efforts for Protection of HR during Counter Terrorism Operations

The UN and other HR Watch dog did not sit idle and let the stampede of Fundamental Rights proceed unchallenged. These powerful voices led to institution of safeguards and reversal of some of harsh pieces of legislation soon after their implementation.

The "Counter Terrorism Implementation Task Force (CTITF) Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism" was established by UNSG in 2005[28] to "facilitate efforts by member countries toward preferment and safeguard of human rights and rule of law during counter terrorism campaigns"[29]. This Group supported application of "Pillar IV of the United Nations Global Counter-Terrorism Strategy", and helped inclusion of HR and rule of law into other three pillars of this Strategy[30]. It facilitates exchange of information on: human rights, rule of law for capacity building, and good practices in the context of counterterrorism. It identifies gaps and shortfalls in counter-terrorism approaches taken by member countries and develops proposals with regard to countering terrorism.[31]

United Nations Global Counter-Terrorism Strategy

UN global Counter Terrorism Strategy provides a comprehensive check list for ensuring protection of HR during counter terrorism operations. Section IV of this strategy reiterated that protection and promotion of HR for every body and abiding by the rule of law were corner stones to all apparatuses of this Strategy, and counter-terrorism measures and protection of HR rights are not opposing goals. It emphasises the necessity of promoting and protecting the HR of sufferers of terrorism.[32] Working Group initiated its world-wide project in April 2013, called "Capacity Building and Training of Law Enforcement Officials on Human Rights, the Rule of Law and the Prevention of Terrorism"; it pursues to impart proficiency to law enforcement officials responsible for counter-terrorism on protection of human rights. During 2013-4, it held two workshops, one each in Jordan and Burkina Faso for developing a seven module thematic curriculum. Training has already been conducted in a number of countries including Nigeria, Tunisia, Iraq and Jordan"[33]. "Five Basic Human Rights Reference Guides" have been developed which serve as reference documents to guide state level actions to work as benchmarks for national evaluation criterion for capacity building requirements. These are guidelines on: "stopping and searching of persons; security infrastructure; detention; conformity of national counter-terrorism legislation with   international human rights law; right to a fair trial and due process".[34]. Group also enabled consultation on "additional tools produced by CTITF member entities, such as the OHCHR Fact Sheet on Human Rights, Terrorism and Counter-Terrorism and the UNODC Handbook on Criminal Justice Responses to Terrorism". These examine complex links between human rights and counterterrorism; these are focused at government functionaries, law practitioners, individuals as well as NGOs.[35]

Darker side: State Level Resistance and Discriminatory Approach by HR Watch Dogs and Major World Powers

Case Study I: Rohingya Muslims

According to a 2018 UN inquiry Myanmar's military killed at least 750 people in one village and at least 10,000 in its broader operations in the western state of Rakhine, where many of the country's Rohingya Muslims live[36]. The report describes the military's brutal actions in detail, from throwing infants into a fire to systematically raping women and girls. It called for constitutional changes and an overhaul of the military and named army officials who should stand trial. "Three-person panel has nominated Myanmar's army chief, Senior General Min Aung Hlaing, alongside other five top military commanders for trial by an international court on account of "genocide and crimes against humanity". Voluminous report presented to UNHRC archives agonizing detail of the atrocities that forced over 750,000 Rohingya Muslims to escape to Bangladesh[37]. Panel has called on the UNSC to refer the matter to the ICC for setting up an appropriate international tribunal to try the nominated individuals[38].

Myanmar has out rightly denied that its military had committed crimes. It stated that its military personnel were responding to militant raids on is border police. Panel Chair Mr Marzuki Darusman, informed the UNHRC: "This explanation is flawed… The killing was widespread, systematic and brutal…. There can be no military imperative to rape women and girls or to burn people alive…It was a well-planned, deliberate attack on a specific civilian population."

Case Study III: Stampede of Human Rights in Indian Occupied Kashmir

In a recent development, "Indian government has rejected fresh reports by Amnesty International and Office of the High Commission for Human Rights (OHCHR) on atrocities being committed by the Indian security forces in Indian Occupied Kashmir"[39]: "Once again we find out that Kashmiris are the ones having to pay the price for the political battle"[40]. South Asia Director of HRW, Meenakshi Ganguly, has "urged the Indian leadership to admit that human rights violations are taking place on their side of the Line of Control (LoC), and they must work with Pakistan to find a solution that puts the interests of Kashmiris first"[41].

Case Study III: Selective Application of Human Rights Benchmarks

During these times, we are "witnessing increasing application of Human Rights selectively"[42]. And "slogan of Human Rights has become a tool for furthering hidden strategic objectives"[43]. The US has left the UNHRC citing "excessive and disproportionate focus on Israel" as the reason[44]. In her rejoinder to an August 24 communication by HRW Asia Director Mr Brad Adams, addressed to Prime Minster Imran Khan, urging him to improve HR situation in Pakistan, Dr Shireen Mazari, Federal Minister for Human, Rights aptly

responded: "I hope that you would also raise your voice against a massive human rights violations, carried out in the Indian-occupied Kashmir, Palestine and in some European States against Muslims citizens[45]."

Minister enquired whether HRW had taken up the matter of HR violations by some European countries against their own Muslim citizens like restricting their freedom to practice their faith at will; and frequent agony caused to them "in the form of abuse of Islam and its Prophet (PBUH)", in direct contravention to[46] "European Convention for the Protection of Human Rights and Fundamental Freedoms". She asked that since HRW claims to monitor HR situation the World over, she would like to be updated on how HRW is safeguarding "the rights of Muslim" citizens to have their places of worship and "be able to dress and practice their religion freely and without ridicule in European states which have seen an upsurge of xenophobia in recent years"[47]. She added. She offered that "Pakistan government would always welcome positive suggestions", but "an NGO's institutional credibility will rest on its commitment to ensure human rights across the globe and not just in selective states"[48].

Conclusion

Global counter terrorism effort has gone grossly adrift in the context of Human Rights. Counter Terroirs campaigns at all levels need to be regulated for staying within the confines of Human Rights frame work. Emotionally it is a hard task, as those perpetrating terrorism have no regard for Human Rights, yet formal institutions of prevalent political order cannot descend down to anarchic level by having little regard for Human Rights in their overall counter terrorism policy framework. At the same time international Human Rights institutions need strengthening so that they are able to discipline the States involved in terrorism under the garb of dubious counter terrorism campaigns. Due care must be taken so that while handling a monster (terror), some of the states do not become a monster by themselves[49].

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UNDERSTANDING ASYMMETRIC ARMED CONFLICTS IN INTERNATIONAL LEGAL SYSTEM

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Mahwish Bakht [**]

Abstract: *Over the last few decades, states all over the world are increasingly engaged in dealing with violent conflicts with non-state violent actors both within and across international borders. These asymmetrical armed conflicts have become pressing security problems. Today, states are deemed to consider terrorism and armed conflicts as their prioritized national security issues that require special attention. The new emerging trends of terrorism, armed conflict and different dimensions of violence are challenging the existing symmetric and asymmetric warfare concepts. International legal system does not claim that states may or may not exercise military action against a non-state violent actor. This ambiguity in the international legal system demands a more reasonably coherent and balanced interpretation of current international legal system. This paper attempts to conceptualize the concept of armed conflict and examines how these asymmetrical conflicts could be studied.*

Keywords: Terrorism, armed conflicts, violence, non-state actors, symmetrical and asymmetrical warfare.

Introduction

> *"History teaches us that in asymmetric warfare the most heavily armed do not always win".*

> Ignacio Ramonet

Asymmetry in warfare has a long history. While studying the changing trends in wars, there is a clear cut contrast between military power and approaches of disputant states. After 9/11 terrorist attack, the exceptional trends and features of war itself has been observed between state to state level conflicts or between state and non-state armed groups. The practice of non-traditional warfare weapons and strategic moves and taking positions with the changing situation or irregular warfare is now-a-days more associated with militants. By utilizing all these tactics and warfare techniques, non-state violent actors are targeting directly to the vulnerable states to gain the disproportionate effect[1]. Initially it was strongly believed that states only go for war to gain their objectives or to influence the policies of opponents. But the situation get twisted when 9/11 terrorist attack happened in the history of United States of America and shake the whole American governance and security system. This militant attack has directly challenged the state's sovereignty and raised objections on the security system of America[2]. This unforeseen extremist assault on the United States has opposed the Clausewitz's idea of center of gravity explained in theory of wars[3]. According to different defense analysts and intellectuals 9/11 terrorist attack is regarded as a great victory of Al-Qaeda against the US[4].

It is observed while analyzing the history that there is insecurity and uncertainty in the weak powers to counter their opponents. In order to counter-attack, the weak powers often go for asymmetric warfare[5]. It is more evident in current time, to involve and utilize these asymmetries in political, economic and military wars[6]. This paper attempts to build an understanding on the dynamics of asymmetric warfare ideas and social constructs of asymmetry in contemporary world.

Idea of Asymmetric Warfare, Psychological Warfare and Terrorism

The concept of war is most evident in the history of mankind and its most dominating features are recorded in histories of state-cultures. The struggle for gaining power and resources has always promoted competition and state of war in human society. But the modes and features of this complex subject has been malformed with the changing circumstances[7]. When armed conflicts involve other states and scope of conflict expand to worldwide then it is declared as world wars. Conflicts or wars in which major powers intentionally use limited resources and military means is known as limited wars[8]. Every inter-state war is generally end on

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agreeing upon on treaty or some bilateral peace agreement. The term of war and armed conflicts are used side by side with each other. It may happen wars can bring peace or may spoil peaceful conditions[9].

Conceptual Understanding of Asymmetry and Asymmetric Warfare

In general meaning, the categories of asymmetric warfare are divided into two main kinds, tactical asymmetry, strategic asymmetric and war by proxy[10]. Tactical asymmetric warfare', state that is technologically advanced remains dominant and often serves as an unbeatable challenge for its enemy. Training and tactics along with the amalgamation of technical aspects demonstrate significant improvement and ensure the weaker force to defeat superior one. This can also be understood by considering the preferred approach of using soft power over hard power in current time. Strategic asymmetric warfare is particular type of warfare in which combatants take initiative by arraying armed forces of a parallel type, while imagining the response of conflicting forces. But if combatants install similar forces, then the end result of a battlefield is evaluated either through the statistical or material gain or strategic use of force by disputant party. The major aim and actual motivation of strategic asymmetric warfare is to gain the political objectives and power struggle for disproportionate power. Lastly, in case of 'war by proxy', non-governmental actors are involved in asymmetric warfare that is associated to a polity interest. Sometimes, non-state violent actor may function as a substitute for the state actor[11].

In 2000, Kenneth McKenzie has classified the six main forms of possible asymmetric threats: nuclear, chemical, biological, information operations, operational concepts and terrorism[12]. To combat these potential threats, both state and non-state entities never opt first to involve in direct war but they prefer to go for those strategies that results in more exploitation of opponent party with less utility of resources[13].

However, asymmetric warfare has historical linkages with the Spain. Followers of the asymmetric line of attack always focus on limited attacks against superior armed forces[14]. It is difficult to understand and to explain the behavior of states or individuals for directly engage in asymmetrical warfare tactics. One can express its views in such manner that the goals and motivational forces are actually the drivers of asymmetrical ideologies of asymmetrical warfare. And the motivational forces to commit violence have strong psychological grounds provided by the deep fears, grievances and injustice[15].

While preceding the discussion to next level, it is necessary to clearly understand the narration about asymmetry and asymmetric warfare that are often interchangeably used in strategic studies and political science subjects. Apparently, both terms are similar but they are interpreted differently by various scholars and writers. On the whole, the common concepts that fall often under asymmetric are conflicts, disputant parties, clashes, line of attacks, tactics, opportunities, and contests are directly linked to military encounters. While asymmetry is mostly understand under the dimensions of taking maximum advantage of the weaknesses of opponent parties, new advanced tools or artillery weapons, smart and effective techniques for the line of attacks, locating the targets or fighting differently[16]. The approaches involved in comprehending the concept of asymmetric conflicts often have foundations of innovative, systematic, non-traditional tactics, weapons or technologies that are applicable for all stages of rivalry, effective planned movements and encompasses all scopes of armed operations that can bring maximum desired outcomes for the attacking states against its target[17].

The popular warfare theorists that have magnificent contributions in the field of asymmetric or unconventional war are Lettow, Sun Tzu, Te Lawrence, Mao, Lenin, and Che Guevara, Marighella. Different authors and writers have presented their ideas about asymmetric conflicts and asymmetries. In 1972, Rosen considers asymmetric power of a state or entity as readiness to bear unbearable costs; Katzenbach in 1962 observes the asymmetric warfare from tangible and intangible resources perspective; Kissinger in 1969 had identified that asymmetric warfare in overall strategy (physical versus psychological attrition); while Galtung distinguishes between social and territorial defence (asymmetry in goals); and Kraemer extricates colonial versus non-colonial guerrilla wars[18]. While reviewing the last few decades, the focus of non-state violent actors towards asymmetrical warfare has depicted that enemy can be targeted more strategically through irregular warfare that extensively harm the enemy. Psychological defeat is now proved as core strategy of victory as compared to outcomes of conventional tactics[19].

Again it is a complex phenomenon to understand in absolute manner, due to its relative nature, it is sometime regarded as similar to the term of terrorism. Asymmetric warfare is not synonymous with terrorism. Now it raises another intellectual question in mind whether international community in contemporary time is

struggling hard for combating terrorism or asymmetry warfare or asymmetric warfare or irregular warfare in the world. Asymmetric warfare encompasses an extensive room of theory, innovative ideas, understanding about the ongoing situation of conflict zone, inference; the implicit evidence is that it deals with the unpredictable actions, with surprise in terms of outcomes, measures and mediums[20].

Moreover, today States are rarely involved in conventional warfare, but gather those parties having various authorized status and significantly diverse military resources, organization, and commando structure are involved[21]. Irregular conflict that is not limited to geographical areas irrefutably leads to civilians being more and more affected by the atrocities of war. Conflict development is now easily taking place in urban areas of state comprising of the people whose competency status can be questioned, and directed towards targets which should be immune from attacks under international humanitarian law (IHL)[22].

The definition of asymmetric warfare can be understood as a way to compensate for lacking of resources, uses means and methods that are prohibited under IHL. One example of this is the use of terrorism. The weaker party often unable to bear an open confrontation, and therefore the civilian society is often used as cover for the operations. In theory, an armed conflict could be asymmetric without any party engaging in asymmetric warfare. Along with terrorism, asymmetry also becomes a potential threat for keeping contemporary peace in the world. Nowadays, the description of Sun Tzu is equally correct. He stated that, the nature of water is that it avoids heights and hastens to the lowlands. When a dam is broken, water cascades with irresistible force. Now the shape of an army resembles water. Take advantage of the enemy's unpreparedness; attack him when he does not expect it; avoid his strength and strike his emptiness, and like water, none can resist you[23].

Mostly definitions in the available literature with regard of asymmetric warfare and terrorism are as actions that are governed by the entity on political motivation. As aforementioned discussion, available literature and writings of different authors and scholar doesn't able to describe the concept of asymmetric or asymmetry warfare in concrete manner same is happened in case of terrorism. The international world was introduced with this term after 9/11 terrorist attacks and President Bush during his speeches and press conferences has used this term from 32-35 times while expressing his views on war on terror in Afghanistan[24]. Nobody can define these abstract concepts in concrete manner but the war of these abstract ideas has also engaged the world into another form of invisible psychological war. Now these conceptual tools that are apparently exist in the form of terminologies also act as warfare tools. Many governments and various organizations have attempted to provide complete description of term but style of interpretation varies. The anonymity still exists in defining the term terrorism due to its political label on an undesirable and unlawful behavior, which may lead to measures being taken against the terrorist organization. Analyzing the term 'terrorism' reveals two other interpretations: one as an end in it such as that indulged in by anarchist elements, and the other as the means to a political end such as that of the Naxalites[25]. The ambiguity exist on state level and individual over these conceptual phenomenon promotes the perplexing situation who is freedom fighter and who is terrorist or a terrorist can be a freedom fighter or freedom fighter is terrorist. To segregate the freedom fighter and terrorist in absolute manner is immensely difficult[26].

Now world has changed the perspectives about the war and strategies for gaining their vested interested therefore different terrorist organizations like the policy holder of states also used calculated statements and select those words that actually serve the purpose for their interests therefore they often used those signifiers, connotations and denotations that generate the desired discourse that is far away from the actual one for example, liberation (e.g. the Palestine Liberation Organization), freedom (e.g. Freedom for the Basque Homeland), or defense (e.g. the Jewish Defense Organization). Other names give the impression that the organization has a military structure and that its members are combatants (e.g. the National Military Organization)[27]. Usama bin Laden in his letter to America, was published in 2002 claimed that Al-Qaeda attack on American civilians was justified as they have killed our people, humiliating and torturing Palestinians and Islamic world now we have equal right to kill their citizens . American people are paying taxes to their government and supporting them in war in Afghanistan so they are not exempted from any serious countermeasures[28].

The construction of ideas and content writing in his letter has depicted the views of terrorist organization about their cause of opting violence and taking revenge from enemy. It clearly implies that targeting enemy's citizen is justifiable as they are the direct financial supporters of enemy in war while this is against the IHL. Several factors are steering the increase number of terrorist attacks. First of all, globalization, the travel and transfer individuals, products, technology and information is highly feasible. Technological advancements in

weapons and warfare tools have contributed enormously in bringing devastating effect in strategic locations. Secondly, with the advancement in weaponry production especially in artillery category the chances of causalities is increasing with the same ratio. The evolution in Internet services, media and devices has opened new routes for invasion and enhanced the vulnerability in societies and states. The accessibility to the sensitive information of state or its defense system can create unbeatable challenges for the sovereignty of the state. The cybercrimes and information warfare of terrorists against its states or any other state project them as hard target for state to beat them. In addition, in order to avoid the approach of terrorists to the weapons of mass destruction like chemical, biological, radiological, and nuclear always act as potential threat for the security institutes of states. Therefore, states always invest well and focus more on the transport of products and weapons especially improvised explosive devices (IED) in and out from the state. Another method used for terrorist attacks is suicide bombing targets large number of people that is highly critical and uncontrollable by the security institutions. Going back to 9/11 attacks as an example: when four airplanes were hijacked by the terrorists and killed nearly 3000 people, only equipped with box cutters. Modern techniques in terrorist activities cannot be controlled by the boundaries, commissions and security checks because no state can catch the planning and strategies they have decide for their next move[29].

Conclusion

Terrorism can be used to influence the stakeholders by psychologically strangling them into confusions and tensions while it can utilize for the power show either on political stage or in military means. In asymmetric warfare, the key goal is to deny and defeat the political agenda of opponent parties by exploiting their weaknesses while involving a vibrant propaganda to gain strategic goals. Not only the terrorist organizations but sometime states are also involved in the applying terrorist tactics against each other either with the support of international non-state violent actors or doing alliance formation with other states to achieve their political aims. Once again the nexus of all these intermingling terms and phenomenon are difficult to categorize in international legal system to decide the right and wrong deeds of state(s) or entities.

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MOBILISATION IN THE MIDST OF STATE'S INTERACTIONS: HOW THE NIGERIAN BOKO HARAM ADOPTED VIOLENT ACTIVISM

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Abstract: *For some time now, the Northern Nigerian-born Boko Haram has become known around the world for its militant actions and religio-political activisms. Since 2002, the group has moved from a "semi-militant" position with merely criticisms of the Nigerian main salafi networks and the preaching of radical Islamist messages, to a group that now uses and justifies different forms of violent strategies against civilians and others within the different segments of the Nigerian society. This essay examines these developments. The paper uses a mixture of primary sources such as videos, tape sermons from the first BH leader, and a number of semi-structured interviews on individuals within the Nigerian security forces, politicians and Salafi networks in the Northern Nigeria, to extract relevant data on how these kinds of activisms evolved. These sources contain quality ethnographic information that contextualise the development of this strategy to the specific interactions between Boko Haram leaders and the different state actors within the Northern Nigeria. Drawing mostly from the idea of "political opportunity" within the social movement theory, the paper argues that it was these interactions that provided the window of political opportunities upon which the activists developed and justified violent activisms, especially at the early stage of the group's operation in Maiduguri (2005-2009).*

Keywords: Boko Haram, Northern Nigeria, Political opportunity, Repression, Violence, Violent activism

Introduction

Many of the recent literature[12] on Boko Haram (BH) have studied the evolution of violent activism in the group. Yet, only few [34] have paid attention on how the Nigerian state practices and the interactions between the group's leadership and the Nigerian security forces impacted the development of the different forms of violence in the group. This paper examines this less researched aspect. First, it provides a brief profile of the group. Further, it traces the relationship between the group's leadership and the state authorities; arguing that the evolution of this element in the group, particularly at the early stage was more rooted on these elements; than on the group's exclusivist salafi-jihadism.

The paper draws on the idea of 'political opportunity' from the social movement theory. A widely accepted explanation within this model[5] is that the mobilisation of resources for violent activisms are often sensitive towards organisational and contextual changes, such as: the state's method of policing[6] and (lack of) access to institutional politics[7]. Much like every social movement behaviours, these forms of activism do not evolve in a vacuum; rather they evolve from a broader social milieu, and constantly shifting configurations of enablements and constraints, which structure and shape how movement activisms evolve within a particular movement organisation[8].

A Brief Profile of BH

As an organisation, BH is believed to have started in 2002 around a group of young Salafi adherents in the Northern Nigeria[9]. Fall-outs from the region's al-Sharia advocacy at the dawn of Nigerian return to democracy in 1999, in addition to heated doctrinal disputes between leaders within the two main salafi networks (*Yan Izala and Ahlus sunna*) in the region would make young salafists to gradually become very disenchanted with the salafist leadership[10]. By 2002, these group of young salafists, most of whom had worshiped at one Ndimi mosque in Maiduguri[11], would decide to relocate to Kanama[12] in a form of Islamic *hijra.* Energised by the preaching and persuasive criticisms of the salafi leaderships by a young vibrant imam, Mohammed Yusuf from the Ndimi mosque, these group of students moved away from the city life. Under the leadership of one Ali Mohammed and with a financial backing from Osama Bin Laden[13], they were able to build a formidable camp, whose purpose inter alia was to live an authentic 'salafi life style'[14]. From there, the group would begin a campaign of violent attacks that resulted to a heavy back-clash with the Bornu and Yobe state authorities. The violent interactions with the authorities saw many of the initial members of the group, including Ali killed. Fearing problems with authorities, Yusuf Muhammed, the spiritual leader of group, flee to Saudi Arabia. He

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was only allowed back into the country at the intervention of the deputy governor of the Bornu, on the promise that he would not be involved in any further form of violence. However, upon his return in Nigeria in 2005, Yusuf re-united with the Kanama group. In the coming days, he would establish a new group in a center in Maiduguri, and in subtle disregard of the promise he made to the deputy governor began to criticise the state and the Nigerian Federal government. This was the beginning of the current BH.

BH's activism at this time was built around Yusuf's conviction that the region had to adopt a stricter implementation of the *sharia* law. Despite having adopted *Sharia* law as their state's respective penal codes, the different states in the region still had what Yusuf regarded as "religious weaknesses, moral decadence and socio-economic disadvantage"; a situation he believed was bestowed on the Nigerian society by European colonisation and subsequent introduction of Western values (boko). As a solution therefore, Yusuf argued for a return to a salafi-oriented theocratic system, and Qur'anic dictates that governed the Northern Nigeria before colonialism. This system as he saw it would entail stricter implementation of the Sharia law. It would also above all things, involve the Nigerian state's abolition of their constitution, in place of the *al-Sharia* system. "This is the only way to restore the country to its rightful religious, political, social and moral path"[15].

For four years, Yusuf's group operated more like a moderate revivalist activist group, attempting to change the region and country's political system. They generally abstained from the use of violence. The use and adoption of this element only evolved in June 2009, after the group had been well established in the region, and had already had an experience with working within the Bornu state government.

Working with the Bornu State Government (2007)

Although Yusuf's relationship with state authorities in Northern Nigeria dates back to 2002[16], his main important interaction with the state that impacted BH's adoption of jihadi violence began in 2007 when Buju Foi, one of his closest allies and a member of his group was appointed as Bornu state's commissioner for religious affair. Foi's appointment had come at the heels of BH's political support for Ali Modu Sheriff, a gubernatorial candidate from the opposition party, who won the seat in 2007. In the midst of the group's growing influence in region, the candidate had requested for Yusuf and his group's political support. In return, the candidate had promised a stricter implementation of Sharia law, (something BH had been advocating for), if he wins. So, Foi's appointment was part of the fulfilment of that promise. It was supposed to provide Yusuf's group access to the state's institutionalised political system; a very opportunity to push for their *al-Sharia* agenda.

However, there was a problem. In implementing such laws, Yusuf would have to work through the state's and region's sharia boards, which were at the time filled with individuals within the main traditional salafi networks. In working with other Islamic establishments, these salafi actors had in what Kassim[17] calls "jihadi revisionists", shelved some of their Salafi radical tenets; choosing instead to become more "moderate and less critical of the state". This means, amending their ideologies, or framing it in such a way that it accommodated the possibility of working within a western democratic system. This was something Yusuf could not accept. In contrast, Yusuf logically questioned the legitimacy of working within such a *Kafir* system, which was built on Western democracy. "Democracy for him, "positions the people as an authority in rivalry with God. …A true Muslim cannot reject Western democracy and yet work with a constitution that was established by the same system he rejects". These two issues form part of a single package. They have to be rejected[18].

Obviously this kind of argument was completely unsalable to both the state and the different *Sharia* and religious boards, whose legitimacies themselves were built on the state's constitution. Hence, it was vehemently opposed. So, despite being very close to power, and part of the state's institutionalised political system; Yusuf and his group found themselves powerless to achieve their goal. Now, having no real chance of achieving the kind of change they desired through the legitimate means, frustrations grew. These frustrations in time began to gradually influence internal debate for adoption of other unconventional means such as jihadi violence, especially as the influence of the group had seemingly become bigger in the region. At least with such unconventional strategy, the group could force the hand of the Bornu state government to submit to their *al-Sharia* agenda.

From the ideological stand point, this also made practical sense. Yusuf did not have to go far to find justifications for this. In line with the salafi thoughts in the region, he had always favoured political change through arm struggle[19]. He frequently extoled people like Usama bin Laden, the Taliban, Sayyid Qutb, and Hassan al-Banna as the type of salafi actors who had followed the true path of Islam[20]. He only differed with many Salafi-jihadi

actors like Mohammed Ali, who led the group at the Kanama camp, when it comes to the right time for this strategy. For him, this strategy should be permissible only after Islamic evidence has been established *(Iqamat al-dalil/al-Hujja)* through proselytism. Such evidence as he saw it would not only provide groups like his with opportunity to attract more followers, it would also make it impossible for political rulers not to use 'ignorance' as an excuse for not implementing true *Sharia* laws[21].

This was exactly the situation, the group found themselves. Now, the Bornu state authorities can no longer use the "excuse of ignorance", since they have been repeatedly informed both from the group's activisms in the al-Sharia boards and in the communities. Also, at that stage, the group had become very well established in the region. These being the case, the use of violent jihad became easily justified as potent tool to enthrone the group's theocratic system.

In the coming months, Yusuf would start preparing his groups for violent jihad against the state. With the little resources available them, they also began to buy and stocked up few ammunitions, which further encouraged and disposed the group for the upcoming 'jihad'. He and others within the group's leadership intensified their anti-state rhetoric; claiming that they will soon depose the Bornu state and later the Nigerian government. These would attract a heavy military response from the Nigerian government that finally got the group over the line.

State Violent Response

The Nigerian state government's response came in two phases. First, a "pre-emptive and selective targeting", that targeted only the group's leadership. On several occasions, the Nigerian government in conjunction with the local Borno state government, successfully targeted and arrested the group's leadership. Twice, Yusuf himself was charged, but his prosecution never went forward. In late 2008, the Borno state government would also ban Yusuf and his then deputy Abubakar Shekau from preaching in public.[22] Rather than deter Yusuf and his group from their new embraced approach, it further energised them to double down on the need for such approach.

Things became worse in 2009, when it became obvious to the Nigerian government that Yusuf was not backing down on his violent rhetoric and actual planning to use violence. Rather than the previous approach, Government response became indiscriminate. Rather than target only Yusuf and the group's leadership, they also began "to go for a total crackdown of the insurgency"[23]. By early 2009, the state had deployed more police troops on the streets of Maiduguri, including a dreaded *Operation Flush II Task Force*, whose real job according to one of my Police sources was to "checkmate BH's violent excesses"[24]. Having already acquired material resources at this time, these militarisation approach with serious human right abuses further emboldened the group on the usefulness of arm struggle against the state. If the group were to still be able to survive or achieve their *al-Sharia* goals, they had to quickly device a reciprocated violent means to deter the Nigerian security forces.

The group's first open violent confrontation was precipitated by an altercation between the group (Operation Flush II Task Force) and members of BH on 11th June, on their way to a funeral in the Gwange area of Maiduguri. Confirming one of the several reports[25] on how this incident occurred, one of my sources who had worked with the Operation Flush in Maiduguri in 2009 (although he was never part of that particular mission), recounted how the security operatives had mandated unarmed BH activists to perform "frog jump." Frog Jump or other humiliating exercises is "discipline" tactics often used by the Nigerian security forces to punish people they deem guilty of minor infractions, once they are caught. According to my source, these activists had in that situation been found "guilty" of refusing to comply with the newly enacted transportation policy of wearing motorcycle helmet. On spotting these humiliation at the hands of security forces, other members of BH had intervened and tried to rescue them from the security men. However, when they couldn't, they tried to forcefully engage with the security officers, who in response started to fire at them. "The officers only shot at their legs and did not try to kill any of them,"[26] he concluded.

A deeply enraged Yusuf had a different version of what happened. In the coming days he would appear before his followers and deliver a passionate and fiery speech labelled an 'Open letter' to the government. In the letter, he lashed out at the Nigerian government's security forces, calling them murderers and accusing them of intentionally targeting his group without justification. Several Boko Haram members were taking four corpses for burial at Gwange Cemetery, he began:

They ran into some Nigerian army members along with mobile policemen belonging to Operation Flush under the leadership of Ali Modu Sheriff, the governor of Borno state. They opened fire on the procession, and at the moment 18 brothers are in hospital receiving treatment. One was shot in the back. Two bullets were removed in an operation. There was one who was shot in the groin. A bullet brushed someone close to the eye. If it had moved an inch, he would have been killed. Another one had both his legs battered. Somebody was shot in the thigh.[27]

In the coming days Yusuf would also begin to threaten and followed up his threats with attacks on few police stations in Bornu, Benue and Yobe states[28]. To mobilise his followers, Yusuf would also begin to frame the group's violent retaliation as not only necessary, but also as a defense to prevent such attacks from happening again. In such situations, inaction would result to more loses in the future. Look at how he put it in one of his speeches:

The same way they gunned down our brothers on the way, they will one day come to our gathering and open fire if we allow this to go unchallenged. The way they did this; they will commit terrorist acts against women if they are allowed. We'd rather die than to wait for them to commit aggression against our women or to come to our gathering and humiliate us. You should know we would never keep silent and allow anyone to humiliate us. It's not possible for someone to come and shoot our brothers. We take them to hospital and bear the medical bills while [the shooter] goes home, without giving a damn. It's not possible [...] Mad soldiers. As long as they are not withdrawn from the city, there will be no peace.[29]

Within this situation, violet retaliation now also becomes not only a strategy to achieve the group's goals, it also becomes a way to deter the Nigerian security forces from further attacks and withdrawing from the streets of Maiduguri. Activists are likely to act not necessarily because they are pushed, but because they believe that inaction could be worse, or that it could lead to loss of hard-earned movement resources. If inaction entails continuous loss, it is very likely that there would be greater inclination towards risk to mitigate the losses.

These persistent petty attacks from the group on the security forces would further incur them more violet retaliation from the security forces. For several days, the Nigerian security forces roamed the streets of Maiduguri arresting and indiscriminately slaughtering BH members and their family members not necessarily involved in the insurgency. Some of my respondents, who were living in Bauchi during this period described the situation as "a complete war". According to one victim of BH violence particularly, who now was living in one of the camps of people displaced by the BH violence, "there was a complete and total chaos everywhere on the streets. We practically could not do anything, other than stay home and watch the violence between the Security forces and BH unfold."[30] People were not sure who was more dangerous, BH or the security forces, "who rounded everybody that looked like BH people." Dozens of people, presumed to be high profile members of the group were rounded up and killed. Some who were presumed to be low key members and sympathizers were simply locked up and taken to undisclosed police stations. The roads were completely deserted. The residents of the city had to take cover in churches and military barracks, to avoid being caught in the cross-fire.

The wave of violence would temporarily come to an end on July 30th when the JTF captured Yusuf in his father in-law's house. He would be handed over to the police, who summarily executed him. Later that day, images of what turned out to be Yusuf's dead body were shown to journalists, with his lifeless body tossed with dirt and riddled with bullet wounds. All these would temporarily bring the insurgency to an end. Other surviving members of the group would go underground. Shakau, Yusuf's deputy would escape to Cameroun, from where he has been able (with the help of AQIM) to revive the group, to launch more sophisticated attacks in the region in the midst of more militarisation of the region. He has in the last 8 years become the new face of BH. As the Nigerian state had continued to engage in human right abuses and continued its militarisation of the region; BH had used as a significant recruitment tool to garner support for the new different violent approach that they now adopt against the Nigerian state. At least within such situation, violence has become a significant assert for them to defend themselves against the highly unprofessional Nigerian government security forces.

Conclusion

This paper has discussed the development of violent activism in BH through a particular analysis of the Nigerian government state response in the early days of the group's activism in the Northern Nigeria. In discussing this, it presented a social movement theory model which brings into focus the effects of the group's interactions with the state in the development of different violent dynamics within such groups. This has been a hugely neglected area in previous BH literature.

The analysis show that while governments often repress organisations because of their potentially violent activisms or destabilising nature, the very act of repression itself creates crisis and conditions for justification of more violence in such groups. By indiscriminately attacking BH activists, and possible sympathisers, the Nigerian security forces indirectly antagonise and embolden people like Yusuf, to not only intensify the moral outrage, but also to encourage and justify the resolve to adopt violence. Here, violence becomes not only a tool to stop the security forces' abuse on both the activists and the sympathisers, but also an element to justify why the group had to engage violently with the members of the security forces.

Furthermore, the analysis also shows that the spiral of escalation in arms and the emboldenement for this within such groups is very likely to be reinforced when groups have become well established and may have had the opportunity of working within the state. With working within the state comes the experience and understanding that there may be no pathway to achieving such group's goal through "legitimate means". Hence, the internal debate for the justification of other conventional means such as violence becomes more appealing to such groups.

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[16] Andrea Brigalia in "The Volatility of Salafi Political Theology," recounts how Yusuf as far back as 2002, had been appointed by one Malam Hudu Muhammad, then Yobe State's Commissioner of Religious

Mobilisation in the midst of State's Interactions   *Amaechi*

Affairs, as a representative of Jakusko Local Government at the Yobe State Religious Board.

[17] Kassim, "Boko Haram's Internal Civil War" 14.

[18] Yusuf, "*Hadhihi Aqidatuna,*" 9

[19] Anonymous Interview with the author, 23rd February 2017.

[20] Yusuf, "*Hadhihi Aqidatuna*," 10.

[21] Kassim, "Boko Haram's Internal Civil War," 12.

[22] Amaechi, "From Non-Violence," 64.

[23] Anonymous Interview of A Nigerian security personnel with the author, 24th February 2017.

[24] Anonymous Interview with the Author, 24th February 2017.

[25] M. Smith, "*Boko Haram: Inside Nigeria's Unholy War," (*London: I.B. Tauris & Co Ltd, 2015) 125.

[26] An anonymous Interview with the author, 28th march 2017.

[27] M. Yusuf, "Open Letter to the Federal Government of Nigeria," June 12, 2009.

[28] Amaechi, "From Non-Violence," 64.

[29] M. Yusuf, "video recording made available to the author by one of the security personnel" (2009).

[30] Anonymous Interview with the author, 5th March 2017.

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A DIFFERENT APARTHEID: STRUCTURAL, LEGAL, AND DISCURSIVE FOUNDATIONS FOR COMPARING SOUTH AFRICA AND ISRAEL

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Abstract: Global shifts in perceptions of the Palestine conflict coupled with a renewed interest in the historic struggle to end apartheid in South Africa has led to a rise in discourse relating the situation facing contemporary Palestine with that of apartheid in South Africa. Scholars and activists, however, have clashed on this issue, with scholars focusing on the historical specificities that differentiate the two colonial systems and activists seeking to engender sympathy for the Palestinian cause by encouraging the comparison. The present essay reconciles scholarly and activist perspectives concerning comparisons between contemporary Palestine and apartheid-era South Africa. It examines six domains that influence the comparison, including definitions of apartheid under international law, the discourse of race in each context, the foundational myths of South African and Israeli nationalism, the role of black and Palestinian labor in South Africa and Palestine respectively, racialized spatial segregation in each context, and activist responses to the Israeli and South African regime. In doing so, it critiques the colonized form of knowledge that has emerged in western scholarship about Palestine, elevating systems of knowledge outside of the academy that seek to incorporate human rights into conversations of academic importance.

Keywords: Human rights, Apartheid, Palestine, South Africa & Labor.

Introduction

There has been a longstanding debate, both in scholarly and activist circles, concerning the applicability of the term "apartheid" to the contemporary state of Israel. Writers have addressed the issue in scholarly works[1] and popular writings.[2] This has not been without cause; certainly South Africa's experience with racialised governance invites comparisons with contemporary Israel. While such endeavors have been profitable, increasing our understanding of the Palestine conflict, South African apartheid, and the role of comparative analysis in history, scholars and activists continue to fiercely debate the salience of the apartheid label in the Israeli context.

The present essay attempts to reconcile many of the contradictory conclusions in the literature. It does not represent the incorporation of new research or data, but rather draws from the extant scholarship on applying the term apartheid to the Palestine conflict to offer an appraisal of how different actors have approached the debate. I examine six key aspects of the debate, including: (1) definitions of apartheid under international law and how these definitions apply to both South Africa and Israel; (2) the differing notions of what constitutes "race" as a category in both contexts; (3) the role of settler-colonialism both as a historical force and contemporary mythology in both conflicts; (4) the use of spatial segregation by race and ethnicity in South Africa and Israel; (5) the question of the relationship between labour and the national project in both countries; and (6) local responses to racial regimes in South Africa and Israel. I conclude that the apartheid designation is problematic from a scholarly perspective; however, from a legal and, by extension, activist, perspective, the use of the term apartheid is not only appropriate but necessary.

Trying to merge such a diverse range of complicated subjects into the inherently limited space of a single chapter is certainly a daunting task. However, though this essay provides only brief sketches of these six crucial dimensions of the apartheid debate, it is possible to appreciate where both scholarly and activist positions stand at present. Further, nuancing the many facets of the apartheid debate and parsing the difference between scholarly and activist perspectives provides the opportunity to interrogate the epistemological qualities of the apartheid debate, raising the critical question of how and why the academy produces knowledge and how this can relate to and inform activism.

Apartheid under International Law

To a large degree, legal analyses agree that Israel is guilty of the crime of apartheid. International law and human rights standards are applicable to Israel as a member state of the United Nations and extend to those

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living in the Occupied Territories (OTs) through the 2012 vote by the United Nations general assembly to extend non-member observer state status to Palestine.[3]

At the most basic level, Israel has violated the core international standard of human rights in a manner that lays the foundation for the specific designation of the state's crimes as apartheid. John Dugard, Special Rapporteur on the human rights situation in the Occupied Territories, cogently summarised these general violations in a report, stating that "[t]he international community has identified three regimes as inimical to human rights—colonialism, apartheid and foreign occupation. Israel is clearly in military occupation of the OPT. At the same time, elements of the occupation constitute forms of colonialism and of apartheid, which are contrary to international law."[4] At the most basic level, then, Dugard argues that the Israeli state is an embodied contradiction of the central tenets of international human rights.

At a deeper level, Israel has violated specific conventions relating to the crime of apartheid. Most notable is the International Convention on the Suppression and Punishment of the Crime of Apartheid,[5] of which Israel is not a signatory. Classifying the crime of apartheid as a "crime against humanity," the convention broadly defines apartheid as a range of discriminatory practices "…committed for the purpose of establishing and maintaining domination by one racial group over any other racial group of persons and systematically oppressing them."[6] Israel violates this treaty through a policy of bantustanisation (segregation in racial enclaves: see below), restriction of movement, arbitrary arrests and unlawful imprisonment on a racial basis, use of a permit regime to restrict mobility, prohibition of mixed marriages, and, most significantly in the case of Palestine, the expropriation of Palestinian land by the Jewish state.[7]

While the legal case for designating Israel as an apartheid state under international law is relatively strong, many object to a direct comparison between South Africa and Palestine based on the framework of the 1973 convention.[8] The first objection is that Jews and Palestinians, unlike blacks and whites in South Africa, do not constitute racial groups and therefore Israel's discriminatory practices fall outside the umbrella of apartheid. While the concept of race will be discussed in greater detail in the next section, for now it is enough to acknowledge that while the *historical* development of "black" and "white" (and indeed other categories) in South Africa differs markedly from that of "Palestinian/Arab" and "Jew" in Palestine, the essential characteristics of both categorisations fall under the broad definition of what constitutes "race" as a category under international law.[9] A second objection is that Israel does not distinguish on racial lines but rather on the grounds of citizenship, extending rights and privileges to its own citizens that it denies to non-citizens, a standard practice for any nation state. This argument could potentially pass muster were it not for a curious distinction in Israeli law between citizenship (*ezrahut*) and nationality (*le'om*), which in most other states in the world are coterminous. There are a number (approximately 20% of Israel's population[10]) of Palestinians who hold citizenship in the state of Israel; however, they are barred from attaining Jewish *nationality*. The Israeli state extends preferential treatment to those of its citizens possessing Jewish nationality, demonstrating that its discriminatory practices are centred in the realm of nationality (and, by extension, race), rather than citizenship, and thus constitute an act of apartheid under international law.[11] Finally, many of Israel's most passionate apologists claim that the Jewish state's treatment of its Palestinian citizens and Palestinians in the OTs are not, in fact, intended as an act of racial discrimination, and do not belong in the category of apartheid. They argue rather that these acts are necessary security measures and thus legitimate exercises of state power. A cursory examination of the history of the twentieth century demonstrates why such a claim is spurious at best: Adolph Hitler and Saddam Hussein made similar claims about the necessity of racialised policies to state security. Also, it is worth raising the difficult moral question as to whether or not it is ethical to practice discrimination in the name of security and the legal question as to whether or not security considerations exempt a state from the precepts of the apartheid convention.[12]

While the applicability of the 1973 convention to the state of Israel holds up under scrutiny, activists have also advocated charging Israel under several other bodies of international law that relate to the crime of apartheid. The International Convention on the Elimination of All Forms of Racial Discrimination of 1969, to which Israel *is* a signatory, condemns "segregation and apartheid" and includes language that would extend the principle to Israel's policies toward Palestinians living in the OTs.[13] Article 85 of the 1977 Protocol Additional to the Geneva Convention lists as a "grave breach" of human rights "practices of 'apartheid' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination,"[14] terms clearly violated by Israel in its legal distinction between Jewish and Arab citizens. The Rome Statute of the International Criminal Court (of which Israel openly boasts about refusing to join) lists apartheid as a crime

against humanity.[15] Finally, some have suggested the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which Israel is a signatory, as applicable to at least the events surrounding the creation of the state of Israel (*al-Nakba*) in 1948.[16] The Convention's condemnation of killing on the basis of "racial or ethnical" categories connects it to the crime of apartheid, itself centred on racial distinctions.

In short, a strong legal case can be raised for designating Israel as an apartheid state, even if the possibility of any actual legal action being taken remains non-existent. By extension, then, it is perfectly reasonable for activists to pursue the categorisation of Israel's crimes as "apartheid." However, debates surrounding apartheid and Palestine also rest on historical and discursive differences between both contexts, and subsequent sections will begin to address these debates while continuing to refer back to legal distinctions.

The Category of "Race" in South Africa and Palestine

Since the legal classification of apartheid rests entirely on crimes based on race, understanding how race functions in South Africa and Israel/Palestine is crucial to understanding the apartheid debate. Additionally, the different construction of race in South Africa and Israel/Palestine is one of the key objections scholars raise when comparing the current situation in Palestine to apartheid in South Africa.

The history of race in South Africa is complex, extending beyond a black-white binary, and is grounded in the country's colonial past (see below). In terms of drawing an analogy between South African apartheid and Israel, however, scholars and activists have focused on the relationship between whites and blacks in South Africa as a point of comparison to Arabs and Jews in Israel. Race relations in South Africa relied heavily on the construction of white superiority and attached an essential, immutable character to whites and blacks based on race. Racial discourse in South Africa was grounded heavily on biological (mis)constructions of race.[17]

The concept of race in Israel is more problematic, as the general categories "Jew" and "Arab/Palestinian" are often not thought of as races. Indeed, even within these categories, there are hierarchical divisions related to globally developed concepts of race along a black-white binary.[18] As in the South African case, characteristic traits are mapped onto "Palestinians" and "Jews" as categories; however, standing in stark contrast to South Africa, the categories of "Arab" and "Jew" are not grounded in biological definitions. Palestinian identity is considered hereditary, based on being a descendent of the Arab inhabitants of contemporary Israel and the OTs prior to the establishment of Israel/*al-Nakba* in 1948. The Israeli state has invested heavily in marginalising and depoliticising this identity, categorising its Palestinian citizens as "Arabs" rather than "Palestinian."[19] While a significant portion of Jewish Israelis identify as atheist (i.e. culturally, but not religiously, Jewish) legal definitions of what constitutes a Jewish person under Israeli law are decided by *halakha* (Jewish religious law), which automatically designates a person to be Jewish if his or her mother is. Israel considers itself to be a "Jewish state" regardless of its Palestinian/Arab population, and legal definitions of who is officially a Jew are important in that the state of Israel offers automatic citizenship to Jewish persons from anywhere in the world. It does not, however, guarantee citizenship to Palestinian exiles from the territory that now constitutes the state of Israel, regardless of how long one's family resided in the area.

The racialised discourse that privileges Jewish Israeli identity over Palestinian identity manifests itself on a number of fronts. Historically, constructions of Jewish superiority over "primitive" Arabs legitimised the ethnic cleansing of 800,000 Palestinians from the land that now constitutes the state of Israel from 1947-1949. The official Israeli narrative surrounding the country's "War for Independence," together with the official narrative of other wars fought by Israel require defining the Arab as Other. A host of discriminatory laws, including a permit regime that denies the right of mobility to Palestinians within the OTs and Israel proper, building permit regulations that favor Jewish nationals over Palestinians, and the denial of citizenship and nationality to the inhabitants of the OTs demonstrate the racialised nature of the Israeli legal system. Exclusionary practices, including Israel's self-designation as a Jewish state (a translucent means of eliding the existence of Israel's Palestinian citizens as well as the stateless Palestinians in the OTs), a forced segregation between Palestinians and Israelis enforced by military occupation, and separate roadways and public transportation that provide Jewish Israelis with faster mobility than their Palestinian counterparts evince the privilege exercised by Israeli Jews over Palestinians.

Jewish racial privilege over Palestinians in Israel and the Occupied Territories is maintained through a state-sponsored de-humanisation of Palestinians. In her groundbreaking examination of Israeli textbooks, Nurit

Peled-Elhanan finds that children in Israeli schools, which exist primarily to serve the country's Jewish population but also serve some of the Palestinian minority who have Israeli citizenship, are taught a curriculum that actively marginalises Palestinian identity. Israeli textbooks routinely elide the role of Palestinians in the region's history and culture, teaching a Jewish-centred history of the region scrubbed of any Palestinian or Arab contributions. When Palestinians are mentioned, Peled-Elhanan describes that they are orientalised as a type of savage. This combined elision and orientalisation serves to internalise racialised discourse in Israeli students, further highlighting the racialised component of the conflict.[20]

Participation in the armed forces is designed to impart the belief that Palestinians are the enemy, that they are less than human, and that the Jewish state and Jewish identity must be protected from this racial threat at all costs. Finally, the intentional targeting of Palestinian civilians by the Israeli Defense Forces (IDF) and the frequent demolition of Palestinian homes by the IDF as punishment against Palestinian civilians demonstrates that the Israeli state places little value on the lives of its Palestinian population, including those who have citizenship and those living in the OTs.

In spite of the ways in which the division between Jews and Palestinians functions as a racialised discourse, objections are raised to treating them as such, especially in a comparative context with South Africa. In addition to the differences regarding biological, historical, and religious definitions of race between South Africa and Israel, one of the main distinctions (though its significance is often overstated) between racial dynamics in South Africa and Israel concerns the demographic ratios between races in both contexts. In South Africa, blacks form an overwhelming majority of the population, a fact that complicated white rule under apartheid. In Palestine, there is a relative balance between Palestinian and Jewish populations if one is to include Palestinians living in the Occupied Territories.[21] Some scholars have suggested that the fact that apartheid South Africa was based on minority rule whereas Israel is based on majority rule is one of the reasons the anti-apartheid struggle has been more successful in South Africa than the struggle for Palestinian statehood;[22] however, successful movements for minority rights in other contexts argue against this.

Regardless of the different functions and foundational discourses of race in South Africa and Israel/Palestine, in both societies there is a functional category of identity grounded in perceived biological or religious differences to which cultural meaning is attached that serves to establish the power of the dominant group (whites and Jews respectively). Nationalists in apartheid South Africa and Israel shared an ideological affinity in which they envisioned themselves "…as threatened outposts of European civilisation defending their existence against barbarians at the gates."[23] Whites and Zionists then actively implemented laws designed to entrench their power against this visceral "threat," laws that promoted exclusion and separateness—i.e., apartheid—demonstrating that while scholars can rightly point to the very different discursive foundations of race in South Africa and Israel, the function of race in both countries as it relates to the apartheid debate is almost identical.

The Role of Settler-Colonialism in the Construction of South African Apartheid and Zionist Rule in Israel

Definitions of race in South Africa and Israel/Palestine are rooted in the historical experiences of colonialism in both contexts. Racialised legal systems emerged in both countries as part of the process of imperialism. Of all the sections in this essay, it is perhaps most difficult to reduce the history of settler-colonialism in South Africa and Israel to a brief sketch; Dutch and British colonialism in South Africa and British and Zionist colonialism in Palestine emerged as part of a broader, transnational struggle for power and economic control against the backdrop of the emerging twin discourses of race and nationalism and would require many volumes to begin to appreciate. Further, the lingering effects of these colonial endeavors are equally complicated. However, Ronnie Kasrils has noted that "[i]t is Zionist Israel's racist, colonialist agenda that is the fundamental cause of the conflict, as was the case in the South African example,"[24] necessitating that any serious treatment of either conflict, including a discussion of the apartheid question, must address colonialism and its legacies.

European involvement in the area that now constitutes South Africa is a textbook case of settler-colonialism. The Dutch were the first to colonise what was later to become South Africa, beginning the process of dispossessing native populations. Afrikaaner colonial mythology in South Africa "…taught generations of schoolchildren that, when the Dutch colonists arrived on the shores of the Cape in 1652, the 'Bantu tribes' in their migration from the north had barely arrived to cross the Limpopo River in what later became South Africa,"[25] presenting the territory as empty of persons prior to the arrival of the Dutch. Eventually, the Dutch

were joined by the British. British colonialism emphasised the essential nature of colonised persons, believing that while it was possible to bestow the "gift" of British civilisation on black Africans, there was a fundamental inequality between the two races and therefore a need for permanent separateness.

Like South Africa, the creation of the state of Israel is a clear case of settler colonialism;[26] however, it differs from the South African case in that a non-governmental movement—Zionism—served as the colonial power rather than a sovereign nation.[27] Zionists saw in Palestine a chance to create a new reality, and did not seek to conceal the essentially imperial nature of their mission.[28] Additionally, while many Zionist leaders mirrored South African nationalist's claim about the lack of inhabitants prior to colonialism and touted Palestine as a "land without a people for a people without a land,"[29] others were more open about the violent relocation of the region's historic inhabitants that would necessarily accompany the establishment of a Jewish state in Palestine.[30] Zionist settlers in Palestine emphasised the use of exclusive Jewish labour, carving out separate enclaves for Jewish life, establishing a precedent of separateness between Arabs and Jews in the territory that was to become Israel. Zionist settler-colonisation of Palestine was accompanied by British colonisation through the establishment of the British Mandate in Palestine. Hedging their bets, the British adopted a divide-rule-policy in Palestine, stoking both Jewish and Arab interests in the region. This, too, contributed to the development of the contemporary conditions that drive the apartheid debate. The withdraw of the British in 1948 and subsequent establishment of the state of Israel (and accompanied dispossession of Palestinians) did not end the process of colonisation in Palestine; rather, following the 1967 Israeli occupation of the Gaza Strip, West Bank, and Golan Heights, colonisation took on a new form via the establishment of exclusively Jewish settlements in Palestinian territories. Thus, while settler-colonialism functioned differently in both South Africa and Israel, a point raised by scholars objecting to the apartheid designation, both effectively disempowered the native populations they sought to displace.

There are further similarities between the functions and foundational myths of settler-colonialism in both societies. First among these is an imagined religio-ethnic mandate that is a central component of both white South African and Israeli nationalist discourse. Both colonial movements relied heavily on projecting themselves back into the role of biblical Israel as it sought to conquer Canaan, anchoring "…their respective settler colonial projects in a fundamentalist interpretation of the Old Testament."[31] Jan Smuts, Prime Minister of the Republic of South Africa (1939-1948), openly expressed the racial implications of this shared theo-political vision:

[T]he white people of South Africa, and especially the older Dutch population, has been brought up almost entirely on Jewish tradition. The Old Testament, the most wonderful literature ever thought out by the brain of man, the Old Testament has been the very marrow of Dutch culture here in South Africa…[T]hat is the basis of our white culture, and it is the basis of your Jewish culture; and therefore we are standing together on a common platform, the greatest spiritual platform the world has ever seen.[32]

Thus in both cases religion, which oftentimes was confused with and considered coterminous with ethnicity, served to justify colonial endeavors. Further, colonists in both contexts projected their colonialist endeavors as a civilising mission, with whites (especially the British) in South Africa claiming to bring civilisation to black Africans and Zionist settlers in Palestine claiming to "make the desert bloom" by bringing modern agriculture and civilisation to Palestine. Thus while there are a number of differences between the specificities of the colonial endeavor in South Africa, perhaps even enough to prohibit a direct comparison between the two from a scholarly perspective, the discursive and human impact of colonialism in both contexts supports the apartheid designation.

Spatial Separation in South Africa and Israel

The legacy of colonialism in South Africa and Israel/Palestine can be seen in widespread practices of spatial segregation between blacks and whites in apartheid-era South Africa[33] and Jews and Arabs in Israel/Palestine. While there are literally thousands of examples of racialised spatial separation in both contexts, two similar practices of segregation dominate the practice of apartheid in South Africa and Israel: (1) a deliberate policy of creating racial enclaves to concentrate blacks in South Africa and Palestinians in Israel (i.e. "bantustanisation") and (2) the establishment of a "permit regime" to limit mobility of subjugated populations.

The so-called "bantustans" were the hallmark of apartheid in South Africa. South Africa's apartheid regime sought to categorise and "settle" the country's black population. Drawing on criteria established by the

white government and with no input from blacks themselves, black South Africans were divided into "nations" (e.g. Zulu, Xhosa, Venda, Tswana, Sotho, etc.).[34] Each of these "nations" was then assigned a track of land to which it was forcibly settled, effectively creating large reservations for South Africa's black population. Travel to and from these bantustans was highly regulated. The apartheid government sought international legitimacy for these policies through claiming that they promoted self-governance and autonomy among the country's black population.[35]

Israeli policy in the OTs has produced similar racialised enclaves in Palestine. Firstly, and most pressing in humanitarian terms, is the case of the Gaza Strip. The Israeli government rarely grants permission for Gaza's inhabitants to enter Israel proper and maintains a blockade against naval access to the territory. The Israeli government coordinates with the Egyptian government to limit Palestinian mobility between Egypt and Gaza through the Rafah border crossing, effectively sealing off the territory and creating what is in effect the world's largest open-air prison. The shipment of supplies (including crucial construction supplies in the wake of the 2009, 2012, and 2014 Israeli wars against Gaza), is also severely limited. Inhabitants of the West Bank fare little better. The minority of Palestinians that hold Israeli citizenship can travel to and from the West Bank, although they regularly face harassment and detention by Israeli soldiers. For inhabitants of the West Bank without Israeli citizenship, travel to Israel is very difficult, including for work or medical reasons. Similar to the South Africa case, Israel has permitted limited self-government for Palestinians living in the OTs, lending a semblance of credibility to what is clearly a policy of *de facto* and *de jure* segregation. This self-governance, codified in the 1993 Oslo Agreements, exists only in a limited number of disconnected Palestinian enclaves in the West Bank, mirroring the existence of bantustans in South Africa.

The "bantustanisation" of the Palestine conflict can further be seen in Israel's illegal practice of settling its citizens in the occupied West Bank. As of 2012, approximately 123 settlements and 100 "outposts" have been built in the territory, with the total population of Jewish persons in the West Bank (including Occupied East Jerusalem) nearing half a million.[36] The settlements are often located around major Palestinian urban centres, effectively cutting them off from the rest of the territory and thus rendering the establishment of a Palestinian state in the OTs untenable. A separate system of highways that are off limits for Palestinian residents of the West Bank link these settlements with Israel, creating a racialised geography that bears a striking resemblance to the South African case.

The ability to travel from and within South Africa's bantustans and areas of Palestinian sovereignty in the OTs required the obtaining of permits, effectively denying freedom of movement for South Africa's blacks under apartheid and Palestinians under Israeli rule. Black labourers required permits to leave South Africa's bantustans, which most were forced to do for work. Similarly, a permit regime has been established in Palestine, restricting the movement of Palestinians in the OTs, with 101 different permits restricting Palestinian movement as of 2012.[37] The granting or withholding of permits, whether for work, medical, or other reasons, has become a system of rewards and punishments for those who are willing or refuse to collaborate with the Israeli regime respectively.

In the case of the racialised segregation of the population, a key element in definitions of apartheid, Israel and South Africa clearly warrant a comparison, and this tends to be one of the few areas in which scholars are open to the apartheid designation for Israel. However, as Leila Farsakh has demonstrated, there is a significant point of divergence between the practice of bantustanisation in both contexts that merits consideration. She states that:

Although there are similarities between the Israeli and South African policies of social separation…Israel's primary concern was to achieve maximum supremacy over Palestinian *land* while excluding the population. Apartheid South Africa sought to dominate, rather than negate, the indigenous population as a means to guarantee the settlers' supremacy over the country's economic and political resources.[38]

Therefore, while the human impact of both apartheid and Zionism allow for an activist and legal comparison between the two, a direct comparison by scholarly standards would ultimately prove unsuccessful in the face of these nuanced differences.

Labour and the Project of Apartheid in South Africa and Zionism in Israel

One of the chief obstacles to formulating a direct comparison between apartheid South Africa and contemporary Israel deals with the question of indigenous labour. Scholars submit that black labour was crucial to the project of apartheid in South Africa whereas Palestinian labour has not only been significantly less important to the Zionist project in Israel, but also has been actively discouraged. This simplistic assessment merits reconsideration. In addition to the fact that Palestinians have formed a significant component of Israel's labour force, an important correlation between the discursive, rather than practical, role of indigenous labour in both contexts demonstrates that there is in fact a similarity between the two.

Owing to South Africa's demographics, where whites constitute a small minority of the country's population, white rule necessitated mass participation of blacks in the labour force. This did not constitute an ideological problem for the practitioners of apartheid, for as has been previously noted, apartheid in South Africa was primarily focused on white domination of the country's black population. Apartheid ideology allowed for black workers in "servile" jobs, such as domestics in white homes or miners, so long as white supremacy was maintained.

Zionist rule in Israel, however, has been more concerned with maintaining control of territory rather than persons. Furthermore, Israel has claimed itself as an exclusively Jewish state, not a state in which Jewish persons dominate non-Jewish persons in the manner that apartheid claimed white rulership over South Africa's black population. This led Zionist settlers in Palestine and their successor state of Israel to embrace an exclusionary approach to Palestinian labour. For the first half of the twentieth century, during which the initial Zionist colonisation of Palestine began, Jewish intellectuals fostered the image of the "New Jew," a "…bronzed, muscular farmer/soldier…the Zionist alternative to his stooped, intellectual and victimised diaspora predecessor,"[39] claiming that for the Jewish "nation" to revive itself, an increased focus on participation in manual labour was necessary. Thus the new Jewish communities forming in Palestine during this period embraced a model of exclusive Jewish labour, cutting Palestine's Arab population off from the labour force that would eventually form the backbone of Israel's economy.

The Israeli state continued the policy of emphasising Jewish labour to the exclusion of Palestinians; however, the picture is more complex than many scholars acknowledge. Contrary to the claim made by many scholars that the comparison between South Africa and Israel falls down owing to South Africa's inclusionary labour practices as opposed to Israel's exclusionary policy, Palestinian labourers have served a significant role in Israel's economy since the founding of the Jewish state in 1948. In the construction and agricultural sectors, Palestinian labourers constituted over a quarter of the workforce in Israel from 1948 to 1967.[40] Following Israel's occupation of the West Bank and Gaza Strip in 1967, the Israeli government was faced with the dilemma of incorporating Palestine's economy and land without acknowledging its demography. On the one hand, to maintain the occupation and therefore the newly acquired territory, the Israeli government had to ensure that Palestinians had jobs, requiring their participation in the Israeli workforce. On the other hand, Israel did not want to acknowledge the inhabitants of the OTs as citizens. This led to the creation of the permit regime discussed above, whereby Palestinian labourers could temporarily pass into Israel and obtain low wage jobs without becoming Israeli citizens.[41] Indeed, in the period between 1967 and the signing of the Oslo Accords in 1993, Palestinian participation in the Israeli labour market remained strong,[42] especially in the construction sector, where Palestinians constituted over a third of total workers.[43] The Oslo agreement allowed for limited Palestinian autonomy in the OTs, thereby reducing Israel's obligation to maintain the Palestinian economy as a prerequisite for occupation. Thus, in the years since 1993, it has become increasingly difficult and less common for Palestinian inhabitants of the OTs to work in Israel,[44] though a number still participate either through managing to get a work permit or, as is more common, working illegally.[45] Finally, while Palestinian workers are far less likely to be able to work in Israel in the post-Oslo years, the number of Palestinians who obtain permission to work in Israeli settlements in the West Bank has skyrocketed, demonstrating again that Palestinian workers do play a significant role in the Israeli economy.[46]

Thus the picture of Palestinian participation in the Israeli labour market is more complex than simply a policy of intentional Israeli exclusion of Palestinian labourers. At various points, and particularly in certain sectors of the economy, Palestinians have been a crucial part of the Israeli workforce, challenging one of the arguments scholars raise against the apartheid designation. Furthermore, a comparison can be reached in terms of the importance of minority labour, regardless of how it was integrated, to both the South African and Israeli

national projects. The control of indigenous labour was, through both practices of inclusion and exclusion, critical for both South Africa's apartheid government and Israel's government to maintain their respective ethnonationalist regimes.[47] Indeed, the labour movement in South Africa was one of the main organising impulses of the broader anti-apartheid movement,[48] and activists working for Palestinian rights in Israel are heavily focused on the question of exclusionary labour policies in Israel, resulting in labour being another point of comparison activists and legal scholars have raised in championing the apartheid designation.

Challenging Apartheid: Local Responses in South Africa and Israel

Most comparative studies of apartheid in South Africa and Zionism in Israel focus on the similarities and differences between the structures of racial separateness in both contexts. However, with the exception of Mona N. Younis' *Liberation and Democratization* and a handful of others,[49] few have considered the responses of blacks in South Africa and Palestinians in Israel and the OTs to the structures of discrimination particular to both situations. This is problematic, for to understand how scholarly and activist conclusions about the applicability of the apartheid designation in Israel relate demands a thorough knowledge of the challenges that have been levied against both systems in a comparative context. Further, from a historical perspective, the Boycott, Divestment, and Sanctions (BDS) movement—currently one of the largest parochial and international movements against Israeli occupation—was consciously modeled on the resistance of black South Africans.[50]

The legal structures of South African apartheid were brought down by a broad grassroots coalition of clergy, union members, students, activists, and others who brought global attention to the problem of apartheid in South Africa by championing a comprehensive international boycott against the apartheid state.[51] Activists in South Africa framed their struggle as one for equality under the banner of human rights discourse, consciously avoiding presenting themselves in ethno-nationalist terms.[52]

Palestinian activists have eyed the success of their South African counterparts and have endeavored to create a similar international movement advocating for the boycott of the Israeli state, a divestment from companies or entities that support the occupation, and international sanctions against Israel to pressure policy change vis-à-vis Palestinians both in the OTs and Israel proper. Omar Barghouti, one of the leading voices advocating for such a boycott, recalls the South African experience with BDS and the importance of listening to indigenous voices in structuring a response to discrimination, stating: "As in the struggle against South African apartheid, genuine solidarity movements are those that recognise and follow the lead of the oppressed, who are in turn not passive objects but active, rational subjects who are asserting their aspirations and rights and their strategy to realise them."[53] In short, both movements rest on the need for the international community to respond in solidarity to calls for justice from the oppressed and to act in accordance with the wishes and aspirations of those raising such calls.

While the BDS movement in Palestine has gained momentum in the past decade, its chief failure, many argue, lies in the one critical area in which it differed from the South African model of resistance. Whereas activists in South Africa endeavored to present their cause as a fundamental issue of human rights, Palestinians have articulated their struggle in ethno-nationalist terms, articulating their express goal as the creation of a Palestinian state.[54] While many, including not only Palestinians but also members of the international community, have argued for the creation of a Palestinian state as a solution to the conflict (a solution that, many would say, is impossible owing to the unique geographic manifestations of separateness in Palestine), the ethnonationalist approach has failed to achieve the same degree of success as the campaign for human rights in South Africa did.

Conclusion

The different dimensions of the apartheid debate examined above demonstrate the difficulties of making a direct comparison between South Africa and Israel from a scholarly perspective. Historical inquiry privileges the particular, discouraging broad-based comparisons such as that between South Africa and Israel. Perhaps this distinction has contributed to why the academy has been so slow to embrace the BDS movement. However, the comparison is salient from legal and, by extension, activist perspective. It is possible, then, that the academic debate surrounding the apartheid debate misses the point entirely. With its focus on empirical inquiry, academic discussion surrounding the apartheid question in Palestine has focused too much on irrelevant aspects of the Palestinian experience.

But why must knowledge be purely empirical? Does the insistence on rigorous, academic knowledge production privilege the powerful and foster a colonisation of knowledge? Could scholars consider an alternative episteme of experiential knowledge in which the locus of power shifts from the ivory tower to the street, an approach in which Foucault's notion of knowledge-power as a regime of control is radically reimagined, and the lived knowledge of the oppressed becomes a wellspring of power in and of itself? This is what is at stake in shifting the apartheid debate from esoteric roundtables and conferences in universities to the persons whose lives are caught up in these debates.

In the late 1980s, as the Cold War was showing signs of diminishing, it seemed impossible that there was a path forward in South Africa that would allow for complete coexistence between whites and blacks. Several short years later, this pessimism was shattered with the collapse of the legal system of apartheid. While the demise of official apartheid in South Africa failed to solve the plethora of racial issues plaguing the country (indeed, nearly three decades later, the position of poor blacks in South Africa appears to be worsening), apartheid's failure in South Africa and the subsequent creation of a multi-national state from its embers should remain a beacon of hope for those fighting for justice in Palestine. Regimes of separateness last only as long as they are able to successfully project the myth of their own success. A critical understanding of how the Palestinian experience relates to other instances of apartheid provides the foundations for dismembering the current colonial apparatus of Zionism and for imagining a new reality that can take its place.

References

[2] Former President Jimmy Carter's *Palestine: Peace Not Apartheid* (New York: Simon and Schuster, 2006) is perhaps the most well-known popular use of the apartheid designation; however, Ben White's *Israeli Apartheid: A Beginner's Guide* (London: Pluto Press, 2009) provides a more in-depth approach to bridging the gap between academic discourse and popular perception surrounding the nature of the Zionist project.

[3] Edward C. Corrigan, "Israel and Apartheid: A Framework for Legal Analysis," in *Apartheid in Palestine: Hard Laws and Harder Experiences*, ed. Ghada Ageel (Edmonton, AB: University of Alberta Press, 2016), 231.

[4] Cited in Shourideh Molavi, *Stateless Citizenship: The Palestinian Arab Citizens of Israel* (Leiden: Brill, 2013), 101.

[5] Adopted as UN General Assembly Resolution 2068 on 30 November, 1973.

[6] "International Convention on the Suppression and Punishment of the Crime of Apartheid." <https://treaties.un.org/doc/Publication/UNTS/Volume%201015/volume-1015-I-14861-English.pdf>.

[7] Virginia Tilley, ed. *Beyond Occupation: Apartheid, Colonialism, and International Law in the Occupied Palestinian Territories* (New York: Pluto Press, 2012), 129-221.

[8] Tilley offers a very helpful, in-depth discussion of these objections and their difficulties. See: Tilley, 107-108.

[9] Ibid, 108.

[10] "65th Independence Day – More than 8 Million Residents in the State of Israel," Press Release, Central Bureau of Statistics, State of Israel, <http://www.cbs.gov.il/www/hodaot2013n/11_13_097e.pdf>.

[11] This distinction can be seen further in Israel's self-classification as a "Jewish state".

[12] Others have also argued that the convention itself was designed specifically to address South Africa, and thus cannot be applied to Israel. Challenging this, however, is the fact that most international law develops as a result of experience (consider, for example, the development of the concept of genocide in response to the Holocaust) and the convention's own claim to have broader applicability.

[13] "International Convention on the Elimination of all Forms of Racial Discrimination," <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

[14] "Protocol Additional to the Geneva Conventions," 8 June, 1977. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD0051E1A0>. Additionally, the Protocol reaffirms Article 49 of the Fourth Geneva Convention, which prevents "…the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies…" Israel's policy of building settlements in the Occupied West Bank is in clear violation of Article 49, and represents a component of the Jewish state's practice of "spatial" apartheid (see below).

[15] The relevant portion of the treaty can be found at <http://www.un.org/law/icc/index.html>.

[16] "Convention on the Prevention and Punishment of the Crime of Genocide," 9 December, 1948. <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>.

[17] Williams, Elizabeth M. *The Politics of Race in Britain and South Africa: Black British Solidarity and the anti-Apartheid Struggle* (London, I.B. Tauris, 2015).

[18] This is especially true in the case of Jewish identity in Israel, where *Ashkenazim* (Jews of European origins, generally thought of as more "white") occupy a position of greater privilege in Israeli society than *Sephardim* (Jews of North African or Iberian origin) and especially *Mizrachim* (Jews of Middle Eastern origins, thought to be less "white"). In addition, members of the *Beta Israel* (Ethiopian Jewish) community in Israel occupy a marginalised position in Israeli society based on their African origins. See: Ruth Amir, *Who Is Afraid of Historical Redress? The Israeli Victim-Perpetrator Dichotomy* (Boston: Academic Studies Press, 2012), 127-128, 208-231.

[19] Yitzhak Reiter, *National Minority, Regional Majority: Palestinian Arabs Versus Jews in Israel* (Syracuse, NY: Syracuse University Press, 2009).

[20] Nurit Peled-Elhanan, *Palestine in Israeli Textbooks: Ideology and Propaganda in Education* (London: I. B. Tauris, 2012.

[21] "65th Independence Day."

[22] Mona M. Younis. *Liberation and Democratization: The South African and Palestinian National Movements* (Minneapolis, MN: University of Minnesota Press, 2000).

[23] Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (New York: Pantheon, 2010), 8.

[24] Ronnie Kasrils, "Birds of a Feather: Israel and Apartheid South Africa—Colonialism of a Special Type," in *Israel and South Africa: The Many Faces of Apartheid*, ed. Ilan Pappé (London: Zed Books, 2015), 28.

[25] Kasrils, 29.

[26] For an excellent conceptualisation of the Palestine conflict from a settler-colonial approach, see Lorenzo Veracini, "The Other Shift: Settler Colonialism, Israel, and the Occupation," *Journal of Palestine Studies* 42 (Winter 2013).

[27] Younis, 36.

[28] Theodore Herzl, founder of the Zionist movement, wrote in his diary that "[w]e shall try to spirit the penniless population away across the border…", describing the need to transfer Palestine's Arab population out of the country to make way for Zionist colonisation as a primary goal of the Zionist movement. Cited in Benny Morris *Righteous Victims: A History of the Zionist Arab Conflict, 1881-2001* (New York: Vintage Books, 2001), 21-22.

[29] Chaim Weizmann, director of the World Jewish organisation, proffered that "There is a country which happens to be called Palestine, a country without a people, and, on the other hand, there exists the Jewish people, and it has no country. What else is necessary, then, than to fit the gem into the ring, to unite this people with this country?" Cited in Nur Masalha, *A Land without a People: Israel, Transfer, and the Palestinians: 1949-1996* (London: Faber and Faber Limited, 1997), 61-61.

[30] Moshe Dayan, a central figure in the founding of the Jewish state, wrote that the destruction of houses as part of the conflict that led to the creation of Israel was "…not in battle, but as punishment…and in order to chase away the inhabitants…" Cited in Morris, 328.

[31] Davis, *Apartheid Israel*, 85.

[32] Cited in Davis, *Apartheid Israel*, 86.

[33] An important point needs to be raised here. While the formal political arrangement of apartheid ended in South Africa in 1994, the ongoing effects of apartheid and continued racism in South Africa have resulted in continued racial segregation in the country.

[34] Tilley, 112.

[35] Ibid, 112-113.

[36] "Expansion of Settlements and Restriction on Palestinian Construction," *Journal of Palestine Studies* 41 (Winter 2012): 192.

[37] Nadia Abu-Zahra and Adah Kay, *Unfree in Palestine: Registration, Documentation, and Movement Restriction* (London: Pluto Press, 2013), 2.

[38] Leila Farsakh, *Palestinian Labour Migration to Israel: Labour, Land, and Occupation* (London: Routledge, 2005), 155.

[39] Sheila Hannah Katz, "*Adam* and *Adama*, '*Ird* and *Ard*: En-gendering Political Conflict and Identity in Early Jewish and Palestinian Nationalisms," in *Gendering the Middle East: Emerging Perspectives*, ed. Deniz Kandiyoti (Syracuse, NY: Syracuse University Press, 1996), 87.

[40] Farsakh, *Palestinian Labor Migration*, 7.

[41] Farsakh, *Palestinian Labor Migration*, 6, 35.

[42] Ariella Azoulay and Adi Ophir, *The One-State Condition: Occupation and Democracy in Israel/Palestine* Stanford, CA: Stanford University Press, 2013); Tilley, 211.

[43] Farsakh, *Palestinian Labor Migration*, 117.

[44] Azoulay and Ophir, 244-245.

[45] Farsakh, *Palestinian Labor Migration*, 120.

[46] Farsakh, *Palestinian Labor Migration*, 140.

[47] Tilley, 210-211.

[48] Younis, 129.

[49] Another example is Salim Vally's essay "Palestinian Solidarity in South Africa and the Academic Boycott of Israel: The Case of the University of Johannesburg and Ben Gurion University," in *Against Apartheid: The Case for Boycotting Israeli Universities*, eds. Ashley Dawson and Bill V. Mullen (Chicago: Haymarket Books, 2015).

[50] Ilan Pappé, "The Many Faces of Apartheid," in *Israel and South Africa: The Many Faces of Apartheid*, ed. Ilan Pappé (London: Zed Books, 2015), 19.

[51] The role of formal political movements against apartheid and Israeli occupation, namely the African National Congress (ANC) and Palestinian Liberation Organization (PLO) is debatable. Younis provides a helpful discussion of the role played by each organisation in South Africa and Palestine respectively; however, she tends to privilege each group as the sole representative of their constituencies. The movements for BDS in South Africa and Palestine both enjoyed support across a broader swath of society than did their political counterparts, hence the decision to focus on them in this section.

[52] Leila Farsakh, "Apartheid, Israel, and Palestinian Statehood," in *Israel and South Africa: The Many Faces of Apartheid*, ed. Ilan Pappé (London: Zed Books, 2015), 169.

[53] Omar Barghouti, *BDS: Boycott, Divestment, Sanctions, and the Global Struggle for Palestinian Rights* (Chicago: Haymarket Books, 2011), 227.

[54] Farsakh, "Apartheid Israel," 169.

[1] E. S. Casino, *Burma and Burmese: A Historical Perspective*, University of Hawai'ia (Hawai): Center for Southeast Asian Studies, School of Hawaiian, Asian and Pacific Studies, 1997.

ETHNIC ARMED CONFLICT IN MYANMAR AND ROHINGYA MUSLIMS

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Abstract: *The forced displacement of Rohingya Muslims from Myanmar's northwestern Rakhine State, (formerly known as Arakan State), is fueling a migration crisis with a big human rights' abuse. This ethnic minority group is described by the UN as one of the most persecuted people in this planet. Prior to 2017, one million were residing in Rakhine State, but now their worldwide dispersion is about 3.5 million. There are different narratives about Rohingya Muslims' origin. Some sources stated about their ancestors' arrival in the Arakan Kingdom in 15th century when it had a separate status from Myanmar. A large majority of this group crossed the borders of Myanmar during the British rule in 19th and early 20th centuries. The Rohingya people are not included in officially recognized 135 ethnic groups of Myanmar. Owing to this discrimination, the country has been suffering the longest internal ethnic armed conflicts between the Rohingya and Rakhines. Since 1970s, the hostile policies of the regime have been forcing the Rohingya to displacement. This deadliest communal conflict and displacement highlighted the question about the status of the Rohingya in Myanmar as the 1982 Citizenship Law excluded them from citizenship. Here is the question to determine the responsible authority to defend, support or repatriate the Rohingya refugees. Reviewing the selected literature and existing empirical conditions, this study has hypothesized that unless the status of this ethnic minority would not be determined by the state, the human rights abuses cannot be stopped. The paper is to explore all these aspects.*

Keywords: Ethnic groups, Rakhine, Muslim, citizenship, Rohingya.

Introduction

Myanmar, one of the most ethnically and culturally diverse country of the world, is located in the South East Asia near the Bay of Bengal and the Andaman Sea. Bangladesh and Thailand are its neighbouring countries. Its total area is 676,578 square kilometers, dividing it in land and aquatic area of 53,508 and 23,070 square kilometers respectively. The total population of the country is approximately 53 million and the Burmans are the major ethnic group, consisting of 68 percent of the population, while other ethnic groups are minorities, sharing 32 percent of the population. The officially recognized national races are 135. Minority groups consist of Chin, Mon, Shan, Kachin, Kayah, Kayin and Rakhine.[1] Among the others, the Buddhist Rakhines are four percent, while Chin people are three percent. The Indians and Mon constitute two percent of the population respectively. Apart from these groups, there are significant numbers of unrecognized ethnic groups like the Chinese, Anglo-Burmese and Rohingya. This ethnic diversity is the cause of suffering and persisting internal violent conflicts since the independence of the country in 1948.[2] All these ethnic groups have different religious identities. The Buddhists are 89 percent, Muslims and Christians constitute four percent respectively. The Baptist population is three percent, whereas Roman Catholics are one percent.[3]

Myanmar is administratively divided into seven states and eight divisions. This division has been exploited by the different regimes to control the ethnic insurgencies.[4] These armed conflicts are source of civil war. Mutual disputes of these groups increase to the level where they not only suppress the weaker groups, but also violate their human rights. It is an undeniable fact the Myanmar despite enriched in the natural resources, is one of the least developed and the poorest country of Asia with its dictatorial system.[5]

The internal situation of Myanmar has been characterized by armed conflicts, insurgencies, ethnic rivalries and predominant human rights violations. It is one of those states, possessing an extensive record of internal animosities, rivalries and mutual disputes among the diverse ethnic and political groups. Furthermore, Myanmar has been ruled by the military regime for a longer period. The military took the control of the country in 1962 and remained in power until 2015.[6] The military regime kept the country under its tight control by oppressing the people and forcing them to make accords with other ethnic armed groups to strengthen their position.[7] This period was a combination of force and fear where the armed forces launched violent moves against the political rivals. The senior army officers showed no consideration about human rights abusing, ignoring miserable prevailing living conditions of the people. Their focus was the preservation of their position and power in the name of defence.

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Ethnic Identity in Pre-colonial Period

In the beginning, Myanmar was made a part of British India, but later in 1937, it was given the status of a crown colony.[8] The British destroyed the ancient Burmese culture, imposing the British traditions. They also used their policy of divide and rule, providing privileges to a few groups.[9] Unfortunately, this policy created simultaneously ethnic identity and a sense of belonging that were not witnessed prior to British rule.[10] The divide and rule policy created the ethnic awareness among people, which was never observed before. The British favoured the minorities over the majority Burmans and created deep rooted enmity among these groups.

In pre-colonial period, many ethnic groups made their own realms, identifying as separate political entities on the basis of their specific culture, language and ethnic traditions. In this era, ethnic consciousness was not a matter of concern and ethnic identity had no space in political affairs of Myanmar. It was not even used in conflicts. Kings and monarchs never demonstrated the ethnic priority in state affairs and ethnic minorities were never suppressed due to their identity. Politically, ethnic existence was nowhere and its reference was used for legendary narratives, religious dealings and records.[11]

Ethnic Issue in Post-colonial Period

The Union of Burma (previously known as Burma Proper) was founded as a modern nation-state by different ethnic groups, including Chin, Kachin and Shan in 1948. On February 12, 1947, these groups signed Panglong Agreement, having the rights of self-rule in their respective areas, employing political equality and voluntary association with Burma.[12] This agreement was signed by a few members of the minorities and it left different ethnic disputes unresolved, particularly the rights of those ethnic minorities, which were not present in the Panglong meeting. This situation threw several issues for future resolution.[13] After Panglong Accord, several ethnic groups were apprehended of losing autonomy and were looking for some political guarantees. Shan was the biggest group, its leadership and people debated the right of independence, endorsed by the constitution.[14] Other ethnic minorities erected their own armed groups either with collaboration or separately for securing their autonomy.[15]

After independence, the constitution of September 1947 was promulgated and a quasi-federal union with unitary system was introduced where Burmans, the major ethnic group was authorized to exercise the state powers, ignoring the multi-ethnic culture of the country. This so-called unity and constitutional problem caused ethnic inequality and political grievances, which threw the country into civil war soon after independence.[16] During the first year of the formation of the country, the situation became volatile and the Communist Party of Burma (CPB) started its underground activities to destabilize the regime, which led to creation of rebel factions with mutinies in the armed forces.[17] Apart from this, another problem that confronted the country in earlier period was "state formation conflict," which erupted because the Union was not created inclusively. The Arakan, Karen and Mon groups were not invited at the signing ceremony of the Panglong Conference officially and General Aung San represented them. General was the hero of the World War II and he led the Japanese-trained Burma Independence Army in the war.[18]

General drafted the first version of the constitution that was promulgated by the constituent assembly. However, regarding ethnic rights, there were several anomalies in the constitution. The Karenni and Shan were given the right of voluntary secession after a period of ten years, whereas the Mon and Rakhine were not granted such rights.[19] This constitution did not make the country a genuine federation and non-Burman nationalities became victim to the atrocities of the military regime. U Chan Htun, who re-drafted the constitution, designed by Aung San, admitted himself, "our country, though in theory federal, is in practice unitary."[20] The fate of minorities was uncertain and they demanded a separate state, particularly the Karen. This demand triggered the ethnic armed conflicts in the form of "state formation conflict" in 1949.[21]

Merging Ethnic Identities with Name, Language and Religion

Most of the documents related to Burma/Myanmar's topic have contradictions in using its name. One reason is complex ethnic composition and another is its political history, which confuse the writers to use any single name. Burma, the district of the early British colony changed its name as the Union of Burma when it got freedom from British in 1948. Once again, it was renamed as Socialist Republican of the Union of Burma by constitution of 1974. In 1989, State Law and Order Restoration Council (SLORC) occupied power in a bloodiest coup and changed the name as the Union of Myanmar. The military regime argued that Myanmar is more appropriate for the ethnic minorities in comparison to Burma, which was not only a reflection of British

subjugation, but also a mirror to the Burmans' collective identity, subsiding identities of other groups.[22] The regime further justified the change of name as the cultural variety of the people.

General Aung San, who liberated the Union of Burma, wanted to make it a "secular state" and emphasized on "pluralism and the policy of unity in diversity." This policy was to provide equality to all religious and racial groups in the Union for living 'peacefully and harmoniously.' General Ne Win (1962-1988), the successor of U Nu, continued these policies, but his practice was different and he used religion and culture as the core of the nation-building. He declared Buddhism as the state religion, violating the Panglong Agreement.[23] He introduced the national language policy of *Myanmar-batha-ska* calling it a source of harmony among the various ethnic groups. Following these practices, the successive military regime used ethnicity by imposing *Myanmar-lumyo* for the national unity.[24] Myanmar entered into civil war in a few years of its independence and the conflict is continued until today.

Military Regime

Myanmar faced several political and human rights challenges immediately after its independence. By 1950, Tatmadaw, the Myanmar military and ethnic groups involved in armed conflict. In the same period, the political leaders began to criticize the parliamentary rule. General Ne Win introduced the "Burmese Way to Socialism," a program for the domination of a single party. This was Burmese Socialist Program Party (BSPP). His regime also inaugurated the 'Four Cuts policy', which aimed to cut off the size of armed ethnic groups through food, finance, intelligence and recruitment.[25]

Regional ethnic groups continued to fight against the Tatmadaw and Ne Win's rule. A cluster of ethnic groups, including the Kachin Independence Organization (KIO), Karen National Union (KNU) and the New Mon State Party (NMSP) collectively established the National Democratic Front (NDF). Its purpose was to resolve the issues of federation, disputed territories and the right of secession. Many members of the coalition parties who merged in NDF, CPB and other such groups had ample territory under their control in Burma and they fought against the Tatmadaw.[26] In 1987, Myanmar was declared as the Least Developed Country by the United Nations, which led Ne Win to resign on July 23, 1988.[27]

The 1988 Uprising and Democratic Elections of 1990

The crucial features of the Ne Win's notorious period were political oppression, suppression of democracy and human rights' abuses. Due to uprising of 1988 and so called elections of 1990, several activists went underground or fled to forests or joined some armed criminal groups against the military. Violent conflict continued in this period and regime's offensive measures destabilized the ethnic movements, which led to a few compromises. The ethnic armed conflict forced a large number of villagers to skip into the neighboring areas. According to the Special Rapporteur, the regime soldiers committed grave human rights' abuses against the civilians. As a result, 100,000 refugees were in Thailand and many were internally displaced within the state.

During the 1990s, military launched several campaigns against ethnic minorities, which intensified the situation, increasing human rights violations. This environment forced the people to flee from their places, becoming internally displaced persons or refugees in neighbouring countries. This was the time when General Aung San's daughter, Aung San Suu Kyi became peace laureate, winning the Nobel Prize in 1991. However, nothing changed for ethnic minorities and internal situation remained as usual. The international community continued its criticism for the poor state of human rights.[28]

Human Rights Violation

The first resolution against human rights' violation was passed by the UN General Assembly in 1991, which condemned the military regime of Myanmar. The UN Commission on Human Rights also showed its concerns for atrocities of the regime and its cruel practices against minorities in 1992. The commission's focus was imposing sanctions on leadership and concerns towards the forced migration of Rohingya refugees towards Bangladesh. The circumstances became worst in 1992 and almost 250,000 Rohingya crossed the border into Bangladesh. A Special Report (1993) exposed the regime's heinous practices against the minorities. It highlighted the severe human rights violations like detention, torture, displacement, disappearances, forced labour and arbitrary execution by the Myanmar government. Another report, which appeared in later years, exposed several other cases of human rights violation. In 1995, after heavy shelling, the government controlled the head office of Karen National Union at Manerplaw, which resulted into displacement of thousands of people

as many took shelter in the jungles while others escaped to Thailand. During the 1990s, forced labour continued and the regime applied it as a weapon of warfare in those areas where ethnic riots were at peak. An inquiry commission was formed in 1997 by a UN agency named International Labour Organization. The commission submitted its report in 1998 and confirmed abundant use of forced labour in Myanmar. The organization also observed the coherent nature of the forced labour, which was a crime against humanity. In 2009, the ILO declared that the practice of forced labour is alarming, despite continuous external pressure to stop it.[29]

Issue of Citizenship and Riots in 2012

The details of the Rohingya's immigration are one of those tragic events, which are expanded around the decades. They have been seeking citizenship rights as the inhabitants of Myanmar with their ethnic identity since independence, but neither the government nor the majority ethnic groups are agreed to recognize them as legal citizens. The majority of the Rohingya is now stateless and living within their own homeland as aliens or taking shelter in refugee camps in neighbouring states of Bangladesh, Thailand and Malaysia. The leaders of Rakhine groups attach different conditions for the acceptance of the Rohingya as the citizens of Myanmar. An official commented, "If they are able to speak one of the official ethnic languages in Myanmar and prove that they have been living in Myanmar for a number of years, they should be granted citizenship but not the rights of an ethnic minority."[30]

In the northern Myanmar, since 2001, the clashes between Rohingya Muslims and Rakhine Buddhists surfaced time to time. The Buddhists' continued victimization of the Muslims irrespective of their ethnic identities, which is directly threating their very survival. In 2012, the riots erupted and became severe when a Rakhine woman named Ma Thida Htwe, was murdered after rape. Three Rohingya persons were allegedly involved in this crime, which was committed in a village named Kyaut Ne Maw on May 28, 2012. The image of Ma Thida Htwe's mutilated body was shown on the internet, which ignited the already volatile situation.[31] In June 2012, violent protests began all over Rakhine State while the government enforced curfew and deployed security troops to control the situation in the area and ultimately state of emergency was enforced in Rakhine State, handing over the control to the military, authorizing it to use the force to stop the demonstrations.[32]

All the three accused were arrested and sent to prison by the police in Kyaukpya (Yanbye). Despite it, Rakhine Buddhists were losing temper and violating the law. They even killed ten Burmese Muslims in Yangon, which further worsened the situation. The government controlled the situation after the loss of sixteen Muslim and thirteen Buddhists' lives. However, the Rakhines continued their practices of targeting the shops and homes of the Rohingya and burnt them down, which resulted in mass displacement. It was estimated that 30,000 people became displaced while 2500 houses were destroyed in consequence of these riots. The Rohingya tried to take refuge in neighbouring countries after fleeing from their areas. Unfortunately, majority of them was pushed back to Myanmar instead of protection. On returning back, these helpless villagers were victimized by their own army and police. They were already frightened of this torture, which they had to face on their returning. Their refusal to return back was due to fear of the cruel behaviour, but their request was turn down and they were thrown back in their so-called homeland.[33]

On June 28, 2012, TunKhin, president of the UK-based Burmese Rohingya Organization, released an announcement, exposing the killing of 650 persons of Rohingya with missing of 1200 persons. Apart from this, many people were injured.[34] He accused the Burmese regime for not supporting the reforms in Myanmar. He also complaint that "in recent months, there have been an increasing number of anti-Rohingya activities, including seminars in Yangon and in Arakan State under the supervision of Rakhine Nationalities Development Party (RNDP), and anti-Rohingya demonstrations."[35] All this was an engineer plan under the official supervision.

The UN workers were also alleged by the Burmese authorities for "stimulating" the unrest and they were arrested on this allegation. To inquire the actual position, Antonio Guterres, the UN High Commissioner for Refugees (UNHCR) had to come to Yangon. After looking into the matter, he compelled the local authorities to release the workers as they were not found in any guilty. On this occasion, Thein Sein, the former president of the country, argued the UN official for the resettlement of one million Rohingya persons to any other state or in refugee camps in neighboring countries. But the UN commissioner rejected his insensitive demand.[36]

In October of the same year, the second wave of violence broke out as the Buddhists and the Muslims were grappling with each other. At least, one hundred people became victim to these riots while 22,000 became

homeless and 4,600 houses were demolished. All this accelerated the human crisis, increasing number of homeless persons, enhancing the burden of humanitarian agencies, which were already over-burdened with the task of rehabilitation of 100, 000 people. Many sources reported that this violence was propelled against all Muslims without any distinction of ethnic identity.[37] On October 26, 2012, Ban Ki-Moon, UN Secretary General issued a warning, stating that "the vigilante attacks, targeted threats and extremist rhetoric must be stopped. If this is not done ..., the reforms and opening up process being currently pursued by the government are likely to be jeopardized." The US also intervened through its spokeswoman Victoria Nuland who insisted the regime to stop the violence and asked the authorities to allow the humanitarian agencies to visit the aggrieved groups for provision of aid without any discrimination.[38]

The cruel behavior of the army and police led the Muslims to protest and they declared not to celebrate any religious festivity and boycotted celebration of the Eid-al-Adah, which was in October. However, the government gave a deaf ear to Muslims' announcement and responded negatively. A report of the Human Rights Watch of November 2012 highlighted the atrocities, showing the images of the victims through a satellite. In these images, many destroyed buildings were shown, which were owned by the Muslims in Ramrees.[39] Doctors without Borders, a French NGO, reported in the same time that Rakhine State was discouraging the aid workers and hurdling in the task of humanitarian agencies by circulating the pamphlets and posters against the Muslims. The government was already involved in this practice and threatening NGOs workers in different ways, particularly who were employed by the NGOs for the Muslims. A large number of those workers left jobs due to increasing brutalities. Joe Belliveau, the operations manager of the NGO lamented, "I never experience this degree of intolerance, what we really need for people to understand that giving medical aid not a political act."[40]

Current Situation and Displacement

In August 2017, a large number of Rohingya refugees crossed the border and arrived in Bangladesh. This exodus was the result of a military crackdown against the Rohingyas, taking revenge of the attack by the Arakan Rohingya Salvation Army (ARSA), an armed group of the Rohingya community. The group was allegedly involved in burning down the 30 police posts in Rakhine State. This event ignited the already fiery situation, increasing the burden on the host communities, forcing more than 700,000 persons to become refugees in Bangladesh. This number was almost 80 per cent of the Rohingyas, living in Rakhine State.[41] The military launched a relentless and systematic campaign for the ethnic cleansing of the Rohingya population. To achieve their agenda, security forces killed thousands of Rohingya, including children and women. Military persons raped girls/women and committed other sexual abuses, making target hundreds of Rohingya females, keeping Rohingy males under tortured detention. Remaining persons of community were thrown in starvation. Business centers and markets were burnt down. Even access to their agricultural farms was denied and many villages were put on fire and all this was a deliberate attempt to victimize an already vulnerable community.[42]

Previously, in the first quarter of 2015, several boats loaded with the Rohingyas, were detained in Thailand when they were crossing the Bay of Bengal to move into Malaysia. Before entering in Malaysia, Thai government pushed back these over-crowed and overloaded boats. The boats were left in the open sea without food, water and fuel and boat-people were left to drift. This illegal entry is not a new practice. In December 2008, several boats containing the Rohingya were pushed back when they were trying to enter in Thailand from Bangladesh. Ye Myint Aung, the then Burmese Consulate General in Hong Kong, showing his hatred and concerns towards sympathy of other countries for the Rohingya, wrote a letter to local press and called them as ugly as ogres who do not share the "fair and soft" skin like Burmese people. Despite his hatred, the issue won great attention in media.[43]

In the crisis of 2015, the boat-people were not allowed to enter into all three countries and a large number of unfortunate passengers were abandoned by smugglers in the sea after a crackdown by Thai authority. Only 3,000 were rescued. There were also reports of dead bodies in smugglers' camps, the bodies were said to be of people, belonging to Myanmar and Bangladesh. The smugglers often recruit passengers for the boats with a low or in some cases on debt to be paid with future earnings in Malaysia. They also kidnap children from the streets or fishing areas and push them to the boats. It was estimated that 300 people lost lives in the first four months of 2015 due to starvation, dehydration or abuse by smugglers.[44]

Earlier, Malaysia refused to accept them, but later under international pressure, Malaysia, Indonesia and Thailand agreed to provide temporary shelter and aid. The International Organization for Migration (IOM) estimated that 25,000 people migrated in 2015 from the Bay of Bengal in "irregular maritime movements." The

UNHCR has showed its concerns towards the neighbouring, which are reluctant and less friendly towards the strangled person, refugees and asylum seekers. For legal experts, it is due to the rule of non-refoulement. Under this rule, the refugees cannot be forcibly pushed back to the place of origin if their lives or freedom is at stake. In the past three years, more than 120,000 Rohingyas left Myanmar through the sea-routes. The UNHCR reports showed a sharp increase in sea-crossing.[45]

Conclusion

For last several decades, the Rohingyas have been victim to state-oriented mechanism facing constraints and punitive treatment intended to force them to quit the country. They are not officially recognized citizens of Myanmar, which brought series of miseries for them. Above it, continuing political and economic crisis consequence of prolonged military regime has forced greater numbers of other ethnic minorities to leave their areas, throwing the country into civil war. The regime's proposed solutions to bring peace and stability in the country are often inappropriate for ethnic minorities as they rarely address their century-old grievances. To offer one resolution for all ethnic conflicts in Myanmar is difficult as the one coat never fits for all. There are several options to grant citizenship to Rohingya people to end the prolonged human tragedy. One is to resolve the issue through dialogue among ethnic leaders, stakeholders, representatives of humanitarian agencies and the international community for making the country a true federation, ensuring rights of all ethnic groups within the jurisdiction of the constitution. Second, is to eliminate all those policies and practices, which create discrimination among the people on the basis of their ethnic and religious identity. Dismantling the system of ethnic prejudice may bring the Rohingya Muslims' problems closer to a solution. Finally, the 1982 Citizenship Law is to amend or repeal or redraft. While doing so, much consideration must be given to the Rohingya, living in Myanmar for many generations.

The Rohingya Muslims who born here or have genuine proofs or effective links to the country, deserve to be granted citizenship. The majority is eligible for citizenship, if not all. It is to remember that at the time of independence, the Muslims were included in the Kaman that was an officially recognized group. It is also a legacy of colonial rule as the British politicised the ethnicity following their policy of 'divide and rule.' If the problem would not be resolved, Bangladesh and other neighbours have to bear the burden of huge number of refugees. The humanitarian agencies are also bearing the burden of the forced migrants, which is no doubt, their moral and legal obligation, but the problem requires a solution. Throughout the world, legislation that defined the claims to whom the citizenship is to be extended, is in practice, but Myanmar has designed the Act of Citizenship to exclude its ethnic minorities making them stateless.

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INCREASING TRENDS OF BONDED LABOR IN PAKISTAN: CASE OF BRICK KILN SECTOR IN LAHORE

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Abstract: The study focuses on the increasing trends of bonded labor in Pakistan especially in brick kiln sector in different areas of Lahore, Pakistan. Bonded Labor is one of the oldest forms of labor in which laborers being shackled in the debts of loans, commonly known as Peshgi. Laborers are bound to work for the compensation to its debt. Trend of bonded labor is increasing in Pakistan and situation becoming extremely vulnerable. The main aim of the study is to identify reasons responsible for the increasing trend of bonded labor and the role of government in taking action for and against it. Therefore qualitative research based on semi-structured interviews and personal observation is conducted, data is collected from brick kilns in Lahore specifically located at Patoki and Multan road. Semi structured interviews of twenty respondents working in brick kilns sectors is conducted, Moreover secondary resources like books, journals and reports of International Labor Organization (ILO) and Bonded Labor Liberation Front (BLLF) is also consulted. It is found that there are certain causes which lead toward bonded labor such as higher poverty rates, social and cultural factors, and internal migration, discrimination based on caste, social status and exploitation of the labor class are highlighted. Furthermore role of government is only limited to the creation of laws, the implementation and imposition of those specific laws are still not there..

Keywords: Bonded labor, brick kiln sector, vulnerability, Lahore.

Introduction

Bonded labor is also known as debt bondage which brought laborer into slavery. It is also known to be modern slavery; whole family has to pay for the debt bondage. It is estimated that there are at least 2 million in India, approximately 1.7 million in Pakistan (mostly in Southern Sindh and Southern Punjab) over 100,000 in Nepal[1]. Bonded Labor is one of the oldest forms of labor in which laborers are being shackled in the debts of loans, commonly known as *Peshgi.* Laborers are bound to work for the compensation to its debt, where an advance is received from the employer in settlement of the services yet to be performed by the employees. It exposes them to exploitation and restriction of working anywhere else.

Bondage often begins when a worker takes a loan or salary advance from his employer to pay for a large expenditure, maybe a ceremony, a wedding or a medical bill. Then the debtor, and other family members, is obligated to work for the employer until the debt is repaid. Additional loans are taken out to meet essential needs and the debt mounts, creating a continuous cycle of immense debts. Ever increasing debts strengthen the employer's control to the point where basic freedom is denied to the whole household; the debt can even be passed down to the next generation[2].

Conferring to Global Slavery Index (2014), 2,058,200 people are enslaved in Pakistan. After India and China, Pakistan is considered to have the largest number of people living in conditions that can be described as belonging to modern day slavery[3]. Furthermore according to Global Slavery Index (2016) estimated the number of modern slavery victims in Pakistan as 2.134m (1.13pc of the total population). In terms of absolute numbers, Pakistan ranked 3 (out of 167 countries) in this index after India (18.354m) and China (3.388m). Using the above referred percentage of 1.13pc with the new population estimates of census 2017 the potential number of victims rises to 2.34m in Pakistan[4].

In Pakistan that practice emerges in the rural areas where the feudal system is practiced and the literacy rate is low. Interior Sindh and the areas at the outskirts of Punjab contain poverty pockets where thousands of men, women and children are caught in the vicious system of bonded labor. Bonded labor is huge in brick making, agriculture, carpet weaving industries, stone brick crushing, shoe making, power looms and refuse sorting, where the working class is bonded in a vicious circle of poverty by the few families in power. Under

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debt bondage, bonded labor is very common in brick kiln majority of them are located in Punjab. Majority of this labor class also constitutes of children working in brick kilns, mines and small-scale factories to work of the debt. These people are not only forced to work in unpleasant conditions but they are also exploited and abused.

International Labor Organization (ILO) has helped in controlling the epidemic of bonded labor. Since 1992 various rings of bonded labor have been abolished and child protection laws are being actively implemented to a certain extent. The International Labor Organization along with its offspring organizations have helped generates awareness and educates the general public regarding the prevalence of this practice, its inhumane nature and educate regarding the role of general public in its prevention[5]. According to International Labor Organization (ILO) there are over one million men, women and children employed as bonded laborers in brick kilns[6]. Brick kiln industry employs around 4.5 million people across the country. Pakistan is the third largest brick producing country in South Asia, producing more than 45 billion bricks per year and there are around 18,000 brick kilns across the country[7]. There are 7,966 functional brick kilns only in Punjab province. Despite being a major source of income for the community the brick kilns are highly inefficient and highly impactful on the environment. The brick kilns rely on low cost fuels and combustible materials that are usually discarded such as oil, plastic, worn out tires etc. The impact of such large number of established brick kilns on the environment is a dire one causing harm to the fertile soil and the agricultural production. The pollutants are also causing great harm to the health of human and animals in the vicinity, however in addition to that these kilns are estimated to employ 4.5 million people within the community[8].

Situation at brick kiln centers is alarming; brick production sector has been termed as dangerous for workers as lack of proper regulations, weak legal environment and absence of accountability. It is creating enormous problems like abusive environment, marginalization and maltreatment. Bonded labor is creating issues of security of many, there is need to identify the reasons for increasing trends of bonded labor in Pakistan and to develop strategies to overcome them. The study will be helpful for the policy makers to work for the bonded laborers and save them from debt bondage.

Research Objectives

- To identify reasons responsible for the increasing trend of bonded labor in Pakistan.
- To study conditions of bonded laborers in brick kiln in Lahore.
- To see role of government in taking action for and against it.
- To suggest recommendations to stop bonded labor.

Research Methodology

All the data has been collected through qualitative research and study based on semi-structured interviews and personal observation is conducted. Data has been collected from brick kilns in Lahore specifically located in the areas of Patoki and Multan road. Semi structured interviews of twenty respondents working in brick kilns sectors were conducted, These sites were selected due to their location as people working on brick kilns were also living in the near areas so it become easy to accesses them. Earlier field visits were made with reference to the head of that brick kiln site owner. In the beginning of data collection observations were made of the laborers working on the brick kilns and then further semi-structured interviews were conducted with laborers on a separate places. Those respondents include men, women and children and assurance was made that their identity will not be disclosed.

Apart from interviews and observations the data has been also collected through secondary resources which includes various reports published by the International Labor Organization (ILO), Bonded Labor Liberation Front (BLLF), the United Nations Organization (UNO) and various other journals, books and articles have also been consulted. All the collected data is organized in to different points and analyzed through content analysis.

Findings:

Reasons of increasing trends of bonded labor in Pakistan

It is seen that some of the bonded laborers moved to urban areas for better job opportunities and trapped in bonded labor due to lack of awareness and poor understanding about it. Following are some of the common reasons for increasing trends of bonded labor.

➢ Bonded labor is a product of extreme poverty, workers trapped in the cycle of bonded labor due to the need for money, then further fear of hardship and the threat of violence from the people in power.

➢ Human Trafficking is another important factor that allows the practice of bonded labor to flourish. In a society where the laborers are entirely dependent on the wealth for their wellbeing, the practice of buying off laborers debt by another interested wealthy individual is common.

➢ Internal Migration is another major issue as many bonded laborers originate from far places due to improper facilities and lower income opportunities. They migrate towards the agriculture belt during times of drought; they end up in debt due to high financial impact of migration. The feudal system monopolizes the needs of such individuals by providing them with debt to settle down and then exploiting them for generations to come.

➢ Social and cultural factors like stratification and discrimination on the bases of caste and religious bases brought peoples into bonded labor, that aid the growth and spread of bonded labor need to be diminished from the society in order to curb the spread of this inhumane practice.

➢ Illiteracy is also a biggest reason for trapping in bonded labor. People due to lack of education and awareness caught in this labor and suffers a lot.

➢ It is seen that due to critical economic condition, influences of feudal system, scarcity of agricultural land, non-availability of industrial units and no other alternate earning source people got trapped into debts and then further to bonded labor. The eradication of this practice is impossible without changing the hierarchal structure of the rural areas. It can only be handled by establishment of effective governance[9].

Conditions of Bonded Laborers

Situations at the brick kiln centers are very vulnerable, it is observed that laborers are under the completely scrutiny by the owners and armed watch man. It is seen that false criminal cases and public humiliation on denial of work and torture by the kiln owner is a routine matter. Brick kiln owners are very powerful and keep workers in illegal custody and torture them. They also do investments in selling and buying of laborers by the brick kiln owners.

Bonded labor is a cruel cycle and curse for the whole families. Entire family has to pay for the price, all family members have to work in scorching sun and no work in rainy weather. There is unsafe working environment for females; most of them face harassment and sexual abuse. According to them rape is a routine matter. Many blame their fate as no justice is provided to them. It is observed that the contractor also enforces restrictions over them; they are not allowed to travel and communicate with others. The children of these laborers are also deprived of basic necessities such as education, entertainment and normal social contact with even their own family members.

The working environment for kiln workers is highly unsafe, Brick kilns produce immense quantities of air pollution that leave a lasting impact on the health of the workers. In addition to that the structure of the kilns is unstable and insecure and has resulted in deaths of many laborers due to burning collapsing of the kiln. The added hazard to the situation is caused by the abuse, maltreatment and discrimination carried out by the employers.

It is seen that round 15 families are working on one site. Some of the families are highly indebted to their employer. Their work stops in monsoon season and laborers are not permitted to leave the area which makes them highly reliant on their employer. Thus, the debt keeps on increasing and so does the grip of the employer.

Through data collection it is seen that the conditions of workers are not so well; like no access to enough food, clean water, poor hygiene, dust, diseases, pollutants and sun exposures. Issue of bonded labor and humiliating practices causes long term psychological impact on individuals. Laborer are denied the most vital right of independence and other basic necessities.

It is perceived that number of the workers belongs to Christian and Hindu community, being a minority community already living in miserable conditions. A different aspect of the bonded labor practice is the exploitation of the minority community of the area. It is noticed that minority in any community does not have a strong support system, they are marginalized by the law enforcement agencies as well as discriminated against socially, making them more likely to approach such sources when in dire circumstances. The loan provider also fully exploits the weaknesses of such individuals and may engage them in illegal activities without their knowledge or against their will. Employers practices including restrictions on movement, non-payment of wages, threats, and physical or sexual abuse.

Role of Government

Enormous numbers of laborers are in debt bondage despite of many constitutional and legal protections by the state. Due to absence of proper execution of the laws and lack of facilities provided by the state, poor community caught themselves in bonded slavery and circumstances are considerably more serious in brick making units[10].

According to 1973 Constitution, Article 11 prohibits all kinds of human trafficking, forced labor, slavery, and child labor at hazardous places. The Eighteenth Constitutional Amendment authorized the provinces to legislate their own labor laws. The provinces have passed many labor laws which are against the true spirit of fundamental human and labor rights embodied in the Article 9, 11, and 17 of the Constitution of Pakistan[11].

Furthermore in Pakistan Bonded Labor System (Abolition) Act of 1992, is implemented but itself has some flaws. The amendments made in later years were more predominate as the act shaped up as Labor Abolishment Act. In 2012 specifically the acts domain changed from Pakistan to specifically in the Punjab. Bonded Labor System Act adopted by the Punjab government in 2012. In June 2014, Punjab governments performed the following steps to improve the living conditions of the working class. They provided increments to minimum wages for unskilled workers from rupees 10,000 to rupees 12,000 per month for the fiscal year 2014-2015. Furthermore increment in the death grant from rupees 2 lacs to 4 lacs through amendment in the Workmen's Compensation Act 1923. There is enhancement in the workers group insurance from rupees 2 lacs to rupees 4 lacs through amendment in the Industrial and Commercial Establishment Ordinance 1968[12]. Unfortunately government lack data of laborers working in brick kilns centers and also laborers working over there are unaware of governmental policies, so how can they be provided by all the facilities. Punjab government has a fixed minimum wage of Rs.788 per 1,000 bricks for the special brick layers. The laborers in debt bondage do not receive even the minimum wage after the subtraction of their loan and the payment is less than Rs.100. The workers also revealed that the approximate market price per 1000 bricks that the owner receives on the other hand is Rs7000[13].

In 2015 the procedure to highlight child labor laws was seen through the government. In 2016 the enactment of the abolishment act for securing of child rights was seen and strict amendments for banning child labor from the ages of 5-14. Even though at provincial level Punjab Prohibition of Child Labor at Brick Kilns Act passed by Punjab government, but it had fundamental flaws that caused its maximum exploitation by the kiln owners and the contract employers. It has caused the maximum exploitation of the law is the age limit of a child, which only covers children within 5 to 14 years of age. The selective limitation has left a segment of children exposed to exploitation. Furthermore according to provincial ordinance of January 2016 revived the system of *Peshgi* and fixed its limit at six times the wage of a worker for one wage period. In current scenario Punjab Bonded Labor System (Abolition) (Amendment) Act 2018 is passed and many changes have been made. The law has provided clarification of the terms and highlighted role of designated officer and inspector to monitor bonded labor issues. Furthermore the system of *Peshgi* was also prescribed in more manageable manner and a specific time limit was set and procedural records were maintained. A new subsection was added that secured the rights of laborer in eviction and their payment records, Moreover a system of complaint was established and special guidance to authorized officers is provided to maintain checks and balance along with his subordinated to check the local districts and punish the culprits.

Conclusion

The trend of bonded labor is a highly derogatory practice but it is still repetitive and constantly growing in the society. The fault does not lie entirely on the mafia or the individuals that give out the loan; it also lies with the deep-rooted issue of poverty, lack of education and the absence of better financial sustenance. Due to these factors the financially unstable class of the community finds it as an easier solution to their financial instability without realizing the risk of the situation. Careless framework, improper implementation and the lack of awareness has caused this practice to flourish despite it being specifically illegalized. The situation must be handled by the government by providing easier access to monetary funds as well as vocational skills to the sector that is highly susceptible to such practices. This practice is causing a long-term damage to the future of the society.

Recommendations

1. The solution to such problems does not lie in a single preventive measure but an over haul of the system, which must bring about effective implementation of labor protection laws and a general prerogative that empowers the laborers.

2. Social security scheme under the charter of International Labor Organization (ILO), ratified by the Government of Pakistan, needs to come into effect at brick kilns also.

3. The digitization and the environmental impact of the kilns must be reduced by the utilization of renewable energy as well as modernized efficient methods for the production of the bricks.

4. Improvement of the brick kiln sector must also be followed by proper check and balance, viable frameworks and the strict implementation of the laws relating to the protection of children, women and men caught in such situations.

5. There is need to discuss labor reforms to scheduled time duration and particular wages for the laborers.

6. There is need to have some initiatives for the prevention, protection and rehabilitation of the bonded labor victims.

7. Education is empowerment that leads to social as well as economic development. The cycle of bonded labor often continues and flourishes as the people privy to this practice labors are unaware of their rights and alternative options for their social and financial dilemmas. Education is one of the most important factors that may play a role in the reduction of vulnerability factor that exposes a person to the prospect of bonded labor. Thus, establishing educational stability in the labor-intensive areas will drastically reduce the possibility of bonded labor. The curse can be lifted by the proliferation of basic education in the society which will result in broader job opportunities as well as create awareness among the individuals regarding their options and basic rights.

8. Investment funds and credits are used to convey microfinance; it can be a valuable stage for giving financial and social administrations to poor family units, fortifying their ability to create occupation and lessening reliance on their employers.

9. Viability of the labor-credit linkage as a key source of worker vulnerability to bondage. The saturation of the practice of bonded labor is particularly strong in the brick kiln sector of Punjab, where the general work force is at a high risk with an even higher risk for the laborers indebted to their employers.

10. There are many aspects of vulnerability and bonded labor that need to be addressed more vigorously within the existing legal framework. The aspects where violence against the person, restrictions on movement and mobility, are employed due to indebtedness. But this maltreatment also exists independent to the financial relationship due the dependability of the employee on the employer. In such cases laws for the protection of the individual against violence need to be applied vigilantly even without the premise of bonded labor.

11. The aspect of social hierarchy and caste system plays a dire role in establishment of the status of an individual. In order to perform effective measures in reduction and eradication of the practice these aspects of the local community have to be taken under serious consideration.

12. Bonded labor is seen by workers and employers alike as a way of managing different types of risk. The improvement of the overall economic factors and industrialization will result in improved opportunity as well as reduction demand for the labor work force thus decreasing the possibility of bonded labor.

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GENDER VIOLENCE, CULTURE AND THE LEGISLATION: A CROSS COUNTRY ANALYSIS

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Abstract: Right to life and bodily integrity is fundamental for meaningful human existence. Its violation can result in long lasting psychological, emotional and physical trauma. Gender based violence particularly, reflects the dichotomous nature of a society where instead of conduct or actions, sex determines individual's fundamental rights. There is no debate on the desirability of gender based violence. However, its determinants remain controversial. It is the central nature-vs-nurture debate about the efficacy of inherent cultural values in comparison with the effectiveness of the legislation in preventing gender based violence. Keeping this in mind our research aims to empirically investigate the relative effectiveness of laws and cultural characteristics of the society in controlling gender violence. We hypothesize that cultural values are more effective in regulating gender-based violence than legislation. A cross-section comprising of both developed and developing countries has been taken for the analysis of varying aspects of gender violence e.g. intimate partner violence, non-partner violence and sexual violence etc. The cultural dimension constitutes views pertaining to gender inequality in politics, economic opportunities and education, while specific legislations relating to gender relations have been incorporated by using categorical variables. Further, an additional dimension of nondiscrimination clause in constitution has been added. Data on cultural variables is accessed from World Value Survey, while legislation and constitutional clause data is collected from Gender Statistics of the World Bank. Various indicators of gender violence are accessed from UNDP. Our analysis clarifies that legislation and constitution are relatively ineffective in mitigating gender-based violence and the cultural values comprising of gender inequality have a higher tendency of exacerbating gender-based violence.

Keywords: Gender-based Violence; Legislation; Culture; Patriarchy

Introduction

Bodily integrity is considered to be among the most fundamental human entitlements. Nussbaum (2003) ranks it right after the entitlement to life in the list of ten fundamental entitlements for meaningful human existence. Violation of these rights is a necessary outcome of violence. Tauchen *et. al,* (1991) include violence in the non-cooperative model of the family. The authors consider violence as a means of gratification and a tool for regulating behavior. The dominant decision maker in the household may engage in violence because the benefits derived from it exceed costs. The benefits derived from violence may be in form of direct enjoyment from the pain of another, a relief from frustration, control over victim's behavior or access to resources. The costs, however, depend on the reaction of the victim, which is determined by the existence of violence inhibiting institutions. In the presence of punishment mechanisms for violent individuals and recourse to protection the victims can seek out assistance from the authority. Existence of democratic and open institutional order, legislation preventing gender-based violence and lack of cultural acceptance for gender-based violence increase the cost of perpetrating violence and hence reduce gender-based violence.

Gender-based violence can involve physical, sexual and emotional abuse. Its prevalence reflects badly on society and is an indication of an endemic trend of mutual disrespect and disregard. Unfortunately, this practice for the most part is directed from males towards females. This means that the impact of gender-based violence is disproportionately acute for one particular segment of the society. According to Brush (1990) domestic abuse is the leading cause of injury to women even in countries like the United States. In its most extreme form it results in heinous crimes like acid throwing, gang rapes, torture, etc. and thus reflects a tendency that needs to be inhibited and controlled.

Many countries now provide legal protection against domestic violence, but there are still many countries who do not do so. Explicit legal regulation and penalties for violators increase the cost of violence for the perpetrators. Also the existence of these laws ensures that the victims have recourse to retribution and can

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seek legal protection and help on the matter. However, the efficacy of the legal system may rely heavily on cultural values.

Cultural values tend to play a central role in regulating individuals' behavior. They constitute implicit rules directing human conduct and interactions. Societies in which the perception of entitlements is disproportionate also demonstrate uneven intensity in the impact of violations of entitlements. In societies where men are considered to be more entitled then women, victimization of violation of rights is also more prevalent among women relative to men. Therefore the societies that accept violation of women's right to bodily integrity or justify it on any grounds, are also expected to exhibit higher incidence of gender-based violence.

Whether legislative and constitutional controls are effective in inhibiting gender-based violence may be dependent on cultural view regarding gender roles and entitlements. The work at hand aims to explore this link between formal and informal rules in controlling violence. We hypothesize that countries with explicit legislative and constitutional controls would be more effective in mitigating violence against women in the presence of higher level of cultural equality in entitlements. We have explored this relationship for physical violence and sexual violence against women using cross-sectional data from 64 countries. Using rigorous descriptive analysis it has been found that cultural values play a significant role in gender-based violence. Gender inequality engrained in the vale system of the nation seems to counteract the legislative and constitutional reforms. This leads to the failure of legislation and constitution in eradication of gender-based violence.

Literature Review

Any type of Violence is intolerable as it may lead to serious consequences depending on the type of violence. The abusers and victims of gender violence have several socioeconomic causes and implications. The factors that can contribute towards a person to become an abuser are the education, age, marital status, living standard such as income, family background or history of violence, use of drugs and alcohol. Gender violence refers to the violence where the abusers can be men against women, women against men, and same sex violence. In patriarchal societies, dominant role of male is one of the major causes of gender-based violence. For instance, Coleman & Straus (1986) state that the desire to show the power instigates a male to involve in violence. Status inconsistency particularly, higher income of wives is another important reason of domestic violence. For instance, Gelles (1976) report that working-women with less income and non-working women are more prone to violence from their partners. These findings are endorsed by Bornstein (2006) and Sugihara and Warner (2002). Similarly, children's emotional and mental health deteriorates in the environment of violence [Nationmaster (2011)]. Kernsmith (2006) explains the role of family origin of perpetrator in the violent behavior. The findings state that people who face abusive behavior in their childhood turns out to be abusive adults. Thus, violence is a learned behavior which transfers from one generation to the other. Moreover, the financial dependence of women makes them to bear the violence from their partners.

Bushman (1997) identified that alcohol use may lead to aggression, emotional and physical changes which may lead towards acts of violence. Similar findings are corroborated by Rolfe et al. (2006). Stuart et al. (2008) also examine the role of drug use in the gender based violence. Among various factors, the study found that the abusers (male or female) are under the influence of drug while being violent to their partners. However, it's not the only factor which leads to the abusive behavior of perpetrators. Walker (1999) report that, in USA, fifty percent of the population experience violence at some stage of their lives. According to Council of Europe study (1992), 6-10 percent of women experience domestic violence in a given year. Moreover, one in four women face domestic violence from their partner in their lifetimes (Nationmaster, 2011). Violence may lead to various physical and emotional problems among victims. For instance, Eby (2004) finds that women who experience more abusive relationship or face more violence in their life time are prone to more stress and depression as compared to those women who do not face violence.

The influence of culture on the extent of domestic violence is documented by various studies [Levinson (1989); Torres (1991); Counts et al. (1992); Heise et al. (1999)] In particular, Levinson (1989) and Heise (1998) conclude that in many societies, economic and decision-making power is significant contributors of men's abusive behaviour towards women. Walker (1999) found that cultural difference does play an important role in instigating and/or mitigating the abusive behavior. He argued that religious affiliation and beliefs, social standards, political structure, brought up of men and women, availability of economic and educational resources are important factors which affects the prevalence of violent activities in any society. It is also observed that

despite facing violence and abusive behavior, women prefer to remain in a relationship mainly due to honor syndrome, family loyalty and reputation[Vandello and Cohen (2003)]. The cultural norms where family honor is given priority, women stay in the relationship even if they face violence from their partners. In many ways, honor syndrome gives strength to men for being violent and abusive. Similarly, female infidelity is another reason for a men to initiate violence [Vandello and Cohen (2003)].

Edelson, et al. (2007) conclude that Latina women suffer from depression and anxiety due to violence, therefore, contributes less in the society and economy. Based on the concept of Machismo, in Latina culture, men are supposed to be strong, honored and full of pride which portrays a positive aspect of the society. However, it has also created negative effects in the society as it makes men powerful, aggressive, and abusive. On the other hand, according to marianismo, women are supposed to be soft nature, sacrificing and compromising for family. Hence, these cultural norms lead to violent and abusive behavior of men.

Over the time, internationally and nationally, various legislations have been established in order to recognize women's right and to avoid gender-based violence. The universal declaration of Human Rights in 1948 is the pioneering establishment for preventing violence against women. This declaration advocates the rules and regulation for women's rights, and equality of all human beings especially women. The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") was established in 1979. It is considered one of the major steps for establishing the rights for women and has been signed by 188 countries. Further, the Inter-American Convention was established in 1994 for the eradication of violence against. Maputo Protocol, in African Charter, governs the rule for women rights and violence against women. In recent past, United Nations Conference on Human Rights in 1993 declared women's rights as Human rights. UN Declaration on the Elimination of Violence against Women (DEVAW) defines any act which leads to physical, psychological, sexual harm, deprivation of women as gender based violence.

Onyemelukwe (2018) analyze the impact of legislation on domestic violence against women in Nigeria. The study explains effectiveness of laws to not only prevent violence against women but also their potential to prevent the committers, enforce punishments and compensate the victims. The findings of the study state that due to various socio political challenges in the country, the laws are not as effective as they are expected to be.

We can say the literature does not clearly link gender violence to institutions. However, there is enough indication from the literature to assert that legislation and culture play some role in exacerbating or mitigating gender-based violence and gives us a basis for our study.

Methodology and Data

We use a variety of techniques for analyzing the relationship between legislation, culture and gender violence. The first step is the construction of an indicator for cultural inequality between the two genders. The construction of the variable for gender inequality in culture utilizes data from World Value Survey (WVS). We have accessed the last four rounds of the survey and our indicator for gender-cultural values comprises of the responses of three survey questions. These questions capture gender equality/inequality from three different perspectives: education, economic opportunities and power. The question capturing power was worded, "*Men make better political leaders than women do*". The responses of "*Agree*" and "*Strongly Agree*" were aggregated and proportion of the aggregated response from total number of respondents was an indicator of cultural assertion of gender inequality in dimension of political power. The dimension of economic opportunities was depicted by the question, "*Men make better business executives than women do*". Again, the responses in affirmation were aggregated and the proportion of affirmative responses from total number of respondents was treated as an indicator of gender inequality in economic opportunities as part of the cultural framework. The statement, "*University education is more important for a boy than for a girl*" depicts the education dimension of gender inequality in cultural value and indicator is generated by using the aforementioned method. The three indicators are then averaged and a composite measure of gender inequality in culture is obtained. It is assumed that culture that incorporates gender inequality in its core values also fail to provide adequate protection to women against physical and sexual violence.

In addition, the data from Gender Statistics of the World Bank are used to construct indicators for legislation and constitutional reforms. The dummy for legislation assumes the value 1 if the country has explicit legislation pertaining to domestic violence and zero otherwise. Similarly, if the country's constitution has a

clause regarding nondiscrimination on the basis of gender then the dummy variable for constitution will assume the value one and otherwise its value will be zero.

The data on physical and sexual violence is collected from UNDP's special publication on the World's Women 2015: Trends & Statistics. Both physical and sexual violence are divided further into two categories namely, violence by all perpetrators and violence by intimate partner. It is measured as a percentage of women who reported experiencing physical and sexual violence in their lifetime.

Discussion of Results

The discussion of results is started with frequency distribution of selected variables. Frequency distribution of the incidence of gender violence by region given in Table 1 simply allows us to analyze which regions experience higher incidence of gender-based violence. Africa seems to experience highest incidences of gender based violence, probably owing to lower levels of economic and institutional development. Lowest incidences of intimate partner physical and sexual violence happen to be Europe. Further culturally ingrained gender inequality is also highest in Africa and Asia and in relative terms lowest in the Americas, with Europe lying somewhere in between.

Table 2 further elaborates the prevalence of gender-based violence through quintile distribution. Some very surprising findings come into light e.g. countries like the Netherlands, Australia, the United Kingdom, Finland France and Japan etc. seem to lie in the highest (4th and 5th) quintiles, while less developed countries like Burkina Faso, Azerbaijan, Tunisia, India and Nigeria etc lie in the lowest (2nd and 1st) quintiles. While this is contrary to the expectations so it does lent credence to the need for further analysis.

For further in-depth analysis, we compute cross tabulation among the types of violence and culture, constitution, and the law. Particularly, Tables 3-6 explain cross-tabulation between gender-based violence and non-discrimination clause in the constitution. In Table 3, out of 36, 24 countries that experience a high incidence of sexual violence by all perpetrators also have a nondiscrimination clause in their constitution. While 16 out of 27 countries that report low incidence of sexual violence do not have a non-discrimination clause in their constitution. Similarly from Table 4 we can see that out of 36 countries that experienced high sexual violence by intimate partner, 19 has a non-discrimination clause in the constitution while 21 out of 27 countries with low incidence of sexual violence by intimate partner do not have a nondiscrimination clause in their constitution. Table 5 depicts cross-tabulation between constitutional rule against gender discrimination and physical violence by all perpetrators. Twenty five out of thirty six countries with highest incidence of physical violence have nondiscrimination clause in their constitution. However, 15 opt of 27 countries that experience low physical violence have nondiscrimination clause. Table 6 depicts that 21 out of 36 countries with highest incidence of physical violence by intimate partner have nondiscrimination on gender basis as part of their constitution. Additionally, 19 out of 27 countries with low incidence of physical violence do not have nondiscrimination clause. This shows a very ambiguous relationship between the constitutional rules and gender-based violence.

Tables 7-10 depict the cross-tabulation between gender-based violence and legislation against domestic violence. Table 7 displays the cross-tabulation results for legislation and sexual violence by all perpetrators. While the incidence countries are more or less evenly distributed, 10 out of 12 countries with low incidence of sexual violence have explicit legislation in place in order to control domestic violence. The results in Table 8 give relationship between legislation and sexual violence by intimate partner. The results show that out of 52 countries with high incidence of sexual violence by intimate partner 33 had no legislation against domestic violence. While 7 out of 12 countries with low incidence of sexual violence had legislation against domestic violence. Table 9 depicts an ambiguous and unclear relationship between legislation and incidence of intimate partner physical violence. This ambiguity is not even cleared up in Table 10.

Table 11 divides the countries in our sample into four quadrants. Quadrant 1 includes countries with explicit legislation against domestic violence and higher gender equality in cultural values. The countries that lie in this quadrant are mostly high income developed nations. Majority of the countries in this group experience to moderate to lowest incidence of physical violence, notable exceptions being Australia, France, UK and USA, all these nations experience high incidences of physical violence. A similar trend is observable in case of sexual violence. Interestingly none of the countries in this group lie in the fifth quintile for sexual violence by intimate partner.

Quadrant 2 contains countries with legislation against domestic violence and gender inequality in cultural values. This particular group of countries lies mostly in Asia and Africa. The few exceptions are situated in Eastern Europe. Majority of countries in quadrant 2 experience moderate to lowest incidence of physical violence. More noticeable is that in case of physical violence perpetrated by intimate partner, most countries belonging in quadrant 2 lie in the 2nd and first quintiles. The incidence of sexual violence is also lying for the most part between third and first quintiles.

Quadrant 3 includes countries that have no legislation against domestic violence but high gender equality in cultural values. This quadrant is having only three countries from which the Netherlands and Tanzania lie in 4th and 5th quintile in physical violence and sexual violence by intimate partner. The data for Canada is only available for physical violence by intimate partner and that too lies in the 1st quintile showing lower levels of physical violence in Canada.

Quadrant 4 comprises of countries that do not have any legislation against domestic violence and also have high levels of gender inequality in their culture. This quadrant also has fewer countries than quadrant 1 and 2, owing to most countries now having an explicit legislation against domestic and gender based violence. Given this state of affairs, the trend remains unclear.

Table 12 also divides the countries in our sample into four groups. Quadrant 1 includes countries that have a nondiscrimination clause in the constitution accompanied by higher levels of gender equality in culture. This group is also comprised of mostly highly developed countries like Canada, Japan, Switzerland, Spain, and the Netherlands, with Tanzania being the apparent outlier. Incidences of physical violence seem to be less rampant in these countries. With the exception of the Netherlands, most of the better-developed countries in this group lie in the 3rd or lower quintile in terms of physical violence. None of these lie in 5th quintile in case of physical violence by all perpetrators. Switzerland, Japan and Netherlands lie in the 4th and 5th quintile of the prevalence of sexual violence.

Quadrant 2 in the Table 12 comprises of countries that have a nondiscrimination clause in their constitution but do not have gender equality in its culture. Most countries in this group belong to the category of developing nations. Out of 16 countries 5 lie in the 4th and 5th quintile, depicting higher incidence of physical violence by all perpetrators. All of these are African countries. Out of 22, about half of these countries lie in the 4th and 5th quintile of physical violence by intimate partner. This shows a notable increase in the incidence of violence if the cultural values are conducive towards gender inequality. Similar tendency is notable in case of sexual violence with 6 out of 7 countries that lie in the 5th quintile of sexual violence by intimate partner belong in this group.

Quadrant 3 includes countries that do not have a nondiscrimination clause in their constitution but have higher gender equality in their culture. Interestingly, this quadrant has some of the most developed nations of the world. Majority of these countries lie in the 1st and 2nd quintile of physical violence. About four out of seventeen of these countries lie in the 4th and 5th quintile of physical violence by all perpetrators. Similarly, majority of these countries lie in the 3rd to lowest quintile in sexual violence. This trend combined with the results from the first quadrant clearly depicts the efficacy of cultural equality between the two sexes in prevention of gender-based violence.

Countries that lie in quadrant 4 also do not have a nondiscrimination clause in their constitutions accompanied by high levels of cultural gender-inequality. Only ten out of the 64 countries analyzed in this study lie in this category. Here we can observe that none of them are situated in the 4th or 5th quintiles for physical violence by all perpetrators. Only Latvia lies in the 4th quintile for physical violence by intimate partner. Similar situation is observed in case of sexual violence.

To check the robustness of the afore-described results a simple descriptive analysis of this institutional breakdown and incidence of violence has been carried out. Each row represents average incidence of a particular type of violence, dispersion giving by standard deviation in parentheses and the minimum and maximum incidence of particular type of violence. Table 13 gives the descriptive statistics for incidences of gender-based violence according to the institutional combination comprising of legislation against domestic violence and gender inequality in cultural values. Physical violence and sexual violence by all perpetrators is most prevalent in countries that do not have legislation against domestic violence, with or without gender inequality in their culture. However, physical violence by intimate partner is more prevalent in countries that do not have gender

equality as prevailing cultural value. This particular analysis depicts the relative effectiveness of legislation in reducing gender-based violence.

Table 14 carries out a similar analysis for incidences of gender-based violence according to the institutional combination comprising of nondiscrimination clause in constitution and gender inequality in cultural values. Highest average prevalence of gender-based violence in categories of violence is noticeable in countries in quadrant 2 i.e. countries with nondiscrimination clause in the constitution accompanied by high gender inequality in culture. These results depict relative effectiveness of cultural values in mitigation of gender-based violence.

Our results show that in relative terms cultural values encapsulating gender inequality have been negating formal efforts for mitigation of gender-based violence. As we can see from the cross-tabulation results that legislation and constitution remain most ineffective and at times even violence enhancing. This gives credence to the idea that formal constraints remain insufficient in reducing gender-based violence and may require cultural support in the matter.

Table 1. Frequency Distribution by Region

Variable	Africa Freq (< Median)	Freq (>Median)	Asia Freq (<Median)	Freq (>Median)	Europe Freq (<Median)	Freq (>Median)	South America Freq (<Median)	Freq (>Median)	North America Freq (<Median)	Freq (>Median)
Physical Violence (IP)	5 (38.46)	8 (61.54)	6 (42.86)	8 (57.14)	20 (74.07)	7 (25.93)	1 (20)	4 (80)	2 (50)	2 (50)
Physical Violence (AP)	2 (15.38)	11 (84.62)	5 (35.71)	9 (64.29)	13 (48.15)	14 (51.85)	2 (40)	3 (60)	1 (25)	3 (75)
Sexual Violence (AP)	2 (15.38)	11 (84.62)	7 (50)	7 (50)	15 (55.56)	12 (44.44)	3 (60)	2 (2)	1 (25)	3 (75)
Sexual Violence (IP)	5 (8.46)	8 (61.54)	6 (42.86)	8 (57.14)	22 (81.48)	5 (18.52)	1 (20)	4 (80)	3 (75)	1 (25)
Culture_D	0 (0)	13 (100)	2 (14.29)	12 (85.71)	15 (55.56)	12 (55.56)	4 (80)	1 (20)	3 (75)	1 (25)

Table notes: To be more specific, we take only Canada, and USA in North America, and the poverty level appears less than median level. Similarly, the cultural appears to be non-patriarchal.
Culture dummy is created by taking median of respective series as the benchmark. (1 represents above median level i.e. high gender inequality in culture and 0 otherwise)

Table 2. Quintile Distribution of Physical & Sexual Violence
Physical Violence

	All Perpetrators (AP)	Intimate Partner (IP)
1st quintile	Burkina Faso, Azerbaijan, China, Colombia, Croatia, Guatemala, Mexico, Philippines, Poland, Moldova, Romania, Singapore, Ukraine	Burkina Faso, Armenia, Canada, China, Croatia, Mexico, Philippines, Poland, Singapore, Slovenia, South Africa, Spain, Switzerland, Ukraine
2nd quintile	Armenia, Bulgaria, Germany, Hungary, India, Italy, Kyrgyzstan, Nigeria, Slovenia, Spain, Switzerland	Azerbaijan, Czech Republic, Estonia, Germany, Ghana, Hungary, Italy, Jordan, Nigeria, Norway, South Korea, Slovakia, Sweden, Tunisia
3rd quintile	Czech Republic, Estonia, Jordan, Latvia, Lithuania, Morocco, Pakistan, Rwanda, Slovakia, Sweden, Tunisia, Vietnam, Zimbabwe	Albania, Australia, Bulgaria, El Salvador, Guatemala, Japan, Kyrgyzstan, Lithuania, The Netherlands, Pakistan, Moldova, Romania, The UK, USA
4th quintile	Australia, Ecuador, Ghana, Mali, The Netherlands, Tanzania	Ecuador, Egypt, Finland, France, India, Latvia, Mali, Peru, Palestine, Vietnam, Zimbabwe
5th quintile	Egypt, Finland, France, Uganda, The UK, USA, Zambia	Bangladesh, Colombia, Rwanda, Turkey, Uganda, Tanzania, Zambia

Sexual Violence

	All Perpetrators (AP)	Intimate Partner (IP)
1st quintile	Azerbaijan, Colombia, Croatia, Guatemala, Kyrgyzstan, Poland, Romania, Singapore, Spain, Ukraine	Burkina Faso, Armenia, Azerbaijan, Croatia, Georgia, Italy, Kyrgyzstan, Lithuania, Moldova, Poland, Singapore, Slovenia, Spain, Switzerland, Ukraine
2nd quintile	Armenia, Bulgaria, Czech Republic, Hungary, India, Italy, Jordan, Lithuania, Nigeria, Philippines, Puerto Rico, Slovakia, Slovenia, Vietnam	Azerbaijan, China, Czech Republic, Egypt, Estonia, Germany, Hungary, Jordan, Mexico, Nigeria, Philippines, Puerto Rico, Romania, South Africa, Sweden
3rd quintile	Bulgaria, China, El Salvador, Estonia, Finland, France, Germany, Latvia, Mali, Morocco, The Netherlands, Pakistan, Tunisia, The UK, USA	Albania, Australia, Bulgaria, El Salvador, France, Ghana, India, Latvia, Lithuania, Norway, Peru, Pakistan, Moldova, South Korea, Slovakia, The UK, USA, Vietnam
4th quintile	Australia, Ghana, Tanzania, Rwanda, South Korea, Zambia, Switzerland	Colombia, Ecuador, Finland, Guatemala, Japan, Mali, The Netherlands, Tunisia, Turkey, Vietnam
5th quintile	Ecuador, Mexico, Uganda, Sweden, Zimbabwe	Bangladesh, Rwanda, Uganda, Tanzania, Palestine, Zambia, Zimbabwe

Table 3. Cross-tabulation: Nondiscrimination in Constitution and Sexual Violence by AP

Constitution\ Sexual Violence by AP	No Nondiscrimination Clause in Constitution	Nondiscrimination clause in constitution	
Low Incidence of Sexual Violence (AP)	16 (59.26)	11 (40.74)	27 (100)
High Incidence of Sexual Violence (AP)	12 (33.33)	24 (66.67)	36 (100)
	28 44.44)	35 (55.56)	63 (100)

Pearson chi2(1) = 4.2000* Pr = 0.040

Constitution represents the Nondiscrimination clause mentions gender in the constitution (1=yes; 0 otherwise). The dummy for incidence of sexual violence (AP) is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of sexual violence of above median level and 0, otherwise)

Table 4. Cross-tabulation: Nondiscrimination in Constitution and Sexual Violence by IP

Constitution\ Sexual Violence (IP)	No Nondiscrimination Clause in Constitution	Nondiscrimination Clause in Constitution	
Low Incidence of Sexual Violence (IP)	21 (77.78)	6 (22.22)	27 (100)
High Incidence of Sexual Violence (IP)	17 (47.22)	19 (52.78)	36 (100)
	38 (60.32)	25 (39.68)	63 (100)

Pearson chi2(1) = 6.0182   Pr = 0.014

Constitution represents the Nondiscrimination clause mentions gender in the constitution (1=yes; 0 otherwise). The dummy for sexual violence by IP is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of sexual violence by IP of above median level and 0, otherwise)

Table 5. Cross-tabulation: Nondiscrimination in Constitution and Physical Violence by AP

Constitution\ Physical Violence (AP)	No Nondiscrimination Clause in Constitution	Nondiscrimination Clause in Constitution	Total
Low Incidence of Physical Violence (AP)	12 (44.44)	15 (55.56)	27 (100)
High Incidence of Physical Violence (AP)	11 (30.56)	25 (69.44)	36 (100)
	23 (36.51)	40 (63.49)	63 (100)

Pearson chi2(1) = 1.2840   Pr = 0.257

Constitution represents the Nondiscrimination clause mentions gender in the constitution (1=yes; 0 otherwise). The dummy for physical violence by AP is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of violence of above median level and 0, otherwise)

Table 6. Cross-tabulation: Nondiscrimination in Constitution and Physical Violence by IP

Constitution\ Physical Violence (IP)	No Nondiscrimination Clause in Constitution	Nondiscrimination Clause in Constitution	Total
Low Incidence of Physical Violence (IP)	19 (70.37)	8 (29.63)	27 (100)
High Incidence of Physical Violence (IP)	15 (41.67)	21 (58.33)	36 (100)
	34 (53.97)	29 (46.03)	63 (100)

Pearson chi2(1) = 5.1169* Pr = 0.024

Constitution represents the Nondiscrimination clause mentions gender in the constitution (1=yes; 0 otherwise). The dummy for physical violence by IP is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of violence of above median level and 0, otherwise)

Table 7. Cross-tabulation: Legislation against Domestic Violence and Sexual Violence by AP

Legislation against Domestic Violence/ Sexual Violence (AP)	No Legislation against Domestic Violence	Legislation against Domestic Violence	Total
Low Incidence of Sexual Violence (AP)	2 (16.67)	10 (83.33)	12 (100)
High Incidence of Sexual Violence (AP)	26 (50.00)	26 (50.00)	52 (100)
	28 (43.75)	36 (56.25)	64 (100)

Pearson chi2(1) = 4.4021   Pr = 0.036
Legislation against Domestic Violence is a dummy variable for whether Legislation exists on domestic violence (1=yes; 0. Otherwise). The dummy for Sexual Violence by AP is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of sexual violence by all partners of above median level and 0, otherwise)

Table 8. Cross-tabulation: Legislation against Domestic Violence and Sexual Violence by IP

Legislation against Domestic Violence/ Sexual Violence (IP)	No Legislation against Domestic Violence	Legislation against Domestic Violence	Total
Low Incidence of Sexual Violence (IP)	5 (41.67)	7 (58.33)	12 (100)
High Incidence of Sexual Violence (IP)	33 (63.46)	19 (36.54)	52 (100)
	38 (59.38)	26 (40.62)	64 (100)

Pearson chi2(1) = 1.9201   Pr = 0.166
Legislation against Domestic Violence is a dummy variable for whether Legislation exists on domestic violence (1=yes; 0. Otherwise). The dummy for Sexual Violence (IP) is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of sexual violence by intimate partner of above median level and 0, otherwise)

Table 9. Cross-tabulation: Legislation against Domestic Violence and Physical Violence by IP

Legislation against Domestic Violence/ Physical Violence (IP)	No Legislation against Domestic Violence	Legislation against Domestic Violence	Total
Low Incidence of Physical Violence (IP)	6 (50.00)	6 (50.00)	12 (100)
High Incidence of Physical Violence (IP)	28 (53.85)	24 (46.15)	52 (100)
	34 (53.12)	30 (46.88)	64 (100)

Pearson chi2(1) = 0.0579   Pr = 0.810
Legislation against Domestic Violence is a dummy variable for whether Legislation exists on domestic violence (1=yes; 0. Otherwise). The dummy for physical violence (IP) is generated by taking median value

of the series as the benchmark. (where 1 represents the prevalence of violence by intimate partner of above median level and 0, otherwise)

Table 10. Cross-tabulation: Legislation against Domestic Violence and Physical Violence by AP

Legislation against Domestic Violence/ Physical Violence (AP)	No Legislation against Domestic Violence	Legislation against Domestic Violence	Total
Low Incidence of Physical Violence (AP)	2 (16.67)	10 (83.33	12 (100)
High Incidence of Physical Violence (AP)	21 (40.38)	31 (59.62)	52 (100)
	23 (35.94)	41 (64.06)	64 (100)

Pearson chi2(1) = 2.3824 Pr = 0.123

Legislation against Domestic Violence is a dummy variable for whether Legislation exists on domestic violence (1=yes; 0. Otherwise). The dummy for physical violence (IP) is generated by taking median value of the series as the benchmark. (where 1 represents the prevalence of violence by all partners of above median level and 0, otherwise)

Table 11. Institutional Mix: Legislation & Culture

(1)
Legislation Against Domestic Violence Exists
High Gender Equality in Cultural Values
Albania, Australia, Bulgaria, China, Colombia, Cyprus, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Hungary, Italy, Japan, Lithuania, Mexico, Norway, Peru, Poland, Puerto Rico, Romania, Singapore, Slovenia, Spain, Sweden, Switzerland, UK, USA

(2)
Legislation Against Domestic Violence Exists
High Gender Inequality in Cultural Values
Azerbaijan, Bangladesh, Croatia, Czech Republic, Georgia, Ghana, India, Jordan, Kyrgyzstan, Nigeria, Pakistan, Philippines, South Korea, Moldova, Rwanda, Slovakia, South Africa, Turkey, Uganda, Ukraine, Vietnam, Zambia, Zimbabwe

(3)
No Legislation Against Domestic Violence
High Gender Equality in Cultural Values
Canada, Netherlands, Tanzania

(4)
No Legislation Against Domestic Violence
High Gender Inequality in Cultural Values
Burkina Faso, Armenia, Egypt, Latvia, Mali, Morocco, Palestine, Tunisia

Table 12. Institutional Mix: Constitution & Culture

(1)
Nondiscrimination Clause in Constitution
High Gender Equality in Cultural Values
Albania, Canada, Colombia, Cyprus, Ecuador, Hungary, Japan, Mexico, Netherlands, Peru, Puerto Rico, Spain, Switzerland, Tanzania

(2)
Nondiscrimination Clause in Constitution
High Gender Inequality in Cultural Values
Burkina Faso, Armenia, Bangladesh, Egypt, Estonia, Ghana, India, Kyrgyzstan, Mali, Nigeria, Pakistan, South Korea, Moldova, Rwanda, Slovakia, South Africa, Palestine, Turkey, Uganda, Vietnam, Zambia, Zimbabwe

(3)
No Nondiscrimination Clause in Constitution
High Gender Equality in Cultural Values
Australia, Bulgaria, China, El Salvador, Finland, France, Germany, Guatemala, Italy, Lithuania, Norway, Poland, Romania, Singapore, Slovenia, Sweden, USA

(4)
No Nondiscrimination Clause in Constitution
High Gender Inequality in Cultural Values
Azerbaijan, Croatia, Czech Republic, Georgia, Jordan, Latvia, Morocco, Philippines, Tunisia, Ukraine

Table 13. Descriptive Statistics for Gender-based Violence

	Nondiscrimination in Constitution & High Gender Equality in Culture	Nondiscrimination in Constitution & High Gender Inequality in Culture	No Nondiscrimination in Constitution & High Gender Equality in Culture	No Nondiscrimination in Constitution & High Gender Inequality in Culture
Physical Violence (AP)	27.1 (9.71) [15.2, 41]	**34.4 (9.46) [19.8, 58.0]**	28.4 (12.48) [6.8, 51.9]	26.0 (8.96) [13.3, 36]
Physical Violence (IP)	23.1 (11.81) [7.5, 39.2]	**28.4 (13.58) [8.9, 64.6]**	19.2 (6.98) [5.7, 28.8]	16.3 (7.4) [5.4, 31]
Sexual Violence (AP)	16.2 (11.32) [5.0, 38.9]	**16.3 (8.79) [3.4, 33.4]**	12.2 (6.66) [4.2, 26]	10.2 (6.16) [3.7, 22.6]
Sexual Violence (IP)	8.9 (4.5) [3.0, 17.2]	**11.7 (9.10) [1.5, 36.5]**	7.3 (2.95) [1.2, 12.3]	6.1 (3.88) [2.4, 14.2]

Notes. The values in parenthesis represents standard deviation while values in square brackets indicate minimum and maximum of the respective category

Table 14. Descriptive Statistics for Gender-based Violence

	Legislation against Domestic Violence & High Gender Equality in Culture	Legislation against Domestic Violence & High Gender Inequality in Culture	No Legislation against Domestic Violence & High Gender Equality in Culture	No Legislation against Domestic Violence & High Gender Inequality in Culture
Physical Violence (AP)	27.48 (11.38) [6.8, 51.9]	30.69 (10.80) [13.3, 58]	**39.85 (1.63) [38.7, 41]**	33.64 (8.74) [19.8, 47.4]
Physical Violence (IP)	20.89 (8.82) [5.7, 39.2]	**25.5 (14.40) [5.38, 64.6]**	22.9 (15.87) [7.5, 39.2]	23.79 (10.35) [8.9, 33.2]
Sexual Violence (AP)	13.36 (8.78) [4.2, 38.9]	13.24 (9.14) [3.4, 33.4]	**19.15 (1.63) [18, 20.3]**	16.23 (4.43) [12.6, 22.6]
Sexual Violence (IP)	7.63 (3.32) [1.2, 14.5]	10.51 (9.18) [2.4, 36.5]	**14.1 (4.38) [11, 17.2]**	9.08 (5.51) [1.5, 15.05]

Notes: The values in parenthesis represents standard deviation while values in square brackets indicate minimum and maximum of the respective category

Conclusion

Gender-based violence can involve physical, sexual and emotional abuse. It reflects the dichotomous nature of a society where instead of conduct or actions, sex determines individual's fundamental rights. This practice for the most part is directed from males towards females. This means that the impact of gender-based violence is disproportionately acute for women. The recourse to violence may be attributed to the possibility that benefits derived from it exceed costs. These costs are determined by the existence of violence inhibiting institutions. Existence of democratic and open institutional order, legislation preventing gender-based violence and lack of cultural acceptance for gender-based violence increase the cost of perpetrating violence and hence reduce gender-based violence.

Our research aims to empirically investigate the relative effectiveness of laws and cultural characteristics of the society in controlling gender violence. We hypothesize that cultural values are more effective in regulating gender-based violence than legislation. We have explored this relationship for physical violence and sexual violence against women using cross-sectional data from 64 countries. The cultural dimension constitutes views pertaining to gender inequality in politics, economic opportunities and education, while specific legislations relating to gender relations have been incorporated by using categorical variables. Further, an additional dimension of nondiscrimination clause in constitution has been added.

Using rigorous descriptive analysis it has been found that cultural values play a more significant role in gender-based violence. Our analysis clarifies that legislation and constitution are relatively ineffective in mitigating gender-based violence and the cultural values comprising of gender inequality have a higher tendency of exacerbating gender-based violence. This point towards the need for a more strict implementation of women protection laws and more severe penalties for the violators in the short run, since cultural change takes time. Further, long term planning for educating both sexes in equitable and respectful gender relation may also be in order.

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Conditions of Child Rights in Contemporary Age

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ISSUES AND CHALLENGES OF *TAHFIZ* EDUCATION GOVERNANCE ON THE HUMAN RIGHTS OF VULNERABLE MUSLIM CHILDREN IN MALAYSIA

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Abstract: *Approximately sixty percent of Malaysia's population comprises Malay-Muslims, whose children attend national, private or religious schools. The concern that secular education does not provide adequate moral values and spiritual compass has resulted in the popularity of Tahfiz education; which is provided by some Federal, State, private educational institutions and orphanages; entailing the memorization, recitation, and appreciation of the Al-Quran and Hadith. Some Tahfiz educational institutions attract poor parents as they pay little or no fees. The exponential growth of private un-registered Tahfiz institutions has resulted in questionable academic standards, injuries, abuse and even deaths of Muslim children; which are against Islamic and secular principles, which put the child's best interests at the forefront. An identification of the issues and challenges of Tahfiz education governance through an analysis of enactments, official publications, media coverage and policy statements, show that the inability to uphold children's rights are attributable to: (i) conflicting goals and strategies of numerous stakeholders; (ii) insufficient harmonization and coordination of inter-agencies' efforts, processes and responsibilities across, and over obstacles posed by, Federal and States' jurisdictional boundaries; and (iii) fluctuating commitment and political will to address inconsistencies and weaknesses identified. The human rights of vulnerable Muslim children will continue to be jeopardized unless the above are effectively addressed.*

Introduction

Public policy discussions on education and the rights of children are contentious in nature because of the issues' multidimensional characteristics, analytical frameworks used, and conflicting stakeholders' interests. Hence the legal frameworks, administrative structures and processes of the issues' governance are important as these: (i) regulate and influence stakeholders' participation and facilitate the attainment of consensus; (ii) ensure that future policy directions are established; (iii) determine institutional performance by focusing on their responsiveness, efficiency and effectiveness; (iii) act as accountability mechanisms for decision-makers; (iv) set the level of transparency required for informed decision-making; and (v) influence the level of fairness for all stakeholders[1].

The establishment and evolution of Islam as a religion have led to the need for, and importance of, *Tahfiz* education (the memorization, recitation, understanding and appreciation of the Al-Quran and Hadith) in Malaysia. Of late issues of questionable academic standards and the frequency of incidents of injuries, abuse and even deaths of Muslim children at private, mostly un-registered *Tahfiz* educational institutions have led to concerns, and opposing viewpoints on strategies that must be instituted to ensure that their best interests, right to life, survival and development are ensured during the course of their studies[2].

To contextualize the issues and challenges of *Tahfiz* education governance on the human rights of vulnerable Muslim children in Malaysia, an analysis of enactments, official publications, media coverage and policy statements, has been conducted. This article first discusses public policy issues that have arisen in *Tahfiz* education and governance in Malaysia. Second, an examination of the governance and children's rights from secular and Islamic perspectives is presented. Third, issues and challenges of the governance of *Tahfiz* education are identified and recommendations on measures that should be considered if the governance of *Tahfiz* education is to be improved and the rights of vulnerable children safeguarded are put forward. Concluding comments end the article.

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Public Policy Issues in *Tahfiz* Education and Governance in Malaysia

Tahfiz education is of immense importance to Muslims the world over as those who can memorize, recite, understand, appreciate and act upon the words of Allah are promised great benefits, namely: (i) accorded the levels of paradise (*Jannah*) that correspond to their respective levels of memorization; (ii) their parents will be given the highest honour on judgment day (*Qiyaamat*); (iii) they will be amongst humankind's best if they teach Al-Quran to others; (iv) be the envy of others as excellent role models; (v) the reciters of Al-Quran are rewarded ten times the number of letters contained in it, and the acts of recitation are counted as good deeds; (vi) the Al-Quran will intercede for them on Resurrection day; (vii) heaven (*Jannah)* for those memorizing Al-Quran and living the righteous path; (viii) garments of glory and honour for them on judgment day; (ix) being protected from hell's fires; and finally (x) attempts to memorize Al-Quran will be twice rewarded[3].

The governance framework of Islamic religious education in Malaysia is influenced by the federal structure of the country. The Federal Constitution determines the Federal government's powers (federal list), state governments' powers (state list that is applicable to Malaysia's 13 states), as well as federal-state shared powers (concurrent list)[4]. Hence Islamic religious educational institutions offering *Tahfiz* education can fall under the purview of either the Federal government, or the state governments; depending on whether religious education is classified as education or religion.

At the federal level, *Tahfiz* education is provided as a part of the overall Islamic religious curriculum or alongside the national mainstream secular curriculum set by the Ministry of Education (MoE). At present, *Tahfiz* education is provided by the Federal government through: (i) regular mainstream schools; (ii) national religious secondary schools (SMKA); (iii) government-aided religious schools (SABK) and; (iv) some public and private institutions of higher learning. The Islamic religious curriculum provided by mainstream secular schools and Islamic religious schools are similar in nature as all students are exposed to *Tilawah Al-Quran, Akidah, Ibadah, Sirah Nabi* and *Akhlaq Islamiah*. However the Islamic religious curriculum used by the SMKA, specific MARA colleges and SABK also include *Dini* curriculum (comprising *Usul-al-Din, Al-Syariah, Al-Lughah al-Arabiah al-Mu'asirah, Manahij al-'Ulum alIslamiyah* and *Al-Adab wa al-Balaghah*) and *Tahfiz* curriculum (comprising *Hifz al-Quran* and *Maharat al-Quran*)[5].

The Department of Islamic Development Malaysia (JAKIM) is a federal entity that provides inputs in drafting, streamlining, implementing as well as enforcing laws and regulations that safeguard the sanctity of the religion and the welfare of the *ummah*. JAKIM also has its own educational institution - the Darul Quran, which has several branches in various states offering Tahfiz Al-Quran certification and diploma programmes in partnership with public and private universities; so that its graduates can pursue undergraduate and postgraduate studies at recognized and accredited higher educational institutions, locally or overseas[6].

At the state level, *Tahfiz* education is provided as part of the Islamic religious curriculum specified by the MoE, and the curriculum set by each state's religious council or department. It is provided by: (i) people's religious schools (SAR); (ii) state religious schools (SAN); (iii) state foundations' funded religious educational institutions, and; (iv) state-owned religious educational institutions. The enactments passed by State Legislative Assemblies enable State Islamic Religious Councils to possess administrative powers over Islamic religious education matters. Contents of enactments pertaining to the control and monitoring of Islamic religious schools include specifying and clarifying procedures on: (i) registration (application, revocation, appeal and power of registration); (ii) management (formation, membership, duties and responsibilities); (iii) inspectors and inspection of educational premises (appointment, right of inspection, procedures used, right of entry, power of investigation, closure of unregistered premises); and (iv) miscellaneous concerns (powers of exempting any Islamic religious educational institution from monitoring and registration requirements)[7].

Federal and state Islamic educational institutions are registered with the MoE, JAKIM or the respective state religious authorities, and receive public funding. These institutions are mindful of applicable rules and regulations, the provisions and objectives of relevant Acts, Enactments, policies and blueprints such as the Education Act 1966, the Education Development Master Plan 2006-2010, the National Education Policy 2012, the key result areas for education as specified by the Government Transformation Programme (GTP), and the Malaysia Education Blueprint 2013-2025.

It must be noted that the history of *Tahfiz* education in Malaysia can be traced to the 15th century[8]. The propagation of Islam and the provision of *Tahfiz* education have been conducted by *ulama* (pious Islamic

scholars) and *Tabligh* (missionary) movements at *surau*, mosques, private residences or properties donated (*waqf*) by individuals, since then. This practice has led to the establishment of numerous *sekolah pondok* (small buildings or huts used as religious educational premises). The *pondok* adopts the *umumi* (unstructured/general) system whereby instructors and management have the discretion of determining entry requirements and curriculum adopted. The instructors are mainly volunteers, who receive token amounts or are not paid for their services. Some *pondoks* also function as orphanages and accept students with disciplinary and behavioral problems - charging little or no payment for the upkeep and board of their students. The religious knowledge imparted by these establishments include *fardh 'ayn, fardh kifayah* and *Tahfiz* education[9].

There are also *Madrasah* or Arabic schools that provide Islamic religious education of a similar nature found in middle-eastern countries. The *Madrasah* use the *nizami* (structured) system whereby students must sit for the entry qualification examination. Some *madrasah* teach Al-Quran, *Sunnah*, *Syariah* and Arabic language, while others include English, Mathematics, Science and selected subjects taught at mainstream schools. Unlike *pondok, madrasah* hold periodic examinations to enable students to pursue postgraduate studies at higher religious educational institutions overseas[10]. Of late, there are also several well-to-do private Islamic schools that offer *Tahfiz* education, use English and Arabic as mediums of instruction, impose strict admission requirements, provide first class teaching, learning and boarding facilities, and prepare students for iGCSE and GCE A-Level examinations by ensuring that instructors are experienced and qualified; and charging fees of about RM 1,500.00 a month excluding associated costs[11]. Private *Tahfiz* educational institutions can qualify for public funding under Section 52 of the Education Act 1996 if they are registered with the appropriate Federal and State authorities. Funding also comes from individuals, private foundations, student fees and public donations

The mushrooming of private *Tahfiz* establishments can be attributed to the fact that they are fairly easy to establish as some disguise themselves as childcare centres or orphanages, and enjoy a high level of management autonomy. However this has resulted in:

(i) The inability to determine the exact number of *Tahfiz* educational institutions as not all private *Tahfiz* education providers register their establishments. In 2011, it was estimated that there were 278 *Tahfiz* educational institutions comprising 14 (5.04%) government-established institutions, with the remaining 254 (94.96%) institutions established by individuals and other private entities[12]. According to the Federation of National Association of Al-Quran Tahfiz Institutions (PINTA), in 2017 there were approximately 1,200 *Tahfiz* educational institutions with almost half under private management operating without being registered with the respective state Islamic religious councils or the relevant authorities[13].

(ii) The inability to regulate and monitor the types and quality of religious education provided to students. It is observed that the quality and quantity imparted to students at Federal, State, some *madrasah* and well-to-do private Islamic religious schools are far superior to that of their mainstream secular counterparts, poor *pondok* and/or orphanage religious schools. This is because those unregistered are not subject to curriculum monitoring, and could not guarantee the quality and number of instructors employed. Indeed some private *Tahfiz* educational institutions that have limited or inadequate funds are unable to pay and keep quality instructors for long; thus adversely affecting the teaching and learning processes[14]. Moreover, the lack of accreditation of qualifications acquired by students attending these financially unsound institutions has resulted in their having limited employment prospect[15].

(iii) Unregistered/private cash-strapped *Tahfiz* educational institutions also tend not to check the backgrounds and suitability of instructors; and this has contributed to incidents of physical, psychological and sexual abuse of children. Table 1 shows at least 26 students have been sexually, psychologically or physically abused from January 2017 – October 2018. However the exact number is not known as not all cases have been reported to the authorities, or have been brought to media's attention.

Table 1: Reported Abuse Cases at Unregistered *Tahfiz* Educational Institutions

(January 2017 – October 2018)

Date	Offence	Offender	Victim	Source
September 2018	psychological abuse & caning	2 teachers	One 8 year-old student	Bernama[16]
September 2018	sodomy	Principal	Nine 11-16 year-old students	New Straits Times[17]
July 2018	oral sex	1 teacher	One 14 year-old student	The Star[18]
April 2018	sodomy	1 Bangladeshi teacher	A group of male students	New Straits Times[19]
March 2018	sodomy & molestation	1 volunteer	Ten 14 – 17 year-old boys	New Straits Times[20]
April 2017	physical abuse	1 assistant warden	Fifteen male students	Says.com[21]

Source: adapted from various newspaper reports, 2017-2018.

Another concern is some registered and unregistered *Tahfiz* educational establishments' non-compliance with fire safety standards and building codes. The Malaysian Fire and Rescue Department (JBPM) has performed checks on 1,238 *Tahfiz* educational premises from September 25 – October, 2017 and found that building permits have been issued to only 80 premises. Moreover 252 premises have not met the required fire safety standards; resulting in 367 notices being issued so as to ensure that sources of potential fire hazards are rectified[22]. Table 2 shows the injuries, deaths and damages that have occurred because of fire-related incidents at *Tahfiz* educational institutions; whose lack of certification has not prevented some of them from operating.

Table 2: Outcomes of Fire Related Incidents at unregistered *Tahfiz* Educational Institutions (2007 -2017)

Year	Injury	Death	Building Damaged/Destroyed
2017	1	24 (22 students & 2 teachers)	9
2016	-	-	7
2015	3	-	5
2014	-	-	1
2013	2	1	2
2012	-	-	2
2011	-	1	4
2007	-	-	3
Total	6	26	33

Source: Adapted from Dr. Jacob George's post[23]

The Governance Frameworks and Rights of Muslim Children in Malaysia

The rights of Muslim children in Malaysia are specified by, and provided for, by: (i) Islam as a religion through *Syariah* laws; (ii) fundamental human rights guaranteed by the Federal Constitution, numerous pieces of legislations that affect children's rights directly or indirectly, the use of case decisions (common law); and (iii) the National Policy on Children and the National Child Protection Policy with the required Action Plans in 2009[24].

First, Al-Quran specifies the rights and responsibilities given by Allah to humankind regarding the raising of their children, and their ultimate accountability to the Creator. Children's rights include the right to life, to be raised in a proper manner and in secure environments that are conducive to emotional, intellectual, physical, moral /religious and spiritual development so they can be good Muslims. The enactment of Islamic Family Law, 1990 (Enactment No.5) specifies the responsibilities of parents/guardians in safeguarding children's rights; thus illustrating the government's commitment to attain these divine ordained rights. Article 72 Clause (1) Enactment No. 5 states that unless otherwise stated by the court, the primary responsibility of the father is to provide support for his child whether the child is in his custody or in the custody of another. Article 89 Clause (1) Enactment No. 5 lists the order of people with the right of guardianship, and over the property, of a child while article 88 Clause (2) Enactment No. 5 specifies the guardian's roles and responsibilities.

Second, secular provisions affecting children's rights include Articles 5 to 13 of Malaysia's Federal Constitution on its citizens' fundamental rights. A specific Act on the protection, needs and welfare of children is the Child Act 2001which came into being with the ratification of the 1995 Convention on the Rights of the Child (CRC). The Child Act 2001 repeals and synthesizes numerous Acts that affect the rights and welfare of the child such as the Juvenile Courts Act 1947 (Act 90), the Women and Girls Protection Act 1973 (Act 106), and the Child Protection Act 1991 (Act 468). The Child Act 2001 (Act 611) has resulted in the establishment of a National Council for the Protection of Children; (ii) a National Advisory and Consultative Council for Children; and (iii) Child Protection Teams and Child Activity Centres at state and district levels to enhance and mobilize community participation for the protection and rehabilitation of children and families who are at risk of being, or have been, abused or exploited[25]. Sections 31(1) (a) and 91(1) (e) of the Child Act 2001, Section 14(a) of the Sexual Offences Against Children Act 2017 and Sections 377A, 377B, 377C, 377CA, 377D and 377E of the Penal Code 2015 (Act 574) are often used to protect children from sexual abuse. Other important legislations include the Adoption Act 1952, Child Care Centres Act 1984 (Act 308), the Education Act 1996 (Act 550), Domestic Violence Act 1994, Children and Young Persons (Employment) (Amendment) Act 2010, and the Domestic Violence (Amendment) Act 2017.

Third, the National Policy on Children and the National Child Protection Policy (with Action Plans) have also been introduced in 2009. These policies and action plans seek to bring about and implement measures that are consistent with the CRC's General Principles of non-discrimination, child's best interest, right to life, development and survival, as well as incorporating the views and opinions of the child. Hence the focus has been on implementing preventive strategies, targeting vulnerable at-risk communities and forging smart partnerships across the different tiers of society in the effort to promote society's awareness[26].

Issues and challenges of the governance of *Tahfiz* education and their implications on the human rights of vulnerable Muslim children

Vulnerable children are children below 18 years of age who do not have sufficient care and protection which leave them open to negative risks; whereby the extent of vulnerability increases in a downward spiral manner with every new shock experienced resulting in higher probability of adverse outcomes for them[27]. The discussions undertaken earlier show several issues and challenges of the governance of *Tahfiz* education as posing negative risks on the human rights of vulnerable Muslim children.

First, the legal frameworks, administrative structures and processes of the governance of *Tahfiz* education need to be better coordinated with those instituted for the protection of children's rights. However harmonization and coordination of inter-agencies' efforts, processes and responsibilities across and over obstacles posed by Federal and States' jurisdictional and policy boundaries are difficult to achieve given the different enactments used by each State. Moreover as registration of all private *Tahfiz* educational institutions is not yet mandatory, enforcing a minimum standard that must be met in terms of accountability for the quality

of education, instructors and staff, as well as facilities provided, that are conducive to the protection of children's rights, is almost impossible.

Second, important stakeholders must perform their roles in a conscientious manner by ensuring inclusivity in decisions made. The MoE, JAKIM, the religious councils and departments from all states, the Women, Family and Community Development Ministry, local government authorities, PINTA, the Fire and Rescue Department, Human Rights Commission (SUHAKAM), National Institute of Occupational Safety and Health (NIOSH), Child Rights Coalition, owners and management of private *Tahfiz* educational institutions, parents, students (present and former), politicians, activists as well as other interested parties, must come together and act as check-and-balance mechanisms so that unregistered and unsafe *Tahfiz* educational institutions are closed, or upgraded to an acceptable level of safety and quality. The establishment of a formal network of stakeholders encompassing both policy areas means consistent and effective scrutiny can be undertaken by all members so that irresponsible, cash-strapped, ill-prepared operators are not allowed to cut corners with regard to the safety of students, the quality of education, staff and facilities provided. Indeed noble intentions of championing *Tahfiz* education in the name of Islam must not be conducted at the expense of students' rights to safety and wellbeing, or used to excuse unacceptable and risky practices of dubious private operators that contribute to the vulnerability of *Tahfiz* students.

Third, commitment and political will must be consistently displayed through effective and proactive actions so that the challenges of bringing together two different policy areas that require intense inter-agencies and stakeholders' coordination and cooperation across Federal-State jurisdictional boundaries can be undertaken to address policy gaps and failures as shown by the existence of unregistered *Tahfiz* centres, as well as the abuses and deaths of students. Only then can effective policy directions be established and stakeholders' influence, participation and issues of non-compliance be addressed so that the rights of vulnerable Muslim children are not compromised. A National Tahfiz Policy has been introduced in 2017 to address the concerns identified; comprising recommendations for the establishment of the best *Tahfiz* model[28]. However without mandatory rules and regulations it is questionable if the policy addresses all of the weaknesses identified, so that incidents of abuse and deaths can be prevented.

Conclusion

It is regrettable that despite Islam's more than 600 years of the establishment and propagation in Malaysia, the rights of Muslim children have yet to be fully attained in accordance with its teachings. The weaknesses in the governance of *Tahfiz* education as well as its lack of integration with the governance of children's rights have compromised the rights of the children that both seek to protect and uphold. The quest of upholding and protecting children's rights is fraught with twists and turns; thus requiring all stakeholders' undivided commitment in fulfilling their religious, moral and legal obligations.

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CHILD HEALTH SECURITY AS A FUNDAMENTAL RIGHT IN PAKISTAN: PROBLEMS AND PROSPECTS

Dr. Amir Ullah Khan [∗]

Abstract: Health security is the inseparable aspect of human rights. The global health security community has designed different legal instruments and established global health institutions to protect children against various communicable and non-communicable diseases across the world irrespective of race, culture, religion, language, etc. Despite all such precautionary measures, Children health in developing countries in South Asia in general and in Pakistan particular is vulnerable. Health was a federal subject under 1973 Constitution of Pakistan. However, under 18th Amendment in 1973 Constitution it has been made a provincial subject. Now the federating units in Pakistan are responsible to safeguard the fundamental right of children to health and to comply with the international health regulations. Contrary to this, the provincial governments in the country failed to securitise children against globally declared communicable and non-communicable diseases. This paper mainly aims to shed light on the global health security efforts with special reference to child health as a fundamental right in Pakistan in post 18th Constitutional Amendment. It also aims to conceptualise child health security as a fundamental right.

Keywords: Human Rights, Health Security, Child Health, 18th Amendment.

Conceptualisation of Child Health Security

Health is the fundamental right of every citizen in a country. Right is the claim of an individual in a society recognised by the whole community according to its socio-cultural norms, legal system, and religious doctrine. This recognition provides legitimacy to that claim. If this recognition is social, legal, constitutional, and moral in nature, then it would enjoy social, legal, constitutional, and moral legitimacy respectively. This concept of legitimacy generates the concept of social, legal, constitutional, moral security accordingly.

Similarly, the global consensus on recognition of a claim of an individual promotes global legitimacy to that claim as a right provided it is institutionalised. The legitimacy is granted in each case when something is considered as an existential threat to a core value of something or somebody. The utterance of a threat and taking up respective measures to securitise such threat is in conformity with the John Austin's Speech Act Theory, which provides a foundation for the Social Constructivist School of Security. The social constructivists further broadened the scope of security studies, and added human security. Barry Buzan and his fellows further divided the concept of security in various sectors – military, societal, economic, political, and environmental.[1]

Flavia Busteo and Paul Hunt have applied an integrated approach introduced by World Health Organisation (WHO) and the Office of the High Commissioner for Human Rights (OHCHR); which is composed of health and human right, popularly known as 'a human rights-based approach to health'. This approach is based upon availability, i) accessibility, ii) acceptability & quality of facilities and services, iii) participation, iv) equality & discrimination, and v) accountability. They applied this approach to four countries, Brazil, Italy, Malawi, and Nepal.[2]

Health security is therefore the fundamental right of every citizen in a society irrespective of his colour, creed, religion, race, language, gender, etc. It is the prime responsibility of the government to protect health rights by mobilisation and utilisation of resources. This paper in mainly centred on child health security as fundamental right from Pakistan's perspective in the light of global children's health security regulations, conventions, protocols, etc.

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Figure-1: Mapping of Child Health and Human Rights
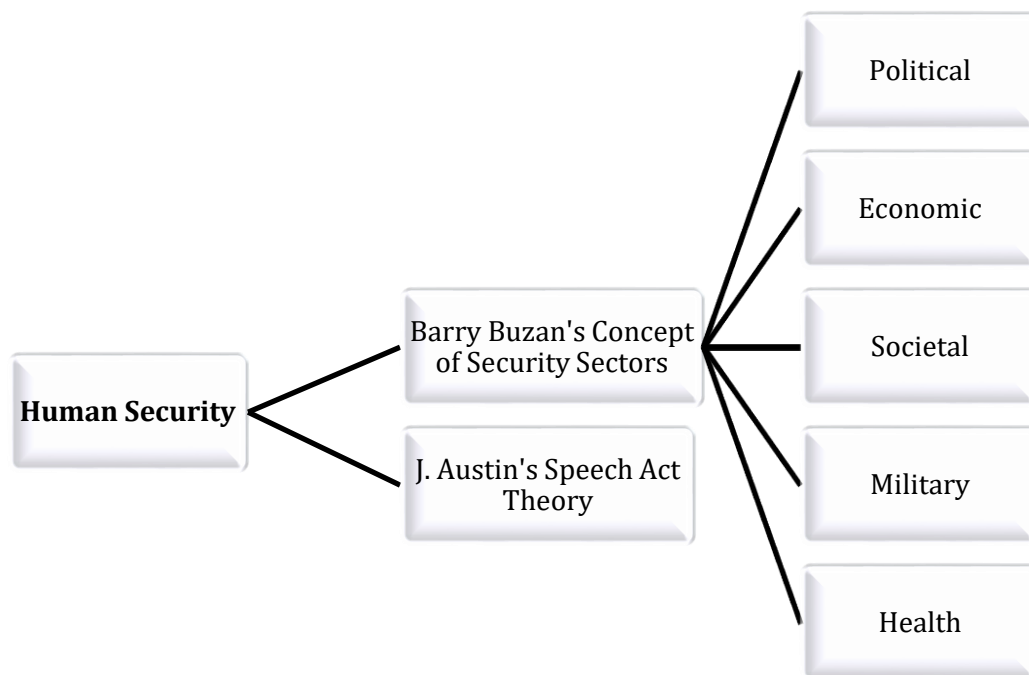
Global Child Health Initiative

Norie Nogami in "Children's Health and Human Rights" shed light on the various international institutions, legal documents, Non-Governmental Organisations (NGOs), and on various documents related with aspects of child's rights like civil, political, trafficking, education, culture, and nutrition. He also mentioned the contribution of Ms. Eglantyne Jebb – the founder of Save the Children – in the post-World War I. She had the credit to draft 'the Geneva Declaration of Child's Rights; which the League of Nations adopted in 1924. It helped the world community to draft and adopt a comparatively more comprehensive legal document on children's rights in the shape of 'the Convention on the Rights of the Child, 1989'.[3]

The League of Nations adopted *Geneva Declaration of the Rights of the Child* on September 26, 1926. In 20th century, it was the first attempt to by the first international institution to adopt such a legal instrument to protect the legitimate rights (including right to health) of children across the world irrespective of any discrimination based on race, colour, nationality, and creed.[4]

General Assembly of the United Nations in its 14th Session adopted *Declaration of the Rights of the Child* on 20th of November 1959. It gave ten principles about the protection of children;s rights. Principle 4 deals social security of children including the protection of children against diseases, and provision of adequate nutrition and health facilities to them.[5]

The global human rights community recognised the rights of children across the world. It gave a legal shape under title "Convention on the Rights of the Child" by passing United Nations General Assembly Resolution No: 44/25 on November 20, 1989. It was enforced on September 2, 1990. Article of 1 of this Convention also defined a 'Child' as a person below the age of 18 years. Article 2 of this Convention also encourages equality and discourages discrimination in treatment of children on grounds of religion, language, area, gender, financial position, culture, etc. Article 4 binds the national governments to take all necessary steps for the protection of children's rights. They have to review their existing laws relate to children. Article 24 also protects the children's right to good quality of health. They have the right to have access to safe and clean drinking water, clean food, and safe environment. It binds the rich nations to help the poor countries to protect such rights of the children. Articles 33 also bind the national governments to take all possible measures for the protection of the use drugs.[6]

National Child Health Situational Analysis

Conventions are legal instruments which become biding on national governments to execute after ratification by the legislatures of member-states to those conventions. The member states are held responsible to frame their laws to comply with those conventions.[7] Pakistan has inherited several health legal instruments from the British Empire. *The Epidemic Disease Act, 1897'*, '*the Khairpur State Epidemic Disease Act, 1941*, and '*the Epidemic Disease (Punjab Amendment) Act, 1944* are the colonial health regulations. The government of Pakistan enforced '*the West Pakistan Epidemic Diseases Act, 1958',* applicable to all parts of Pakistan.[8] For health security, several vaccination Acts were during colonial era. The British government introduced '*the Vaccination Act, 1880'.* In post-independence period, '*the North-West Frontier Vaccination Law (Amendment) Act, 1947'* was introduced. Later on, '*the West Pakistan Vaccination Ordinance, 1958'* was promulgated on November 29, 1958. It was extendable to North West Frontier Province except Tribal areas.[9] Until the passage of 18th Amendment in 1973 Constitution of Pakistan, health was mainly a federal subject. The 18th Amendment devolved health sector to provinces.

The infectious diseases claim the lives of children in the developing nations despite the advancement in the vaccination and antimicrobial treatment. The case of mortality of children in Pakistan due to infectious diseases is not different wherein 95% infectious diseases are found among eight developing nations. The United Nations International Children Emergency Fund indicators (2008) showed that the mortality rate of children in Pakistan under five (U-5) was high. Pneumonia causes death of two million children in U-5. Likewise, diarrhoea also causes death casualties every year. Measles is also a health security threat to children which causes 20,000 deaths in the country every year.[10]

1. Malnutrition:

Nutrition is the science of food and its relationship to the health. Malnutirition is a "pathological state, general or specific that results from total or relative of one or more essential nutrients in the food'.[11] Malnutrition is a global issue prevailing especially in developing and less developing countries which is one of the major cause of death in children. Malnutrition affects he physical growth and intellectual development of the children, which ultimately affects their career development. This hinders the human resource development in a society. Pakistan is not escaped from this malaise. In contrast to other developing countries, Pakistan has highest level of children malnutrition.[12]

In 2016, the National Assembly Standing Committee on Human Rights showed astonishment over the deaths of 828 children in Thar due to unavailability of water, food shortage, and lack of basic health facility. The presence of excessive amount of Choline in the water also causes multiple health problems in the area. The provincial and district governments failed to address these issues of the local population.[13] In 2017 the report shows that 1340 children died in Tharparkar due to health governance issues including 341 from underweight, 36 from respiratory, 36 malnutrition, and 14 from diarrhoea.[14] Children in Thar Parkar region are still vulnerable to health security threats. By August, 2018 more than 380 children died in Mitthi. Viral diseases along with malnutrition also claimed the lives of seven kids. The lack of safe drinking water and the available contaminated water has further aggravated the situation and multiplied the various infectious diseases.[15] In 2018, the death toll of the children due to malnutrition is 450.[16]

2. Measles

It is very alarming that 2,845 and 6,494 confirmed measles cases were occurred in 2016 and 2017 respectively.[17] Every year Measles infects thousands of children in the country. In 2018, 30,000 measles cases have been reported with 216 deaths. In Punjab, 11,139 cases were reported. In Sindh, 7,383 measles were reported. From Khyber-Pakhtunkhwa and Baluchistan 9,875 and 1,637 measles cases were reported respectively out of these 30,000 cases.[18]

3. Polio

Polio is still endemic in Pakistan despite international sanction on its citizens to travel abroad without vaccination. Federal government and provincial governments in collaboration with global donor agencies like Bill & Malinda Gates Foundation, UNICEF, Rotary International utilised human and financial resources to eradicate polio from Pakistan.[19]

Table-1[20]

Province	2011	2012	2013	2014	2015	2016	2017	2018
Punjab	9	2	7	5	2	0	1	0
Sindh	33	4	10	30	12	8	2	0
KPK	23	27	11	68	17	8	1	1
FATA	59	20	65	179	16	2	0	0
Balochistan	73	4	0	25	7	2	3	3
Gilgit-Baltistan	1	1	0	0	0	0	1	0
Azad Jammu & Kashmir	0	0	0	0	0	0	0	0
TOTAL	**198**	**58**	**93**	**306**	**54**	**20**	**8**	**4**

Polio virus has traced in the water taken from Sohrab Goth, Chakorah Nala, Muhammad Khan Colony, Baldia, and Nagi Nala. Similarly, the parental refusal to vaccinate their children against Polio is still a main hurdle in the eradication of polio from Sindh. Study shows that in Karachi 118,557 children till September, 2018 could not get polio vaccine. In addition to this, accessibility to children is also a hurdle to vaccinate them. From April to September 2018, 96,906 kids in Karachi and 88,464 children in rural Sindh remained unvaccinated.[21]

Factors affecting Child Health Security

Children access to safe drinking water, healthy food, clean environment, protection against various infectious diseases is not up to the mark.

1. Unsatisfactory Sewerage System

The major health problem is the poor sewerage system in Pakistan. It is mother of all gastro diseases in general people and especially in children. It causes polio, diarrhoea, malaria among children because they are more vulnerable to such diseases. The study shows that the sewerage system in health institutions is sub-standard and source of diseases.[22]

2. Unhygienic Water Supply/ Contaminated Drinking Water

Another chronic health security issue is water supply system, accessibility to safe water drinking in most parts of the country. The children are mostly vulnerable to unsafe or contaminated drinking water.[23]

3. Federal Governments' Meagre Budgetary Allocation for health

The federal government has lessened the allocation of budget for health which also hindered the health security general, and children health security particular (Figure-2).

Figure-2
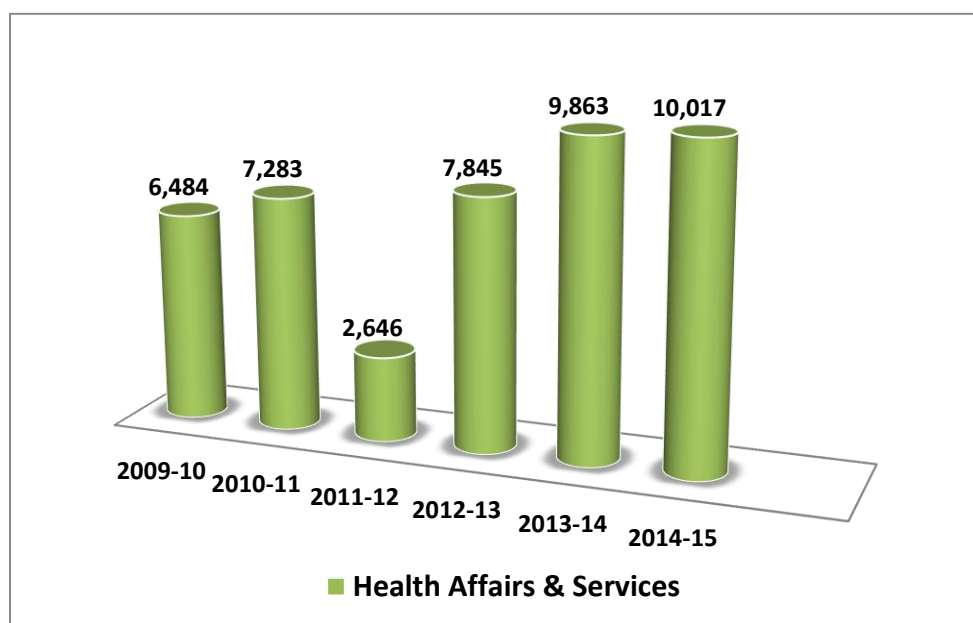
4. Poor Health facilities in health institutions

The provincial governments are still not successful to provide adequate health facilities in the impoverished regions. The report of Secretary Health of Sindh submitted to a two-judge bench showed the existence of vacant posts of specialist doctors, laboratory technicians, gynaecologists, and the indifferent attitude of child specialist doctors to perform duty in district Tharparkar.[24] The study shows the major health governance issues in the provinces especially in Sindh, these are, shortage of equipment, and staff in health institutions, political appointments, and the indifferent attitude of these political appointees to duty to serve their local people.[25]

5. Medico-Pharma Mafia Collusion

Another major health governance issue is the mutual collusion between medical doctors and representatives of the pharmaceutical industries. The doctors and pharma-industries are actively involved to loot common man.[26]

6. Poor implementation of Health-regulated laws

The provincial governments have failed to frame and implement the existing health regulations or laws. It has further aggravated the child health insecurity in Pakistan.

7. Half-hearted Political Will

The available literature shows that the half-heated political will is also main hurdle in way of securitising child health in Pakistan.[27]

8. Poor Immunisation Programme

The frequent occurrence of cases of polio, measles, and other diseases in various parts of the country reflects the weaknesses in the National Expanded Programme of Immunisation.

Securitisation of Child Health

First, in the post 18th Constitutional amendment in the country, it is primary constitutional responsibility of the federating units to frame health laws, to revise and bring changes in the colonial obsolete health laws, and to comply with global health regulations, conventions, and protocols.

Second, the national and provincial governments must bring provincial health policy in compliance with global health standards so as to integrate our national health policy with the global health policy and to make our people especially children safer from various communicable and non-communicable diseases.

Third, the provincial governments should earmark major part of their budgets to health sector, especially to securitise the mother and children health. The increase in budgetary allocation will help to counter child health insecurity in Pakistan.

Fourth, operationalisation of local government institutions can play an effective role to cope with child health insecurity particularly. In most of the provinces, the local government institutions are only in name. Their contribution to society is of no worth to mention.

Fifth, strengthening of monitoring mechanism is also an essential panacea to counter child health security. The provincial governments must design effective and merit-based accountability system to ensure the implementation of health regulations and force the health officials to perform their allotted functions with complete honesty and devotion. Lastly, like education the health should also be incorporated in the list of fundamental rights of citizens envisioned in 1973 Constitution.

Conclusion

The aforementioned discussion shows that the child in Pakistan is still far away to enjoy his/her right to health in the light of international health regulations. It has failed to comply with these global health security legal codes. There is dire need of the time to adopt an integrated approach from national to provincial and to local government institutions to take all possible steps to guard the children from various diseases. In addition to this, it is also the responsibility of every member of the society to make his environment clean, and close the doors on such diseases.

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ATTITUDE TOWARDS GIRL CHILD MARRIAGE AS A CONCERN OF HUMAN RIGHTS: THE ROLE OF SEXIST BELIEFS

Aneela Aziz[*]

Dr. Anila Kamal[**]

Abstract: *The girl child marriage is the social issue and mostly subjected to the underdeveloped countries and some regions of South Asia. A funding organization like the United Nations Convention on the Rights of the Child (1989) devoted their efforts to protect the future of a girl child. This study was designed for finding the contribution of sexist beliefs in supporting the acceptance of girl child marriages. The Discriminatory Attitude towards Women scale and Attitude towards girl child marriages scale were completed by 250 male and female university students of Pakistan. The results have shown the positive role of sexism in endorsing the attitude towards girl child marriages. The underdeveloped countries like Pakistan need to work for the rights of the child especially those vulnerable to girl child marriages.*

Keywords: Sexist beliefs, attitude towards girl child marriages, protect, future, rights of the child.

Introduction

The practice of child marriage among girls is basically a violation of human rights in some regions of Pakistan. The concept of girl child marriages or early marriages of girls is a worldwide problem and it is a consequence of patriarchy. The marriage before the age of 18 among girl population is highly being practiced in a country like Pakistan[1], and a high proportion can be observed among those living in village areas, lower socioeconomic status [2] and households with poor education[3]. Pakistan is rarely participating in eliminating the prevalence of child marriages by documenting the laws and introducing solutions for the empowerment of girl child. The economic and social susceptibility of pregnant women and stress are paramount of associated broader strategies, including poverty reduction and women's empowerment.

Although the Child Marriage Restraint Act 1929 impose that it is illegal to marry a girl under 18 according to the latest amendments, the instances of these practices can be seen in the rural regions. There is child marriage customs called *Vani/Sakh/Khoon-Baha* commonly practiced in the province of Punjab and in areas with the tribal system. In these customs, to solve the tribal issues and household feuds are solved with this marital system. Otherwise, this custom is conditionally avoided in exchange for money. Similarly, there are other tribal practices like *Swara* (child brides get married for honour)*, Addo Baddo* (where families of different clans agree to marry girls when they are child), and *Pait likkhi* (a custom of tribal and rural region where two families agree to marry their children before they are born) often promote the practices of child marriages.

The high proportion of marriage practices of girls at a young age is common in Sindh in Pakistan. The girls are 72% and boys with 25 % become the victim of this practice every year in the province of Sindh. On the other hand, girls are 66% and 22% of boys suffer from the consequences of child marriages in Baluchistan and Punjab collectively. This prevalence shows the neglect, prejudice for the girl child and unlawful practice by local government. They fail to protect these children from these forced marriages at this immature age. The government should provide "full rights, standards of health, appropriate education and development with the best interest of the child"[4].

The Role of Sexism

To confirm the roles associated with the gender those imposed traditionally while hiding the sexist beliefs and attitudes about that gender and show them only when there is a possibility that other gender might suffer from them. It is sometimes called the covert form of sexism because these beliefs make lower gender suffer while providing powerful gender all the benefits publicly. The study conducted in mid nineteen [5]discriminate this kind of sexism from old-fashioned by calling it modern sexism.

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In the culture of Pakistan, women are considered disadvantaged group right from their birth and there are some predispositions associated with their sex [6] [7]. Males have more preference than women because they provide the economic, monetary, and social utilities to the family where they are born. They are considered the breadwinners and considered to be the symbol of happiness. The discrimination based on gender can be examined by the ratio of sex imbalance is more in Pakistan than other developed countries[8]. The role of demographic variables was also examined to confirm the attitude towards girl child marriages. In Pakistan, there are very few studies conducted on this relationship. The sexist beliefs about girl child are forcing them to remain deprived of education and self-learning. Meanwhile, they are facing some serious health-related issues that lead to the highest mortality rate among women ever married as a child.

Method

It was a correlational study conducted to explore the relationship between modern sexism and attitude towards girl child marriages. This objective was fulfilled by examining the correlational analysis of data obtained from university students. The hypotheses were generated to provide the evidence for the above objective:

1. Modern sexism is positively correlated with the attitude towards girl child marriages among students.

2. Male students have more acceptances toward girl child marriages than female students.

Operational Definitions

Modern sexism. A covert form of sexism which refers to as modern sexism that one's attitudes and beliefs about discrimination towards another sex remain hidden but are shown only when there is a chance of that sex to suffer in public. A higher score on the Discriminatory Attitude toward Women scale [9] was considered as the modern sexism.

Attitude towards girl child marriages. Marriage before 18 years of age among girl gender, is known as girl child marriages according to international as well as national groups[10]. A tendency to respond positively and negatively towards marriages before 18 years of age particularly of girls is called an attitude towards girl child marriages[11]. The higher score was the indicator of a more positive attitude and vice versa.

Instruments

Discriminatory attitude toward women scale (DAWS). This is an indigenous scale developed by Ashraf (2003) to measure discriminatory attitude toward women and modern sexism. The scale is in Urdu language and has 46 items. Items can be rated on five points scale points ranging from 4 to 0 where 4 represent strongly agree and 0 is for strongly disagree. The higher score represents the higher discrimination for women. For the negative items, the scoring was reversed. There are 10 negative items (i.e., *items nos.,* 1, 2, 19, 20, 21, 30, 31, 32, 40, 41). Minimum score on this scale is 0 whereas the maximum possible score is 184. The Cronbach's alpha-coefficient calculation as an indicator of the reliability of DAWS is .98.

Attitudes toward girl child marriages scale. This scale was originally presented by Malatyalı, Kaynak, and Hasta in English based on previous qualitative studies [12]about girl child marriages and then it was translated in Turkish. It comprised of 12 items and it has four negatively scored items out of 12 items (*item nos.* 1, 3, 6, and 12). Participants will indicate their level of agreement for child marriages. The scale points range from 1 to 6 where 1 represent strongly disagree and 6 represent strongly agree. It is applicable to adolescents and its alpha reliability is .91 [13].

Sample

A sample of $N = 250$, male ($n = 59$) and female ($n = 191$) university students was taken to explore the relationship between study variables.

Procedure

The data was collected under the period of one month, from different public universities of Islamabad and Rawalpindi. The participants were approached in their classes using convenient purposive sampling technique. Only those participants were approached who were willing to participate in the study.

Results

The correlation results were calculated using SPSS version 21 to prove the hypothetical relationship between the study variables. The results are thoroughly explained in the tabulated form.

Correlation between the study variables. One of the main objectives of the study was to explore the relationship between the study variables i.e., modern sexism and attitude toward girl child marriages. The data was checked for the direction of the relationship, whether study variables are related to each other in suggestive direction or some other patterns emerged. So, to check the feasibility of a relationship was calculated by using bivariate Pearson's Product Moment Correlation.

Table 1:

Correlation between Modern Sexism, Hierarchy Attenuating and Enhancing Legitimizing Myths, and Attitude toward Girl Child Marriages (N = 250)

Variables	*r*
Modern Sexism↔ Attitudes Toward Girl Child Marriages	.41**

*Note. **p < 0.01*

Table 1 shows the significant positive relationship between modern sexism and attitude towards girl child marriages. So, Hypothesis 1 has been proved after analyzing these results i.e., modern sexism is positively correlated with the attitude towards girl child marriages.

The mean differences in study variables on gender. The Differences among males and females were observed for study variables. The results have been shown graphically in Figure 1 given that the male gender group has shown a more positive attitude towards girl child marriages.

Figure 1. The Gendered Group in Favor and Against the Girl Child Marriages.
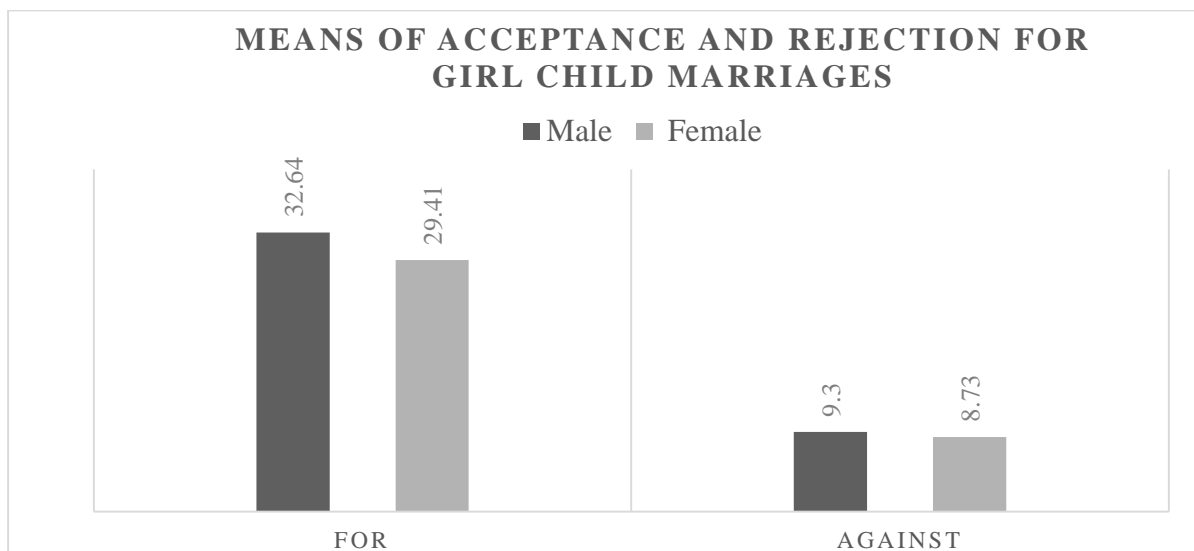
Figure 1 clearly indicates that males have shown acceptance for girl child marriages as compared to females with the mean of 32.64 very few female and male groups have rejected the attitude towards marriages among girls.

Discussion

The child marriage practices may revoke the right to education and employment and earn better living conditions. These marriages are a serious violation of human rights in early childhood. Because it violates the equal rights for both genders i.e., girl and boy member of the family[14]. The differentiation solely based on the

gender within the family system lead to these marriage practices. The moral values of society members are being abolished due to traditional practices of gendered group discrimination.

The competition in the society can be faced by both gendered groups but the dominating gender maintains the hierarchal position by implementing different laws and policies to discourage the efforts of subordinate gender in the case of present study female gender. The effects of these laws and policies present the outcome in dominating social environment[15]. These marriage practices are subjected to different questions to provide reasons for continuation, but the practitioners often relate it with culture. They fail to provide proper justification instead they depict their sexist or discriminatory beliefs in the form of human right violation.

The present study assumed the link between the sexist or discriminatory beliefs and attitudes toward girl child marriages. To test this hypothesized statement (Hypothesis 1) the correlation analysis (Table 1) was performed which provide the evidence for this link. It shows that these beliefs are working in the background of having a positive attitude towards girl child marriages. Although society accepts the rights of equality for both genders under social pressures in the background, they have reasons and justifications to make them legal and authentic. This practice is common among those in power like powerful male members work for their own gendered group and provides all the benefits for them. This one-sided approach leads to inequality and often disturbs the balance of social life. The girl child fails to obtain social benefits and faces health-related issues like early age miscarriages, HIV/AIDS-related diseases.

The second hypothesis of the present study was built on the results of the first hypothesis, i.e., the male students have more acceptance for girl child marriages as compared to females. It was proved using the mean difference analysis among the responses given by both gendered groups. It proves Hypothesis 2, to elaborate it graphically the (Figure 1) results are presented diagrammatically. It clearly illustrates the more acceptances of girl child marriage practices among male as compared to the means of females. The reason male gender has shown more acceptance for girl child marriages was defined in literature is that male gender group is more concerned and sincere with their own gender as compared to another gender [16]. While female being a girl tends to show more rejection for girl child marriages to show benevolence for their own gender.

There is a lack of social concerns for the education of rural girl child because of the passive role of the girl child in the family. They come with the reason of lack of schools for girls in the nearer proximity or locality [17] of the rural region of Pakistan. Therefore, the rights of a girl child should be protected by increasing awareness about the seriousness of this social issue among the public. The government of Pakistan should take some serious actions to control the increasing prevalence of girl child marriages in south Asian regions.

Limitations and Suggestions

- The present issue should be designed for the sample of the rural population facing the issue of girl child marriages more commonly.

- The data for the present study were collected in a short time period through a questionnaire-based research method to future studies should also consider the mixed or qualitative research method.

- The other factors associated might be related for girls married early and hurdles in poor implementations of laws regarding girl child marriages should also be considered in future studies.

Implications

- The funds and scholarships can be offered to those girls and their families to raise a girl child by providing them with a quality lifestyle.

- Media can start the electronic and printed movements to give responsiveness about the consequences about these practices.

- The importance about education among female gender can be highlighted to diminish the stereotypical misconceptions among the rural population.

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AN UNBORN CHID'S RIGHT TO LIFE: A STUDY OF THE LAW OF ABORTION IN PAKISTAN?

Dr. Mudasra Sabreen[*]

Abstract: *Every legal system in the world guarantees right to life. But the right to life of an unborn child is somewhat differently treated as in some respects it is an independent human being whereas in other respects it is still a part of the mother. Termination of pregnancy has always been a controversial issue in societies as well as legal systems. If we look at Islamic law an unborn child's right to life is divine and cannot be taken away by the mother or the state. Islamic law considers a fetus a separate life and allows abortion only in exceptional circumstances. In Pakistan abortion is an offence and is being dealt with in the Pakistan Penal Code 1860. This article will discuss an unborn child's right to life and the law related to abortion in Pakistan. The law of abortion in Pakistan is based on Islamic law especially the Hanafi school so relevant issues will be discussed in Islamic law as well. The rights and duties of a human being including right to life emanates from legal capacity. A section of the paper will be devoted to legal capacity of a child before birth, which will be followed by analysis of the law of abortion in Islam and in Pakistan. At the end conclusion will summarise my findings.*

Keywords: Child rights, abortion law, Pakistan, Islamic law

Introduction

Termination of pregnancy has always been a controversial issue in societies as well as legal systems. In Pakistan abortion is an offence and is being dealt with in the Pakistan Penal Code 1860. An unborn child's right to life is divine and cannot be taken away by the mother or the state. In this article we will discuss the law of abortion in Pakistan. As this law is influenced by Islamic law, so relevant issues will be discussed in Islamic law as well. The rights and duties of a human being including right to life emanates from legal capacity. At first legal capacity of an unborn child will be discussed. At the end conclusion will summarise my findings.

Legal Capacity

The rights of a child are directly related to its legal capacity. Legal capacity in Islamic law is defined as *'the ability or fitness to acquire rights and exercise them and to accept duties and perform them'.*[1] Legal capacity is connected with *dhimmah* which means liability. It is a condition precedent for the existence of legal capacity.[2] *Dhimmah* is an attribute by which one acquires capacity for acquisition of rights and duties.[3] It is a covenant between the lawgiver and the subject and it can be assigned to a natural person as well as to an artificial person.[4]

There are two kinds of legal capacity: capacity to acquire rights and duties which is called capacity of acquisition, and capacity to execute these rights and duties which is termed as capacity of execution.[5] These capacities are called receptive legal capacity and active legal capacity respectively. Because of the capacity of acquisition a person becomes able to acquire rights and liabilities. *Manāt* or basis for the capacity of acquisition is the attribute of being a human. This capacity is inherent in every human being. He/she possesses it even before birth. The capacity of acquisition is of two kinds, complete capacity and deficient capacity. A person having deficient capacity of acquisition possesses only some rights and has no obligations.[6]

The capacity for execution is defined as '*the capability of a human being to issue statements and perform acts to which the law giver has assigned certain legal effects'.*[7] The basis of the capacity for execution is intellect and discretion. This capacity is further divided into three kinds: capacity for *jināyāt* or criminal liability, capacity for *'ibadāt* or religious worship and capacity for *mu'āmalāt* or civil transactions. These capacities are based on the fact that the person is capable to comprehend the command or not. Legal capacity for criminal liability is based on the ability of a human being to comprehend the communication related to criminal acts. Legal capacity for *'ibadāt* is based on the capability of an individual to understand the communication related to *'ibadāt.* Legal capacity for *mu'āmalāt* is based on the ability of a subject to understand communication pertaining to transactions.[8]

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Legal Capacity of a Child

At first we will discuss legal capacity of an unborn child and then of a child after birth. A *janīn* or unborn child possesses deficient capacity of acquisition. An unborn child has only those rights which do not require acceptance.[9] Deficient capacity is assigned to an unborn child as the basis of legal capacity is not fully developed yet. An unborn child is not considered an independent human being because it is still a part of the mother. But in other respects the child is considered a separate personality as it has a separate life.[10] As said earlier, a foetus has some rights like inheritance, bequest, parentage, *'itaq* or manumission and rights in *waqf*. These rights would be assigned to a *janīn* only if she is born alive[11] within six lunar months from the establishment of the right.[12] No obligation can be imposed upon an unborn child as it is not capable of forming an intention. For example, if the guardian of a *janīn* buys something on behalf of the unborn child, the child is not liable for the price. The child after birth acquires capacity for imposition of obligations but this capacity is also of defective character.

In Islamic law a *janīn* is considered a separate legal person. If a foetus is aborted as a result of injury a special indemnity (*ghurrah*) is to be paid and this indemnity devolves on the heirs of the child.[13] *Ghurrah* is usually one twentieth of the *dīyah* (compensation) for death of a person but if the child is aborted alive and dies afterwards then the full *dīyah* is payable.[14] Ghurrah is distributed among legal heirs excluding the offender. Ghurrah is when woman delivers a dead feotus if it was alive and later died there will be full diyah.[15]

There are two verses of the Qur'ān which say that abortion is illegal and there is general agreement among the jurists on their interpretation. Allah says: '*Kill not your children on a plea of want*'.[16] Jurists agree that the purpose of revelation of these verses was to prohibit infanticide and abortion. According to the *Mālikī, Shāf'ī,* and *Hanbalī* schools abortion is absolutely prohibited but the *Hanafīs* argue that abortion is permitted in the first one hundred and twenty days of pregnancy provided there is a potential danger to mother's life or to the life of an infant surviving on the mother's milk.[17] *Hanafī* jurists based their opinion on a *hadīth* reported in *Sahīh Muslim* in which Prophet Muhammad said that human life does not exist in the embryo before the lapse of one hundred and twenty days.[18] Basing their views on a verse in the Qur'ān[19] the jurists determined three stages of development of a feotus: *nutfah* (the semen stage), *'alaqah* (the blood clot stage) and *mudghah* (the lump of flesh stage). The duration of each stage is forty days. The foetus is considered a human being after the expiry of one hundred and twenty days i.e. after completion of third stage.

If the organs of an aborted embryo are formed the offender has to pay *ghurrah* whereas if the embryo is unformed he has to pay lesser compensation. According to the *Hanbalīs* and *Shaf'īs* a lump of flesh will be considered an embryo if it has a hidden form which only a midwife or a doctor may testify to. *Hanafīs* don't consider a lump of flesh an embryo on the basis of hidden form. According to them the form of human organs should be clear.[20] Medical science has proved that the human life exists in the embryo right from the start of conception so abortion should not be legalized in the first one hundred and twenty days of pregnancy. A foetus has a right to life which cannot be infringed by anyone except on the basis of a just reason. On the other hand it can be inferred that all three schools consider a child's legal personality from the time of conception whereas the *Hanafīs* consider a foetus's legal personality as arising only after one hundred and twenty days of pregnancy.

Abortion becomes permissible in the case of risk to the mother's life. This rule is based on the principle when you have to choose between a lesser harm and a greater harm you should choose the lesser harm. The mother is the source of the child and has a full life so to save the mother's life it is permissible to sacrifice the child's life.[21] *Fatwās* have been issued by some Muslim scholars on the legality of abortion in the case of deformity of the foetus, unwanted pregnancy as a result of rape and danger to the mother's life.[22]

Now we move to the capacity of a child after birth. Under Islamic law a child possesses complete capacity for acquisition of rights and duties at birth. According to the majority of jurists including the *Mālikīs, Shāf'īs, and Hanbalīs,* a minor lacks capacity for execution before puberty. The *Hanafīs* are of the opinion that if the child attains some discretion before puberty then it is assigned deficient capacity for execution. For this purpose jurists determine the age of discretion at seven.[23] Before the age of seven a minor is called *sabī ghair mumayyaz* and after seven till puberty the child is called *sabī mumayyaz.* At this age the minor is not liable for criminal acts. A child is exempted from the punishments of *hadd*, *qisās* and *ta'zīr*. For homicide and bodily injury the *'āqilah* (the child's family or tribe) will pay blood money.[24] This rule is based on the *hadīth*: *'three people are not accountable for their actions: a child until he reaches puberty; a person asleep until he awakes*

and an insane person until he regains his sanity'.[25] *'Ibādāt* (religious duties of worship) are also not imposed on a child at this stage. The deficient capacity for execution is with respect to transactions only.

The transactions which a child can make at this stage are divided into three categories.[26] In the first category there are transactions which are purely beneficial, for instance, acceptance of a gift or charity. A minor is allowed to make such transactions without ratification of the *walī* or guardian. In the second category there are transactions which are purely harmful or which result in financial loss, for instance, to give charity, loan, or bequest. These transactions are void even if made by the *walī* because he has no authority to enter in such transactions on the minor's behalf. Then there are transactions vacillating between profit and loss such as partnership, sale or any other kind of business. These transactions if made by the minor are only valid after ratification of the *walī* otherwise these will be void. A guardian cannot waive any right of the child on its behalf as it will amount to harming or damaging the child's interests. A guardian is supposed to protect the minor's interests in every situation.[27] The judge has authority to supervise the guardian and keep a check on the exercise of powers by him. If a guardian is not protecting the interests of the minor the guardian can be removed by the court.[28] As children have capacity of acquisition so they have rights but due to lack of maturity they don't have the capacity of execution so they cannot exercise these rights. Guardianship is an institution which protects children and gives their rights to them which they exercise on their behalf.

Rights and Maqasid-al-Shariah

Maqāsid is plural of *maqsad* which means purpose or objective. In Islamic law the term is used to denote the objectives or aims of Sharī'ah.[29] There are five essential objectives or *maqāsid* of Sharī'ah.[30] *Al-Raysūnī* stated their importance as *'these are things essential for the achievement of human beings' spiritual and material wellbeing.'*[31] Islamic Law is supposed to serve these *maqāsid*. These are following:[32]

- Establishment and Protection of the Religion

- Establishment and Protection of the Human Body

- Establishment and Protection of Progeny

- Establishment and Protection of Intellect

- Establishment and Protection of Property

The whole system of Islamic law revolves around these objectives. These objectives are definitive and are derived from the Qur'ān and Sunnah.[33] *Hifz* includes establishment and protection. Establishment means to establish that *maqsad's* elements and foundations and protection means to protect it from what damages the aspect of establishment.[34] If we take the example of religion, it is established by performing rituals and is protected by obligating *jihād* in certain situations.[35] Likewise *Nasl* or progeny is established by institution of marriage and prohibition of abortion whereas it is protected by enforcing punishments for *zinā* and providing *ghurrah* (indemnity) for abortion.

When we use the term 'Islamic state' it means that in that state Islamic law or Sharī'ah is the supreme law of the land. In other words the Islamic state should adhere to strict application of Sharī'ah and to its objectives.[36] Most of the rights and duties of the individuals and the state emerge from these *maqāsid*.[37] Here we will discuss only the rights and duties related to children. Religion is not a matter of concern for a child because of its immaturity and lack of understanding. The rights which we can derive from these *maqāsid* are the following. Protection of *nafs* gives a child the right to life whether it is a foetus or a child after birth. It also provides a right not to be assaulted or injured which includes prohibition of abortion as well. This is a primary right and gives rise to many accessory rights like right to food, health, shelter, livelihood etc. Accessory rights are the rights, which increase the scope of primary rights. This is the approach of the Pakistani courts as well, in a judgment it is said by the Supreme Court that right to life doesn't mean vegetative or animal life; it means life with those facilities which a civilized person is entitled to enjoy with dignity.[38] Hifz alā *nafs* also suggests that proper persons should be appointed for the care of the person of the child till the time the child can take care of itself. Protection of progeny or *nasl* gives the right of parentage. It can be said that a child has a right to the status of legitimacy. In Islamic law paternity is established for a legitimate child only. To preserve the identity of parents is a right of the child which it has even in the case of adoption. In Islamic law to take a child into care is allowed but to change a child's lineage is not allowed. A child will always be identified with its real parents. Protection of intellect gives a child the right to get information, education and to express its opinions.

It also provides that the child should be brought up in a way that its mental faculties should be developed. Protection of property gives a child the right to manage its property in a judicious manner. A child because of immaturity and lack of understanding cannot perform this function itself. Islam provides the institution of *wilāyah* (guardianship) to protect the interests of the child in such situations. It is a right of the child that proper persons should be appointed for management of its property.

From these *maqāsid* duties and rights of an Islamic state can also be inferred. It is a duty of the state to establish and protect these objectives. It is a duty of the state to prohibit all acts detrimental to these objectives and to ensure their preservation.[39] For protection of these objectives an Islamic state has to guarantee basic rights otherwise these objectives cannot be achieved.

The order in *maqāsid* shows a priority; The first one has priority over the second one and so on. *Dīn* has priority over *nafs*, *nafs* has priority over *nasl, nasl* has priority over *'aql* and *'aql* has priority over *māl*. This order functions in the case of a clash among interests or rights. For example Islam delays execution of punishment for a pregnant woman who commits adultery till the birth of the child, as the child's right to life is paramount as compared to the right of the state to punish the offender. The right to life emerges from *Hifz alā nafs* whereas the crime of the mother is from *Hifz alā nasl* so *nafs* has priority over *nasl*.[40]

The Law of Abortion in Islam

The discussion of abortion in Islamic law revolves around rights of the unborn child and not much around rights of woman.[41] The Qur'an has described the creation of man in the following words:

> "We created man of an extraction of clay, then We set him a drop in a safe lodging, then We created of the drop a clot, then we created of the clot a tissue, then We created of the tissue bones, then We covered the bones in flesh; thereafter We transformed it into another creature. So blessed be God, the Best of Creators"[42].

The Prophet Muhammad (PBUH) is reported to have said:

> "Verily the creation of any one of you takes place when he is assembled in his mother's womb; for forty days he is as a drop of fluid, then it becomes a clot for a similar period. Thereafter, it is a lump looking like it has been chewed for a similar period. Then an angel is sent to him, who breathes ruh (spirit) into him. This Angel is commanded to write four decrees: that he writes down his provision (rizq), his life span, his deeds, and whether he will be among the wretched or the blessed[43]".

> Quran says 'whosoever have spared the life of a soul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all of mankind.'[44]

According to the majority of Muslim scholars abortion is prohibited. In Islamic law abortion is considered termination of a life hence it is a crime. According to Imam Ghazali, a Shaf'i jurist, abortion at advanced stages of pregnancy becomes a more serious crime as compared to abortion at early stages of pregnancy.[45] Abortion can be allowed only in exceptional cases like saving the life of the mother. This is the opinion of the Hanafis and Shafis.[46] If according to the expert medical opinion pregnancy can endanger the mother's health or there is extreme deformity in the embryo abortion can be allowed but this, too, should happen within first 120 days of pregnancy. The time period is determined in the light of a hadith.[47] If the mother's life is at risk abortion can be performed at any stage of pregnancy. Muslim scholars have asked to take opinions of three medical experts before deciding about abortion.[48] According to Islamic law *diyat*, *kafarrah* or *ghurrah* is the punishment for this offence.[49]

Muslim jurists, basing their view on the above mentioned authorities, agree that life is breathed into the fetus 120 days after conception. Al-Kuzāt is of the opinion that the soul is breathed into the fetus after forty-two nights after the *Nutfah* has settled down in the womb. The *Nutfah* is considered to be settled when it holds onto the wall of the womb, which happens on the seventh day after conception. It can be said that breathing of the soul occurs after the fourty-ninth night, at the beginning of the eighth week. It is difficult to determine the exact time of the ensoulment of feotus. But it can be said that it happens between forty and fifty days.[50].

There is difference of opinion among jurists regarding legality of abortion at early stages of pregnancy. According to the *Hanafi* jurists abortion is allowed before the soul is breathed into the fetus provided that the

husband or the wife has authorized it. According to the *Malikis* abortion is prohibited at whatever stage it is performed. Imam Al-Ghazali differs with other *Shaf'i* scholars on this subject where he views abortion as prohibited at all stages of pregnancy. The *Hanbali* jurists are of the view that abortion is prohibited after one hundred and twenty days of pregnancy and differed in the case of abortion before this period. Some of them authorized abortion as long as the fetus has not been created. There is consensus of opinion that after expiry of one hundred and twenty days abortion is prohibited.[51]

Abu al-Fadl, a contemporary scholar, argues that in the case of a pregnancy resulting from rape, abortion is allowed as it is allowed to get rid of the semen before it settles in the womb.[52] According to Al-Buti, pregnancy can be terminated in such situations before expiry of 120 days. Tantawi has issued a fatwa legalizing abortion even after expiry of 120 days.[53] Sheikh Nizam Mangera is of the opinion that at the initial stages of pregnancy i.e. before expiry of one hundred and twenty days abortion can be allowed only in cases like rape, incest, fatal deformity of the embryo.[54] It is evident from the above discussion that in exceptional circumstances abortion can be allowed but as a general principle abortion is prohibited.

The Law of Abortion in Pakistan

Every legal system in the world guarantees right to life. Article 3 of the Universal Declaration of Human Rights says: "Everyone has the right to life, liberty and security of person". Article 6.1 of the International Covenant on Civil and Political Rights says that every human being has the inherent right to life and this right should be protected by the law. The Constitution of Pakistan 1973 also guarantees the right to life in Article 9.

After partition Pakistan followed Indian law made by the British. In 1989 in the case of the Federation of Pakistan v. Gul Hasan Khan, PLD 1989 SC 633 the Supreme Court of Pakistan struck down sections 312-316 of the Pakistan Penal Code being inconsistent with the injunctions of Islam. The current sections 338, 338-A, 338-B, 338-C (Criminal Law Amendment Act II of 1997) replaced those provisions which are based on Hanafi law.[55]

In Pakistani law abortion is not allowed except in the case of risk to the mother's life. Section 338 of the Pakistan Penal Code 1860 provides that if a foetus whose organs have not been formed is aborted by the mother the punishment is three years imprisonment. If abortion is caused by any other person with the woman's consent the punishment is three years imprisonment and ten years if it is caused without the woman's consent. There are two exceptions to this rule: abortion to save the mother's life and abortion during providing the mother necessary medical treatment.[56] Section 338-B of the Pakistan Penal Code 1860 provides that if a child, some of whose organs have been formed, is aborted the punishment is a fine equal to one-twentieth of the full *dīyah*[57] if the child is born dead and full *dīyah* if the child was born alive but died due to the offender's act. The court has authority to order the offender up to seven years imprisonment in such a case. If there were more than one children in the mother's womb the offender will pay separate *dīyahs* and will go through separate punishments for each child. These sections apply to a woman who has herself aborted her child at the stage of pregnancy where the child's organs were formed. In this situation the only exception will be abortion to save the mother's life. This section does not protect the abortion during provision of necessary medical treatment.[58] As far as *dīyah* is concerned the courts have discretion to fix the quantum of *dīyah* after taking into consideration injunctions of the Qur'ān and Sunnah and the financial position of the offender and the heirs of the victim. The law does not give any maximum value but the minimum value of *dīyah* is fixed as equivalent to the value of thirty thousand six hundred and thirty grams of silver.[59] One twentieth of this minimum value is equivalent to the value of fifteen hundred and thirty one grams of silver approximately.

In new sections 'necessary treatment' is not defined and no judicial interpretation is available for it. It is not clear whether the Doctor's opinion is compulsory or advisory. Apparently it doesn't seem compulsory. For second stage pregnancy, if limbs are formed, abortion can only be performed to save the mother's life and for this purpose mother's consent is not necessary provided it is performed in good faith.[60] According to the current law doctors are vulnerable so hesitate to perform abortion. It leaves women with unsafe options like abortion performed by midwives or in some cases nurses. Usually abortions are performed secretly so it is hard to get data. Time period can be fixed for first stage and second stage. Opinion of two medical officers from a recognized/authorised hospital should be made compulsory.[61] The mother's consent is required for *isqat e hamal* (she has the power to make decision) and the doctor's consent is required for *isqat e janin* (decision is with the doctor).[62]

Causing miscarriage is a case of strict liability, it does not matter whether the blow was intentional or unintentional, and compensation has to be paid in both cases. In the sections *ghurrah* should be made payable by the offender in all cases.[63] Causing miscarriage has been made an offence of strict liability both in Islamic and Pakistani law.[64]

Conclusion

Right to life is a fundamental right of every human being but an unborn child's right to life is somewhat differently treated. The reason is that in some respects it is an independent human being whereas in other respects it is still a part of the mother. Termination of pregnancy has always been a controversial issue in societies as well as legal systems. If we look at Islamic law an unborn child's right to life is divine and cannot be taken away by the mother or the state. In Islamic law the discussion of abortion revolves around rights of the child and not around rights of the mother. Islamic law considers a fetus a separate life and allows abortion only in exceptional circumstances. In Pakistan abortion is an offence and is being dealt with in the Pakistan Penal Code 1860. The law of abortion in Pakistan is based on Hanafi school. The rights and duties of a human being including right to life emanates from legal capacity. Islamic law as well as Pakistani law deals with the offence of causing miscarriage as an offence of strict liability. By restricting abortion the law has left women with unsafe options. It is better if the law makes a transition from restriction towards regulation. The law should differentiate between stages of pregnancy and should clearly mention the exceptional circumstances when abortion will be allowed.

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ROLE OF GOVERNMENT OF PUNJAB TO MINIMISE THE MENACE OF CHILD LABOUR

Khizar Hayat⁎

Abstract: *Children as well as adults have human rights. Human rights are of no use if not ensured in practice. Children also have the right of special protection because of their vulnerability to exploitation and abuse. Children being the most vulnerable section of the society need special treatment from parents, society and state. Humanity has to do its best for the children so that they may become a golden capital for the state in the days to come. Instead of playing with toys and studying in schools these little angels are being forced to beg, being exploited for the sex trade, being inducted into bonded labor or being abandoned altogether to fend for them by the parents and by professionally operated gangs. Oftentimes, children are trapped in this horrific cycle of abuse with no way out. When the parental affection and the societal morality dies then constitutionally the state should be there to provide shelter to these saplings from the cold and harsh waves to be grown up and be a fruitful and civilized entity in the society. Since 2015 the government of Punjab has initiated a number of measures to completely eradicate the working children in the brick related activities, workshops, hotels and other working units for physical and physiological safeguard and welfare of children by providing a natural environment to provide them natural environment of learning, playing along with their peers. Paper under study attempts to have an insight and detailed analysis of the various legislative, administrative and social measures of the government of Punjab to eradicate the menace of child labour. It is an exploratory research and Qualitative research methodology has been carried out with both the primary and secondary methods of data collection by employing iterative analysis technique to analyse the semi-structured interviews of a purposive sampling to produce an amalgam having elements of both collected data and relevant theories. The results will reflect the opinion of respondents situated in contextual theories to spotlight the current barriers to the issue concerned and provide prudent policy solutions to the status quo.*

Keywords: Child Labour, Child Work, Exploitation of children, Preventive and Curative Measures

Introduction

Social development and well-being of all segments, genders and all the age groups of the society without any social and economic differences is a pre-requisite to the sustainable and dignified growth of human beings. This notion has been advocated in the wake of changing world and market led liberalization. The provision of human rights with improved Human Development Indicators (HDIs) is critical and global standards compliance is the duty of the respective states. Like all other social evils child labour is rampant in all societies especially in the developing world due to poor economies and high population growth rate that deprive the children from precious and most cherished period of life and put their mental, physical health and future life in serious danger. Due to the intensity of the issue it has become a very challenging and thought provoking concern of modern governments which is to be addressed or at least managed to the minimum level. Serious concerns from the international and national human friendly agencies have sensitized the issue and a number of measures have been taken to cope with the issue. Provision of mere education to the children may not address the issue properly some technical and skillful art should also be imparted to enable them to be a source of earning for the family and may have a bright future. Poverty, inflation, unemployment, large family size is working as force multiplier to the issue.

Definition of Child and Child Labour

Child labour means the use of underage workers for any physical work which is beyond their physical, mental age and capacity. Internationally a worker of 16 years age is considered for employment. According to a report issued by an international NGO almost 250 million children are working in the world. More than 150 million of these children are working in dangerous conditions. Additionally, each year more than 1 million of these children will be victims of human trafficking.[1]

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Underage workers are a worldwide phenomenon, occurring mostly in the developing and under developed world. It has been practiced in different human societies at different ages of their history and continues to flourish in almost all parts of the globe. According to Article 1 of the Convention on the Rights of the Child, 1990, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier**."**[2]

The International Labour Organization (ILO) defines a work done by children that deprives them of their childhood under the age of 15 (14 in certain countries),[3] which destroy their abilities and personality. Another point of view is that a work that may cause any physical and psychological dent to the underage workers at the cost of their education and childhood liberty is called child labour. Negation of opportunities of education through schools may deprive the children from good future and great abilities of life. The International Labour Organization has described the following works as worst forms of child labour and has strictly banned the use of children through its Worst Forms Convention 1999 accreted by 151 countries:[4]

- Child Slavery

- Child Prostitution

- Debt Bondage

- Child Trafficking

- Children use in Armed Conflict

- Child Pornography

- Drug Trafficking

- Any Work of Hazardous Nature

These worst forms of child labour are carried out in unhealthy, poisonous environment in very dangerous situations with dangerous and harmful machines or tools. Almost out of total population of children in the whole world half are working and many in a work of hazardous nature.[5] African continent is on the top and followed by Asia, South America and others. Developing countries has legalized child workers in normal jobs after the age of fifteen and thirteen in non-hazardous work and minimum eighteen years for hazardous work.[6] According to estimation the largest sector of child involvement is agriculture which employs almost 60 percent of total work force of children.[7] Works which do not put the physical or mental health and education of children at risk are called child works. It involve any skillful art or domestic work of assistance in family business or activities with education hand in hand is called child work it permit them to learn some skills and cause of pocket money as well.

Child Labour and Exploitation of Children

Exploitation of weak and small by powerful and large is a nature of animals but it is practiced by human beings in all forms of life everywhere in the world and children are not the exception to it. It is caused in many forms in different societies and cultures. Africa and Asia being the developing world has highest rate of exploitation in the form of prostitution, commercial and domestic work, camel jockeys, professional beggary, work in textile industries, sale of children to cover family debts and many more forms. Alienation of children from their parents at an early age through slavery or any work expose them to serious hazards, illness and other serious problems like premature adulthood, nutritional deficiencies, depression, drug addiction, contagious diseases and they are left to fend for themselves on the streets of large cities. Due to their vulnerability these children are mostly victims of physical, mental, and sexual violence. This is the worst exploitation of children by fellow human beings. These working children grow up as illiterate adults without and any social and economic security, become criminals and involved in a number of socio-economic crimes.

It's not only the child's age which determines the work whether its child labour or child work, the type and number of hours of work, the working conditions matters a lot in deciding it. The situation varies from one state to another and one sector to the sector. There is a wide difference between the work of children and child labour. All the underage workers do not fall under the preview of child labour as participation in work that does not affect their physical, mental health and personal development through education is generally taken as good for child and society as well. The activities which contribute to child's development and welfare of family are

equip them with technical skills and experience and enable them to start a professional life as compared to others.

Following Children are considered at risk:

- Children without parental Attention or care (Neglected children)

- Slaved children

- Hazardous, non-Hazardous and forced Working by children

- Children with parents in prison

- Victims of child trafficking

- Suffering from discrimination

- Disables

- Involved in conflict zones

- Living in extreme material deprivation

Research Methodology

Strategy of Inquiry: This is an exploratory study based on primary qualitative methodology aimed at discovering and presetting an in-depth analysis of various dimensions of the preventive and curative Policies and steps of Government of Punjab to minimise the Child Labour and the themes are derived from the data collected through interviews. These preventive and curative measures have not been systematically studied and analyzed earlier. The unit of analysis is the country of Pakistan as a whole and the province of Punjab in special. The "lived experiences" of the policy makers of Punjab, top provincial officials, Academic and legal experts, field staff of labour department (Labour Officers and inspectors), and what is the "essence" of their societal professional and political experiences. Method of analysis used is qualitative Iterative analyzing method.[8]

Necessary observable data has been collected through:

- Secondary sources, The use of documents (UN Conventions, Protocols, ILO Reports , Constitution of Pakistan, Acts of Parliament, available official national and international reports, speeches, newspapers, books, articles, publications),

- Primary source, Interviews (from related policy makers, policy executors of the provincial government, academic experts, constitutional and legal elites)

Sampling: Due to the requirement of iterative method of analysis repeated and deep rooted study of the sample transcripts has been utilized and experienced therefore; the sample of fifteen respondents was taken through purposive snowball sampling technique. The inclusion criteria included, inter alia.

Semi-structured Interviews: Semi-structured Interviews were conducted for the data collection to extract the information from the respondent, the researcher was allowed to discuss wide of issues related to the governance of the issue, some projected and leading and unguided questions were asked to collect the required knowledge about the research problem. Interview method was unstructured, discussion and counter questions with the respondents allowed the researcher to extract the logics or rational behind the issues and policies. All the respondents were interviewed with the surety that their opinions will be used for educational purposes only and not for any political or any other use. The essence of subject and participants comfort ability were given preference, both English and Urdu languages were taken as medium of interviews.

Preventing and Curative Measures Taken in Punjab

The issue of child labour in Pakistan remained more or less the same from the year 1947 to the 2000. It is observed that all the political parties which remained in power badly neglected this social issue of child labour. It is due to that negligence and bad governance model Pakistan has been placed among those states where drop out ratio of children from schools is highest. Pakistan made very moderate advancement in efforts to minimise menace of child labour by taking a number of international engagements and national legislations and commitments. The Punjab government has also started android-based inspections in all the established industrial

estates. During the last three months, 1261 inspections were conducted in which 27 cases of child labour were identified. This was followed by initiation of legal proceedings against the violators.[9] Government of Pakistan has ratified all the conventions and initiatives of the UN and other international forums regarding the protection of child labour. The government of Punjab is diligently working to minimise the issue of child labour from the province as said by former Minister for Labour and Human development Mr. Ashfaq Sarwar said "The department is utilize all available resources for the elimination of child labour below the age of 15 years from the province particularly in auto workshops, hotels and restaurants, petrol pumps and service stations in the light of the directions of Chief Minister Punjab."[10]

Following are the major initiatives of Government of Pakistan to Minimise Child Labour:

- Ratification of International Treaties, conventions and Protocols

- National Measures

- Lowest Working Age in Pakistan

Employment of Children Act 1991 says "a child is categorized as a person below 14 years of age and an adolescent is below 18 years of age"[11]. Pakistan's constitution of 1973 regards the minimum work age as 14 years. But the Eighteenth constitutional amendment enacted in 2010 has raised it to sixteen years.

According to the Article 25(A) of the constitution of Islamic Republic of Pakistan 1973, its sole duty of state to provide free and compulsory education facilities to its population between the ages of five and sixteen years.[12] By this a child cannot work before the age of sixteen years, while the Government of Punjab has approved fifteen years as the minimum age for employment and eighteen years for employment in hazardous work. [13]

UNDP Goal 8-2025 Decent Work and Economic Growth

Pakistan has agreed to cooperate with the United Nations Convention on the Prohibition and Immediate action for the elimination of the worst forms of child labour to fulfill the UNDP Goal 8 till 2025. It binds the countries to take effective and result oriented steps to end forced labour in all forms by ending slavery, human trafficking and the worst forms of child labour by 2025.

GSP + Status of Pakistan by European Union since 2014.

The primary objective of the "Generalized Scheme of Preferences (GSP) an European Union initiative to provide concessions in trade to developing / least developed countries by reducing or eliminating tariffs on exports of the developing states to European States. This initiative is was started to help the poor states in managing economic affairs for the reduction in poverty, illiteracy, bad governance and sustainable economic development. These concessions by EU are associated with the programmes and policies to implement twenty seven (27) conventions related to human rights, good governance and protection of environment from degradation.

In response to than the government of Punjab has initiated a number of programmes to implement those national promises. The observation committee of EU has shown disappointment over the pace of growth. The EU ambassador to Pakistan, Jean- Francois Cautain has remarked that "so far the glass is half and half empty"[14] The GSP+ preferences entered into force for Pakistan on 1st January, 2014. The last review for Pakistan on GSP+ was held in 2016 and next review is expected during 2019.

- Factory Act 1934 on Bonded and Child Labour

- The Employment of Children Act 1991

- Abolosihment of Bonded labour Act 1992

- National Steering Committee on Child Labour

According to the agreement between the international labour organization and Government of Pakistan 1994, a committee of observers and implementers comprised of federal ministers, NGOs, trade unions and workers and employers to resolve the issues related to labourers and employers. Following are other initiatives of Punjab Government too:

- National Commission On Child Labour

- Punjab Labour Policy 2015

- The Chief Minister's Vision of A "Child Labour Free Punjab" And War Against Child Labour.

Constitutional Provisions

The constitution of Pakistan 1973 provides guarantee to fundamental rights and puts sole responsibility on the state to ensure these rights. State should make environment so the People be employed in a decent work environment with social security and humane conditions of work. It prohibits all slavery, bonded or forced labour and any form of child labour.

- Article-11- restrict all forms of human exploitation

- Article 11(3) Restricts employment of children under the age of fourteen

- Article- 25 and Article- 25(A)

- Article-37 Equality of All Citizens

- Article-38   Promotion of Social and Economic Wellbeing

Punjab Education Foundation (PEF) Partner Schools

The PEF revolutionary programmes was started in 2005 by the Punjab Government to provide free and quality education to three million unprivileged students through 12000 partner schools with public private partnership at a very low cost of Rs550 per student as compared to public sector school spending Rs5000 per student. There are special initiatives and programs for the education of girls.

- **IP-PMU (Integrated Project To Eliminate Child Labour)**

Integrated Child and Bonded Labour include:

  - Education through non formal Centers,

  - Birth Registration and national ID card Service

  - Social Security system

  - Provision of Health kits and screening system by medical camps

  - A marriage grant of Rupees 100,000/ through Workers Welfare Board

- **The Punjab Prohibition of Child Labour at Brick Kilns Ordinance 2016 and Elimination of Child and Bonded Labour project, EBLIK (4D) 2016**

The pilot project to minimise the Child labour was initially started in two districts (Lahore and Kasur) and now it is extended to other four districts of Punjab with a grant of Rs5.2 billion.[15] Through this project the following initiatives were taken:

- Registration, Effective monitoring and inspection system has been started at brick kilns.

- Education facility free of cost,

- Special District Coordination Committees of the project

- Short term and long term loans to workers for ending the bond of slavery.

- The Khidmat Chard scheme 2016 (Rs.2000 at Registration at school and Rs.1000 per month to every student with a 75% attendance with the teacher)

- Geo- tagging of workers

- Legal aid services

- Health kits and Medical Camps

- Social counseling / Awareness

- **The District Vigilance Committees (DVCs)**

Under the EBLIK 4 D programmes a committee called DVC has been formulated for the implementation and observation of the programmes. In this committee Deputy Commissioner (DC) is chairman and District Officer Labour works as secretary with other members. Implementation on "The Bonded Labour System (Abolition) Act, 1992" is based upon regular and effective working of the District Vigilance Committees (DVCs). DVCs have been made fully functional in all the 36 districts of Punjab under the supervision of DCs who are ensuring holding of monthly meetings on regular basis.[16]

International Labour Organization Country Director to Pakistan while presenting annual report lauded the efforts and programmes of Punjab government with regard to the promotion of labour conditions and efforts to minimise the menace of child labour from all fields of work and provision of education facilities provided to them at their work place with monthly stipends.[17] She directed other provinces to follow the suits

Punjab Labour & Human Resource Department had a MoU with the American Refugee Committee (ARC) Pakistan to counter child labour. ARC and Government of Punjab will jointly work for the common objective i.e. Elimination of Child & Bonded Labour with maximum enrolment at schools by giving stipends to incentives child labourers who wished to be enrolled in schools.[18]

Analysis and Interpretation

Super-ordinate Themes	Major Themes
Nature of child labour in Pakistan (social, economic reasons, Cultural, professional parents or gangs or poor state mechanisms or negligence)	• 3rd worst in the world • Elimination of child labour: a far-fetched dream in a developing country like Pakistan • Poverty, unemployment Clear division of powers or Overlapping powers • Nature of federal or provincial institutions regarding Monitoring and evaluation of Child Labour (composition and functioning)
Measures taken by Government of Punjab to control Child Labour	• International treaties • Legislative Measures • Empowerment of Law enforcement Agencies • Financial Empowerment of parents • Nature of federal institutions (composition and functioning)
Hurdles on the way to the Child Labour free Punjab Response of Prosecution Inspection and Monitoring System	• Constitutional / Legal • Operational • Resources • Capability / Capacity of the State Institutions • Will of the government
Suggestions to have the Child Labour free Punjab	• Constitutional amendment • Improvement of the System of government Institutions or any other. • Establishment of a separate Authority or Department for the Rights of Children • Reforms in Education system • Capability / Capacity building of state institutions • Social Awareness about the Issue • Will of the state • Severe Punishment to employer • All the actors should play a positive role • Capacity and capability building of

Interpretation and Discussion

The views of the respondents have been weighed and corroborated with the theories and assumptions of child Labour, social and administration officials, experts and members of civil society. This eventually will employ that the efforts to minimise the child labour must be accelerated and reformed in response to the respondents. It will lead to the maximum success and will clearly help in diagnosing the loopholes between the policies formulation and implementation to curtail the growing rate of child labour.

Nature of Child Labour in Pakistan

Poverty is a widespread in Pakistan and many people need the extra income to afford food, education, shelter and other daily necessities. It is generally observed that parents face the dilemma of prioritizing short-term economic gain over long-term educational benefits for their children. Thus the children are often viewed as a competitive advantage in the work place. The views of the respondents after discussion with the director labour government of Punjab, legal experts, social mobilizers, labour inspectors it is extracted that the phenomenon of child Labour is one of the social evils experienced by the developing world. It is due to poverty and large family size. "It is a vicious circle of socio-economic problems that is causing this issue and poverty is the basic cause of this menace as 30 per cent of the population lives under the poverty line and is deprived of all basic amenities."[19]

Illiteracy, population growth, unemployment and deteriorating economic condition of the country are forced multiplier to the issue. Due to high unemployment rate of educated youth in the society early job opportunities and proper source of income in early age is also the causing the growth of technical work and child labour. As a respondent said "to be very frank there is no guarantee of job after the Master's degree which is taken after sixteen years of education with the investment of time and money, otherwise a child stars good earning after two to three years of training and it looks charming to parents and the child as well. All major initiatives of the government are of curative nature not of preventive nature. They are ad hoc decisions and based on the international pressure and exegesis of the moment."[20]

Other reasons of child labour are the less wages of child as compared to an adult worker the employer gets benefit of this in the presence of poor governance and toothless laws and inefficient judicial system."[21] We should also take a look at the way schooling is taking up more and more time. In our competitive world, children go to school the whole day, and sometimes, they have additional tuition classes till late at night. This can be as bad as many forms of child labour, education should be compulsory, but it should be child-friendly, and there should be time for playing and games.

Measures taken by Government of Punjab to control Child Labour

Children are the architects of the future and thus their physical, emotional, and psychological welfare should be on the top of the public policy agenda. This responsibility is sanctioned by religious injunctions and the constitution of Pakistan. It is unfortunate that successive governments have remained negligent on this count and the child rights agenda could not get the policy focus it deserved.[22] The fact that Pakistan is ranked among the countries with the highest ratio of children being out of school is alarming and a reason to accelerate the pace of policy reforms. All the respondents were not satisfied from the measures of government to deal with the child labour. One respondent said "the state is not sincerely working on the issue of child labour as the budget allocated is very low and it is not truly implemented."[23] Government becomes active after the media campaigns and international pressure from worldly bodies like ILO, UN and other NGOs.

Hurdles on the way to the Child Labour free Punjab

After the 18th constitutional amendment since 2010 the ministry of labour and human resource was fully transferred to the provinces since then the government of Punjab have started a number of initiatives with the help of local and international partners to deal with the issue of child labour. A number of hurdles have been identified vis-à-vis policy formulation, implementation and evaluation. A large number of huddles have been pointed out by the respondents. Almost all the respondents were of the view that the major hurdle to minimise the issue of child labour is the poor Socio-economic conditions of state and society. As one of the respondents said, "Poverty and unemployment directly lead to the child labour."[24]

The role government to deal with the issue is not quite sufficient as one of the respondent said, "There is no policy making at all in Pakistan. Quite paradoxically the policy makers instead of relying and utilizing the

standard theoretical frame works and ground realities have continuously relied on extemporaneous decision making.[25] There is poor response from the legal system as one of the respondent said "The laws are toothless, their implementation is not effective and the judicial system is overburdened and does not have time to deal such cases. FIRs registered against the employers are not attended for a long period of time and the prosecution department does not support the labour department official.[26] There is lack of awareness among the people and poor response of Prosecution and police department provide leverage to the parents and employers too.[27] Government ignores the ground realities while formulating the policies and programmes. As one respondent said "The inspection and monitoring System of state is very ineffective and there is shortage of human resources and financial support to the poor segments of society."[28]

As the root cause of every social issue is connected with the economic deprivation and injustice. Early employment opportunities force the Poor Parents prioritize short-term economic gain over long-term educational benefits to end their socio-economic miseries and to make their both ends meet. The menace of child labour shatters the dreams of country's future generations. This is an unfortunate fact that some parents compel their kids to work and earn money for them while some are made to send their children for work as they couldn't pay their debts to landlords or lenders especially in rural areas. In both situations, minors and their future suffer.[29] Following are subordinate themes derived from the discussion regarding the hurdles.

Suggestions to have the Child Labour free Punjab

The Declaration of the Rights of the Child emphasizes the physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The Inspection by inspectors or social mobilizers is during the office hours and after 5.00 pm there is not any such mechanism as most of the restaurants and work places are open till late night. As recommended by a respondent that "the manpower of the labour department should be increased and their raids or inspections should be surprised and secret without any fear or influence."[30] Slow, complex and Non Responsive Prosecution system should be redesigned and separate tribunal like labour courts be established.[31]

One of the respondent was of the view that, "there is lack of Will of parents, society and government to discourage it. It should be sensitized and the sensitivity of the issue should be raised."[32] Working children are misfit in regular schools due to age gap among the regular student and misbehave with teachers and class fellows. For this separate schools should be established as initiated in the EBLIK project. One of the respondent said, "EBLIK-4D project should be expanded to all the districts to cater the issue of child labour."[33] Government is focusing on the boys and the girl underage workers are ignored and there is not any record management and inspection of female workers at domestic and home based industries. As said told by a respondent, "Home based workers are still ignored and data of neglected children is not collected, government and society should think about it."[34] According to a social worker "Self-service and disposable system of eating should be introduced at small and large eateries to discourage child labour."[35] No record of workshops, service stations, small hotels, domestic, secret, rural work places or small factories.

In the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, family is convinced as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. Child Labour is a serious concern. Organized or malicious campaigns to induct children in child labour needs to be reported and dealt with iron hands. The full scale adjustment that the menace needs to undertake, therefore, is far larger than anything imagined thus far. The job of handling the situation or the issue not only belongs to the government, it is social, moral and humane duty of parents, society, media and fellow citizens too. It is a dilemma of our male dominated society that our society is not at all women and child-centric. This trend should be changed.

Human rights education enhances knowledge about human rights and the mechanisms for their protection. It also promotes values, beliefs and attitudes that encourage individuals to uphold. As a respondent said "It is disappointing to see these children working in an unhealthy environment. The Government should focus on this burning issue and provide the basic right of children: education. Every child in Pakistan, in fact all

over the country has a right to be educated, he has the right to enjoy his childhood and play freely. The government and even the local citizens of Pakistan should play their part in eradicating child labour and provide these children with better opportunities."[36]

Bright future of children which are orphans, having low economic or social profile isn't the sole responsibility of the government and NGOs but everyone will have to play his/her role to protect the country's future generation. If we can't do anything, then there is no need to come out on roads and chant slogan in favour of children to mark "World Day against Child Labour". We have to shun hypocrisy and take real steps to save children from falling prey to ills that ruin their future. In a nutshell the well-designed human rights measures and elimination of child labour don't just produce a ripple effect. Far more will be required in the days to come. The job includes not only charting a difficult course into the future, but persuading the parents and stakeholders in the society, that the bitter pill is the only one on the menu.

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Academic Session: 5

Women Empowerment

Session Chair: Prof. Dr. Bilveer Singh

INTERSECTIONAL CHALLENGES TO WOMEN OF RELIGIOUS MINORITIES: (A CASE OF MINORITY WOMEN IN PAKISTAN)

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Abstract: Empowerment for marginalised groups encompasses their actual ability to exercise their social, political, legal and economic rights to improve their standard of living and progress towards socio-economic betterment. Much has been written to substantiate the marginalized state of religious minorities in Pakistan, but little interest has been shown in investigating the situation of women in such minority communities from the perspective of human rights. Within the oppressed community, women are treated as lesser humans both within their own caste by men and suffer the same caste consequence from the outside. Social discrimination stemming from inequalities due to class, religion and caste gets compounded by the intra-community patriarchal challenges that jeopardize the lived experiences of women that may likely to contribute towards violations of the rights of minority communities. This paper makes an attempt to examine the socio-religious challenges faced by working class women of minority communities that further eclipse the promotion and protection of the rights of religious minorities in Pakistan. It will approach the issue by looking at the intersectionality of multiple social divisions based on religion, caste, class, skin colour and gender, shaping peoples' subjective realities and synergies which can increase disadvantage, discrimination and deprivation of rights. I will draw my findings from in-depth interviews of 11 respondents that include 7 Women Human Rights Activists from Sikh, Christian and Hindu Community, 2 Christian Journalists and 2 Religious Leaders of Christian Community. Such a research on the intersection of gender, class, and religion will help to identify the challenges that can facilitate the creation of viable policy measures towards improving the lives of women of minority communities in Pakistan.

Keywords: Christians, Hindu, Minority Women, Discrimination, Intersectionality

Introduction

State's relation towards its minorities, be it religious, ethnic, caste and sexual, is measured as one of the parameters on the yardstick to assess the human rights situation of a country as espoused by various international treaties on human rights. The constitution of Pakistan guarantees equality of citizenry irrespective of race, colour, caste and creed containing a complete chapter on the fundamental rights and calling for the protection of the religious minorities in Pakistan[1]. The Government of Punjab in its recently published Policy on Human Rights realized that major part of the minority population is poor and illiterate and expressed its commitment towards adopting special measures for the empowerment of minorities[2].

Pakistan's official census placed religious minorities at 3.72 percent of the total population with Christians (1.59 percent) and Hindus(1.60 percent), being the largest majority and other minority groups include Ahmadis and scheduled castes[3] . Both religious minorities in Pakistan namely Hindu and Christian are concentrated in Sindh and Punjab respectively having a single ethnic association, and are poor, politically powerless and socially depressed[4]. As of 2013, Municipal Corporations have highest number of Christians working as sweepers: Lahore has 76%, Islamabad has 98%, Quetta has 88%, and Peshawar has 86% Christian sweepers[5] and these Christians sanitation workers are ghettoized in Christian bastis[6]. Social marginality is based on characteristics such as gender, ethnicity, religion, sexuality, occupation and language that may often lead to the spatial marginalization of such groups in enclaves and ghettoes, or to the exclusion of marginal groups from privileged social spaces[7]. Christian sweepers are often subjected to socio-religious discrimination and stigmatization due to their work with waste collection and are often called by derogatory words such as Chura etc to ridicule and derogate their community[8].

Empirical study carried out on caste based discrimination in South Asia revealed the prevalence of economic deprivation, social exclusion and a life of humiliation meted out to the groups in Pakistan, who are not only treated differently and often kept out as polluted and   untouchables [9]. This study highlighted the term scheduled caste as used for untouchables in Pakistan, which mostly comprises of small Hindu minorities and for Punjabi Christians, who were converted from the dalit Churas of Punjab entailing a close nexus between

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the question of minority and caste in Pakistan. Due to discrimination emanating from untouchability associated with racial and religious affiliations, minority women of lowest socio-economic families further become the victim of neglect and are usually placed in vulnerable situations subjected to harassment/abuses by their Zamindars/landlords[10].

Literature Review

Patriarchal challenges coupled with caste and occupation based discrimination implies oppression on multiple counts. In addition to the problems emerging from the socio-cultural conditions rife with patriarchal social constructs that are deeply ingrained in the social milieu, it is pertinent to look at the challenges these women are confronted with due to their subservient minority status, lower class and gender identities. A survey study of 800 minority women conducted by a non-government organization based in Lahore reported that minority women faced double discrimination and exploitation because of their gender and association with religious minority group[11]. However, this study has not looked at the specificities of socio-religious discrimination minority women face in terms of their interfaith interactions. Employing intersectionality as a theoretical frame, my study argues that socio-cultural norms rife with patriarchy coupled with religious discrimination give rise to multiple social burdens that need to be analyzed from intersectional lens in order to address the challenges and constraints minority women face. The term intersectionality is rooted in black feminist scholarship in USA. This term was coined by Kimberle Crenshaw to describe the exclusion of black women from white women discourse arguing that the social categories are not independent of each other rather they are interdependent and mutually constitutive which explain the unequal outcomes[12].

People with two or more subordinate identities suffer from intersectional invisibility and further the phenomenon of people living with intersecting subordinate identity has been under-analyzed in social identity research[13]. The debate of intersectionality has been narrowly applied on gender, sexual minorities and race. It hardly covers the concerns of religious minorities, immigrants, oppressed social classes and disabled people. It is pertinent to take into account the experiences of minority working class women living at the margins for constructing development theories and researchers need to turn their attention to these specific issues. Therefore, empirical studies to hear the voices of women of marginalized community will open up research possibilities to describe specific women experiences that can result into services more responsive to women's needs[14].

The mainstream Women Movements in Pakistan have not looked at the specificities of women' positions within minority groups. The academic literature having a human rights perspective has analyzed at the minority question in general but it has not examined the particularity of the situation of women of minority communities in Pakistan. Filling this void, it is pertinent to take into account the perspectives of minority women through their lived experiences in order to draw insights from the situated knowledge at the margins. Bringing forward the socio-religious and patriarchal constraints of minority women, my study will clarify social change discourses to support the creation of strategies for the promotion and protection of the rights of religious minorities.

Feminist Approach

Espousing the use of feminist approach, scholars share the commitment emphasizing that the focus of practice needs to shift from men concerns to the women voices in order to reveal the locations and perspectives of all women and support research of value to women leading to social change or action beneficial to women[15]. At an epistemological level, feminist social science legitimizes women's lived experiences as a source of knowledge as the ordinary and extra ordinary events of women lives are worthy of critical reflection as they inform the understanding of the world[16]. My study uses the feminist frame by considering the voices of minority women as a source of knowledge.

Methodology

My research study brought out the voices from the margins within their contextual realities, therefore, I borrowed support from the qualitative school of thought believing that social meaning is rooted in lived material conditions. My study positions itself within the qualitative approach to explore the social realities constructed by the perceptions of the actors, who themselves internalize the meaning systems and operate within the perceived domain. I as a researcher was immersed in the data collection. Since, I myself belong to the minority Christian community and have been working on social issues pertaining to the interests and concerns of religious minorities with particular reference to minority women in Pakistan for the last 12 years in various

community based projects, therefore, my working experience with the grassroots communities is an added advantage as it allows my participants to freely express themselves without any fear of being stigmatized. Some research questions implied sensitive responses as they were related to their minority identity and personal experiences of discrimination, therefore, the shared minority identity with the participants and my rapport building with the gatekeepers served as an added advantage. In-depth interview was used as a research tool that allowed the application of inductive technique in order to elicit responses from the subjects. Interview questions were framed from structured to semi structured to open ended questions with probing queries and informal community conversations were also conducted.

Data Source and Sampling Strategy

The respondents include 7 human rights activists from Christian, Hindu and Sikh Community, 2 Christian journalists, and 2 religious leaders of Christian Community. Purposive Sampling was applied to help determine the inclusion as well as exclusion criteria that included only those respondents having an experience of working with the rights based perspective on social issues of religious minorities in Pakistan. Data derived from the qualitative study was transcribed followed by coding and developing matrices. The themes were drawn and categorized from the data in order to better reach to answers to the broader research questions of the study. Digital recorder was subject to the approval of the choice of participants as a few participants were reluctant to record their voices given the sensitivity of the nature of questions relating to their minority status. After completing the fieldwork, all recorded in- depth interviews were listened to in detail and potential themes were developed for analysis. Responses were translated from Urdu, Punjabi to English.

Findings and Discussion

Minority Identity at Workplace: The nursing profession in Pakistan has a sizeable number of women from the Christian community but the negative shadow emanating from the social stigma of the profession itself coupled with minority religious identity lurks strong throughout the professional career of Christian nurses. As told by a respondent, "while I was working as a nurse, I experienced religious discrimination at workplace due to my religious association with the community known for janitorial services, and derogatory words such as churi and bhangi are hurled against Christian women regardless of whether they work at middle or upper echelons of the organizational structures". The colloquial punjabi/lahori language has many demeaning and derogatory idioms regarding the chura community. The word chura itself is used to describe any worthless person and to belittle him/her. The novel "Our Lady of Alice Bhatti, penned the perils and pains of a working class Pakistani Christian nurse due to her minority religion and lower caste subaltern status[17].

Minority women at their workplaces face inter-community challenges in maintaining cordial relations with their coworkers due to some socially preconceived notions and misnomers ascribed to their religious identity as resonated in the words of the respondent.

"I was working as a teacher in a Government School where I was constantly asked questions about my religion and offers for religious conversions are often made to me and such encounters were quite uncomfortable and, above all, a few middle aged Muslim colleagues were not ready to sit and eat with me and once they were surprised to know that my Aunt is a teacher in a college because they thought that all Christians work as sweepers".

The public discourse on caste based discrimination is quite silent whereas the exclusionary practices against marginalized groups are wide spread, such as, many stories reveal that while taking meals, utensils used by poor Christians in Punjab and KP and scheduled caste Hindus in Sindh and Baluchistan, are kept separated[18]. It is further attested by my respondent, who said "Utensils of Christian domestic workers are placed separately because they are considered as unclean".

The concentration of socially disadvantaged working class groups in undervalued domestic work jobs are not protected by any labor laws. Domestic workers are often degraded and disrespected due to their nature of work and lower class, specially, Christian workers, who are called as jamadars, mehtars etc for doing dirty cleaning jobs. Furthermore, women earnings of these socially disadvantaged groups do not bring any change in the gender hierarchies and power relations at homes[19].

Interfaith Marriages and Religious Conversions: The concept of interfaith harmony is very much linked to promoting peace among communities of different religions and honor diversity and plurality of religions, faiths, beliefs and practices as well as developing friendly spaces for interfaith relations and social harmony. However, the materialization of interfaith interactions into interfaith relations exposes a plethora of social challenges confronted by women of religious minority. Under-aged marriages of Hindu girls followed by religious conversions is quite a common practice among Kohli, Bheel and Hindu community in Sindh. "In such situations, filing an FIR in a Police Station by the family of the Hindu women is a daunting task due to the inbuilt social bias reflected in the behavior of Police Officers. The law enforcing agencies are reluctant to subscribe to the notion that under-aged Hindu girls can be converted forcibly and married off, learnt by a respondent while she was extending legal support to the family of a lower caste Hindu woman". Religious conversion of the lower caste Hindu girls have been consistently reported during the past several years and Hindu representatives viewed forced conversions and abduction of minor girls as a grave issue of concern[20]. A respondent of Sikh Community said, "our community does not support interfaith marriages and community elders are of the view that if we allow our women to seek education they will be exposed to interfaith interactions and could be susceptible to religious conversions through marriages by men of the majority community, therefore fearing religious conversions, women of Sikh community are usually married off at an early age within the confines of their own community. In this way, women of Sikh community are restricted in accessing any social space outside the bonds of their own community.

Fearing cultural integration with other communities, I draw semblance to the position of Saigol, who analyzed the patriarchal nationalist anxiety reflected in the writings of Sir Syed Ahmad Khan during the late 19th century that restricted women from attaining modern female education due to the fear of loss of control over their women[21]. In my study, men of Sikh community entertain the same anxiety that their women' entry in the public sphere will negatively affect their tradition and culture.

"With the exception of a few cases, it is often seen that acceptance of a Christian bride in an extended Muslim family is not welcomed and she is often named as Churi by her in-laws", shared by a respondent. In certain cases, where such marriages are broken, women have no choice for social rehabilitation to their parents' house because parents view that their act of marrying a man of other religion brought a bad name to their family honour in particular and bad reputation to their community in general.

In feminist and gender studies, the woman body has occupied a key position in a wide range of debates, including: men's control of women's bodies as a key means of subordination[22]. It resonates with the liberal feminist analysis that how women bodies are embodied with the notions of carrying male, family and community honor. The 'dishonouring' however works only when the meaning of honour as symbolically vested primarily in women's bodies is shared by both the communities of the perpetrators and the victims[23]. Therefore, women of minority community become more vulnerable to any kind of violence emanating from social inter-community discord and divisions.

Intra-Community Patriarchal Construction: Within the oppressed communities, women are treated as lesser beings both in their own caste by men and suffer the same caste based repercussions from outside. The psycho-social construction of sexuality in an oppressed and marginalized class derives from the unreconstructed patriarchalism based on the unexamined assumptions of attaching power, purity and superiority to maleness and impurity, inferiority, weakness to female[24]. Impact of patriarchal forces particularly on women' lives are not homogeneous and depend on their class, class, religion and geographical location [25].

Personal Laws affecting Minority Women: Christian Divorce Law 1869 needs amendment to expand the grounds of dissolution of marriages as the current laws requires the use of adultery as a ground for divorce. In accordance with section 10 of the Christian Divorce Act, a man can apply for divorce only if he proves that his wife is guilty of adultery after their marriage was solemnized and needs to name the co-adulterer with that of his wife and if he fails to name co-adulterer then he has to claim that his wife is leading a life of a prostitute. Massive social change has occurred spanning over one and a half century, but unfortunately, the ground for divorce and judicial separation remained the same as it is extremely difficult to succeed in a divorce petition because one has to prove adultery and since the charge of adultery is difficult to establish fake witnesses are brought forth and manipulated testimonies are produced for proving charges of adultery and in many other situations, where adultery, in fact, is non-existent, but nevertheless, petitions to the effect are filed for the purpose of resolving socio-cultural disputes[27] ."The absence of reasonable grounds for divorce in a christian

marriage further present insurmountable social challenges to Christian women, who are entangled in difficult marriages and seeking judicial redress becomes more complicated in the presence of such a law", informed by a respondent.

The Punjab Anand Karaj Act 2017 regulating the Sikh marriages was passed by the Punjab Assembly in March 2017[28], however, the rules of business are yet to be made in order to translate law into practical application. Similarly, Hindu Marriage Act was passed in February 2017[29], however, it is still awaiting the drafting of the rules of procedures.

The absence of such laws governing marriage, divorce, inheritance and child custody further distances Sikh community from legal protection that provide a reason to community elders to have illegal jirga system in order to settle family disputes. The virtual absence of women voices in such community redressal forums place Sikh women at a disadvantaged position, informed by a respondent.

Conclusion

The research findings brought out the empirical insights in understanding the intersectional layers of discrimination emanating from multiple sources such as class, caste, religion and gender that eclipse the social well being of women of minority communities, which is also upheld by the feminist theory of multiple jeopardy[30]. Pakistani Women in general are subjected to patriarchal socio-religious and discriminatory cultural norms whereas the situated reality of minority women gets jeopardized on multiple counts due to their subservient gender, class, caste and religious identity. Therefore, collective struggles for the practical realization of human rights in Pakistan need to look into the specificities of minority women located in the socially oppressed situations. The Women's Movement in Pakistan, the Women Action Forum has always been concerned to the protection of rights of religious minorities in Pakistan, however, a detailed analysis on the situation of minority women is needed to include the subaltern voices from the margins. Thereby, the question of women identity should not be taken as a monolithic category for analysis. Rather it is essential that intersectional aspects characterized by class, gender, religion and occupation need to be taken into consideration in research analysis.

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MINORITARIAN WOMAN: NEGOTIATING WOMEN EMPOWERMENT AMONG MINORITY COMMUNITIES; AN EXPLORATION OF MUHAMMAD HANIF'S OUR LADY OF ALICE BHATTI

Zahida Younas *

Areeb **

Abstract *This paper intends focus on the empowerment of women belonging to the religious minorities of Pakistan. The rights of religious minorities have been a major issue in the Pakistani community. Researchers like Theodore Gabriel emphasize the importance of preserving the rights of minority communities including the right to preserving their religious and cultural identity, yet it has been observed that religious minority communities in Pakistan do face certain challenges. Focusing on the issues of women empowerment, we argue that women belonging to religious minority communities in Pakistan are denied rights and oppressed on multiple axes, that is, both with reference to their religious affiliation and their gender. Drawing on the Gutierezz's definition of women empowerment we intend to explore how women belonging to minority communities in Pakistan negotiate in between their social circumstances, both owing to their status as a member of a religious minority and as women, to create spaces of resistance and agency for themselves. We intend to explore these issues with reference to Pakistani literary writings, specifically Muhammad Hanif's novel Our Lady of Alice Bhatti. We would explore how the mentioned text portrays Christian female characters as negotiating their rights, as presented in the UN declaration of human rights, both as women and as members of a minority community showing how these women attempt to find empowerment within the very spaces that seek to oppress them.*

Keywords: Women empowerment, Religious minorities, Gender, Resistance, Agency

Introduction

Though Pakistan is essentially a Muslim country, it does indeed have some minority communities belonging to other religions. This paper is an attempt to explore the issues faced by religious minorities in Pakistan, who are excluded from the mainstream Pakistani society due to their religious affiliations, regarding their rights and their religious and cultural identities and the ways in which they negotiate these within the Pakistani society with reference to the depictions of the Pakistani Christian community in Muhammad Hani's novel, *Our Lady of Alice Bhatti*. We intend to focus more on Christian women who we believe are stuck in a double bind, both with reference to their gender and religion.

Muhammad Hanif's *Our Lady of Alice Bhatti*, portrays his Christian and "Choohra" characters as being excluded from the main social fabric of the society due to their religion which, in Pakistan, is not the religion of the majority of the population. While there is no accepted definition of minority as yet, Marvin Harris has defined "minority" as "a subgroup within a larger society and that its members are subject to disabilities in the form of prejudices, discrimination, segregation, or persecution at the hands of another kind of subgroup, usually called a majority".[1] Louis Wirth presents a similar stance referring minorities as to "a group of people who, because of their physical or cultural features are singled out from others in the society in which they live for differential or unequal treatment, and who therefore consider themselves as objects of collective discrimination"[2]. Here the Hanif's novel too depicts Pakistani Christians as subject to multiple levels of discrimination at the hands of the Pakistani elite.

The exclusion of minority groups from mainstream society is inbuilt into the concept of nationalism which, according to Soekarno is an imagined framework that maintains national unity but only includes identities who share certain common notions including cultural, linguistic, racial and geographical background. In this manner, nationalism stands as an exclusionary principle which eliminates all those groups who do not share certain similar notions[3]. Theodore Gabriel states here that minority groups are very often under a lot of pressure to assimilate. The group that identifies itself as the majority very sees minority communities as alien

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and thus as an outside threat to the society[4]. Similarly, the Christian characters in Hanif's *Our Lady of Alice Bhatti* are seen as outsiders in the society and have to go to great lengths in order to be accepted as a legitimate part of the Pakistani community. The reason is, a Gabriel quotes Fazlur Rahman as saying, Islam has been "made a limiting factor"[5] in the Pakistani society, rather than a factor that encompasses all human beings.

Christian women in Pakistan constitute the group of women who are marginalized both on the basis of their religion; that is, they are Christian, and on the basis of their gender, that is, they are women. They can be termed as "subaltern" meaning "of inferior rank"[6]. Younus and Qasim note that, 'Subalternity refers to a condition of subordination or marginalization, brought about by…economic, social, racial, linguistics or cultural dominance. It is a condition – a space of difference- where the masses; the subaltern, have no access to power or any other influential position"[7]. Being on the subaltern position, they belong to those ethnic minority classes, who are not just facing the issues related to the class but also they are being marginalized because of their religious identity. Capotorti defines ethnic minority as 'a group which under-numbers the rest of the population and does not occupy a dominant position in the state; its members are citizens of that country and possess a number of thenic, religious, or linguistic characteristics other than the rest of the population, and experience, at least implicitly, a sense of solidarity aimed at preserving their culture, traditions, religion, and the language"[8]. For the purpose of this paper we will be focusing specifically on the religious aspects of minoritarianism rather than thenic or linguistic ones.

Gender is also one of the major causes of being a subaltern. Women belong to a lower class and are 'even more deeply in shadow'[9] as Spivak argues. For her, subaltern is another name for the women in a phallocentric tradition. It is building on this particular argument that we argue that Hanif's female Christian characters are made doubly subaltern in that they belong to a religious class that is a marginalized minority within Pakistan. In conjunction with that, these characters are also marginalized, both within their own community and within the rest of the Pakistani community on the basis of their gender. However, we argue that the protagonist of the novel, Alice Bhatti, despite the restrictions placed upon her, exercises her agency to get certain rights that are denied her because of her gender and religious affiliation.

Subalternity of the Minority Subjects

Muhammad Hanif's *Our Lady of Alice Bhatti* portrays the characters of Alice Bhatti and her father as subaltern within the Pakistani society on the basis of their religious affiliation that is, being Christian. Furthermore, as Muhammad Hanif emphasizes, these characters belong to the class of Christian "Choohras"[10], that is, sweepers and cleaners who are seen as the one of the lowest classes of society. This puts Alice and her father at a disadvantage both in a Muslim majority society and their own Christian community. Alice Bhatti's father, on the very first page of Hanif's novel, states "These Musla will make you clean their shit and then complain that you stink…And our own brothers at the sacred? They will educate you and then ask you why you stink"[11]. Thus the status of a Choohra itself works as a double bind for the Christian community. Yet another character Dr Pereira states that "There was a time when he could assert his authority and claim that the hospital was built by *my* father named after *our* Holy Mother so why should anybody have a problem hiring a nurse who happens to be Catholic"[12], showing how Christian representation, even in Christian spaces, becomes at times, a matter of contest.

It must be noted here that as mentioned before, that much of the discrimination against the Christian minority community is portrayed here, in the novel, as a result of the fact that Islam has been made a limiting factor in the Pakistani society rather than an inclusive one. Thus, the moment Alice marries Teddy Butt, a Muslim man, it is automatically assumed that she has converted to Islam, though she herself denies it. Similarly, another Christian nurse who married a Muslim, Sister Hina Alvi, finds herself unable to switch back to her maiden name, Massey, after her divorce because doing so "might give someone the idea that here is a Musalman abandoning her faith"[13].

This matter becomes even further complicated at another point in the novel when Alice is tried in court for attempted murder   . Alice's father notes that since "the case doesn't involve any claims of religious discrimination, any acts of blasphemy or disputed church lands, nobody from Lord's Lawyers or any of the human rights organisations has showed up"[14]. Though Theodore Gabriel describes the rights of minorities as "for them to receive equal rights and treatment from the state, to preserve their religious and cultural identity"[15] it is noted here that the discrimination extends beyond the issues of religious and cultural identities expanding onto other social issues as well, most of which are ignored, even by the human rights organisations, in favour

of religious rights specifically. Gabriel too states that the problems faced by the Christian community in Pakistan extend to education and the legal sphere as well[16].

The fact that any other problems that the Christian community, and specifically Christian women, face are ignored of they're not directly related to religious matters is emphasized even further at another point in the novel when Alice's mother, Margaret Bhatti's death, is passed off as an accident, even though Alice notes that "it is not very likely that when you slip…you'll also scratch yourself on your left breast with such violence that those who wash your body will see four parallel sharp gashes drawn with human nails"[17]. The fact that the Bhatti family remains silent on this matter cements them as being part of the subaltern, subaltern here being, people "denied access to hegemonic power"[18] or "any other influential position"[19]. These people thus cannot gain access to any influential position that may help them articulate their rights, and thus they remain unheard. The fact that the Christian community in *Our Lady of Alice Bhatti* is portrayed as subaltern is cemented in the novel at Alice's trial where she is charged with attempted murder despite the fact that it was done in self-defense. This idea is once again cemented at the very end when Alice is murdered by her husband and simultaneously denied sainthood by the Christian community that believes Alice to be a "junior nurse of questionable character"[20]. This connects the character of Alice with the subaltern condition, that is, "a condition of subordination or marginalization". This further connects Alice's exclusion from both the Muslim and the Christian community to her gender leading up to our argument that Hanif's female Christian characters are oppressed on multiple levels including both religion and gender.

Alice's gender puts continuously paints her as an object and a target of men around her. Alice notes that, in her career as a nurse, she has seen women "shot or hacked, strangles or suffocated, poisoned or burnt, hanged or buried alive…most of life's arguments…got settled by doing things to a woman's body"[22]. Alice continuously emphasizes that she does not want to "that kind of woman"[23] and she takes precautions as such; that is, "she tries to maintain a nondescript exterior; she learns the sideways glance instead of looking at people directly. She speaks in practiced, precise sentences"[24] and so on. The reason being, as evidenced by Alice's mother's death and Alice's own death at the end of the novel, is that these women too have no access to an influential platform where they may air their problems, as a result they remain silent and as Spivak states "even more deeply in shadow"[25]. There is point in the novel where she is suspended from her nursing position for attacking a man who tries to rape her. Once again, Alice's voice goes unheard and she is told that she has not been trained to "go around hacking them" no matter the reason. This once again makes them a part of the subaltern.

The subalternity of the Christian women is emphasized in Hanif's text a condition that is situated in multiple forms of oppression. Alice's position both as a woman and as a member of a minority Christian community interacts in complex, and sometimes conflicting, ways to exclude her from the main social structure of the Pakistani society. Alice notes herself notes that "some people do not want to drink from the same glass she has drunk from…But the same people who wouldn't drink from a tap that she has touched have no problem casually poking their elbows into her breast or contorting their own bodies to rub against her heathen bottom"[27]. Throughout the novel Alice's religion and her gender are constantly conflated in a way that adds to her discrimination thus implying that Alice's being a woman and being a Christian both relegate her into a lower position where she is treated like an object. Alice's husband too is told by his friends "No disrespect to our bhabi, your wife is just like our sister but these mushkis are very hot"[28]. Thus Alice's position as a woman and as a member of a minority community are both used to exclude her from a position where she is agentic and instead used to delegate her to a position where becomes part of the subaltern, unable to have her voice heard by those in power both within the Christian community and in the majority Muslim society.

Creating Spaces: Resistance and Agency

Despite being placed in a subaltern position, both Alice and her father, as members of a minority community, and Alice as a woman negotiate their rights within the social paradigms of their society both overtly and covertly and manage to achieve certain forms of agency and in this way, find some form of empowerment and attempt to create a space for themselves in the society from which they have been excluded.

The term empowerment too has multiple definitions. Gutierezze speaks of empowerment as a "process of increasing personal, interpersonal or political power so that individuals can take actions to improve their life situation"[29]. In a similar vein Collins reconceptualizes the definition of empowerment by connecting it with resistance strategy, observing that black women create their own space by resisting oppression[30]. Joseph and

Alice Bhatti too attempt to create a space for themselves within society from where they can assert their agency and, in Alice's case, create a better life for herself.

Hanif's novel portrays Joseph Bhatti as owning his own position as a member of a marginalized community. Joseph Bhatti is proud of his status as a Choohra, so much so that the other members of his own community find him strange, wondering "What kind of sweeper goes out and cleans the city on his days off?"[31] This is accompanied by other similar accusations to which he replies "This kind of man. Joseph Bhatti Choohra"[32]. At another point it is stated that he "always referred to his work as duty, as if his duty was not clearing up clogged sewers"[33]. Joseph Bhatti's acceptance of himself as a choohra perhaps may be theorized with reference to Bell Hooks who sees the margins not simply as places of deprivation but also as places of resistance[34]. She states that being part of the margin is to be "part of the whole but outside the main body"[35]. Thus Alice and Joseph Bhatti's position outside the main body of society provides them an outside view into the workings of the society. Hooks states that to see the margins as a site of deprivation only is another form of oppression which prevents the oppressed from launching a resistance[36]. Alice and Joseph Bhatti, in Hanif's novel, thus launch their own resistance from the margins of society.

While Joseph Bhatti finds his own form of agency and resistance in pride as a choorha Alice's resistance combines both a sense of being marginalized with a constant form of challenging the power structures. Even when Alice is being sentenced to prison Alice "walks into the dock with her head held high, handcuffs clinking, staring purposefully at the judge as if saying: you?...Alice does turn around, but only to stare at the judge, then she spits on the floor of the court and rushes out"[37]. Alice's refusal to bend to authority carries into her daily life where she breaks multiple social conventions including marrying a Muslim man without converting to Islam as she tries to gain more agency within her own life. Agency here is defined by Kabeer "in relation to empowerment, therefore, implies not only actively exercising choice, but also doing this in ways that challenge power relations"[38]. Alice's character challenges the power structures again and again while at the same time exercising her agency to make her own choices including the choice of marrying a Muslim for love while refusing to leave her own religion; in fact, when the question of changing her name comes up Alice states: "I am no bishop's daughter, not even related to a common priest. But it never occurred to me to change my name"[39]. Alice thus, despite her desire for escaping her life as a choorha, intends to remain situated within the margins even after her marrying a Muslim man, unlike the other member of her family who take up Muslim names and pretend to be Muslim in order to improve their lives.

Alice's marriage to Teddy, despite her Christian colleagues' disapproval, too is an act of defiance and thus, a way for Alice to assert her agency. In doing so, she attaches herself to a Muslim man which once again gives her a possibility for greater agency within the Muslim society. Thus Alice finds that she has created another space, through the choices she has made where she may continue to assert her own agency. However, despite her marriage to Teddy, Alice's position as an agentic subject within the society is still uncertain. Despite being able to create a space where her voice may be heard and where Alice's could challenge her status as a subaltern, Alice's father finds, after her death, that despite temporarily being able to create a space from where Alice can speak up as a minority woman she remains subaltern within her own community when the Christian authorities refuse to declare her as a saint, their reason being the fact that they suspect her character and the fact that she is, in the end a choorha, that is, a member of the lower working class.

Conclusion

In conclusion, Hanif's novel *Our Lady of Alice Bhatti*'s portrays the Christian community and specifically Christian women in Pakistan, as a subaltern class and thus as excluded from the mainstream social discourse. However, drawing upon Gutierraz and Bell Hooks, an analysis of the novel shows that despite their status as subaltern, these Christian characters, do indeed find ways of questioning their own subaltern status by increasing their personal power while inhabiting the margins of the society. However, though Alice, a Christian woman does manage to negotiate a space for herself within the confines of being a woman and being from a religious minority, her space is still undermined by her socio-economic background as a result of which her own community refuses to saint her.

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ROLE OF FARMING CO-OPERATIVES IN ENHANCING WOMEN'S EMPOWERMENT IN PAKISTAN

Shahroo Malik[*]

Abstract: Rural women in Pakistan are an integral part of the agriculture sector yet their contribution often remains invisible at policy level. Despite the fact that they've been involved in farming and agricultural related activities since centuries, they're not able to reach their full potential. Using Pakistan as a case study, this paper tries to explore how farming co-operatives help in enhancing social political and economic empowerment of women. It examines what constraints women face while obtaining a co-operative membership. This study is based on a mix of both quantitative and qualitative secondary data. The results of this study indicate that arming co-operatives help women to earn income by acquiring modern farm related skills and techniques, hence becoming economically empowered. Farming co-operatives also help in attaining better social outcomes such as increased spending on children's education, especially girls' education and enhanced nutritional diet. A higher economic status of women then socially empowers them by enhancing their status in household, confidence and self-esteem increases their decision making power. Furthermore, farming co-operatives also help in politically empowering women by developing networks and linkages through which they can come together to raise issues of common interest and concern. These networks then help them in putting forward their concerns to relevant policy makers.

Keywords: Women, Empowerment, Co-operatives, Farming, Decision making.

Introduction

Since centuries women have been involved in farming activities such as taking care of livestock or working in fields. But their contribution in farming related activities often remains invisible. Even in Pakistan, rural woman play a very important role in farming sector yet their contribution is often ignored in policy circles. Agriculture sector is an important part of Pakistan's economy and it accounts for 19.5% of the Gross Domestic Product (GDP).[1] It is a source of livelihood for 42.3% of rural population out of which 14.56% of the females are directly associated with agriculture related work[2]. Pakistan ranks at 143 out of 145 on Gender Gap Index 2017[3], 0.75 on Gender Development Index (GDI) 2018 and 0.541 on Gender Inequality Index (GII) 2018.[4] Pakistan's poor ranking on gender related indicators clearly show that it is one of the most unequal countries in terms of women's empowerment and gender equality. This shows that a lot needs to be done for women's empowerment in Pakistan. Hence, in countries where agriculture sector constitutes as a major part of the economy, farming cooperatives can play a major role in enhancing women's empowerment by strengthening their role in economic, social and political spheres.

Food and Agriculture Organisation (FAO) defines co-operatives as a collaboration or partnership of women and men who come together to work for the achievement of their common cultural, social and economic needs through a jointly owned and democratically controlled enterprise.[5] In co-operatives members pool in their resources such as land, labour, capital and technical knowledge to serve the common needs of its members, earn profits for them and fight for their rights.[6] The co-operative model exists in various sectors such as housing, finiancial services, agriculture, dairy, housing, etc.[7] This study will focus only on farming co-operatives which includes both dairy and agricultural co-operatives.

Many researchers have defined women's empowerment differently and there's very little consensus among them. This study uses Kabeer's definition of empowerment in its analysis. Kabeer defines women's empowerment as "the expansion in people's ability to make strategic life choices in a context where this ability was previously denied to them". Kabeer takes in to account not just the ability of a person to make choices but also considers the process of change that occurs when the person achieves these abilities. According to Kabeer, a person only becomes empowered if they start to exercise their right to choose in major fields of life where this right was denied at first. Similarly, Malhotra states that any positive change in woman's status cannot be considered empowerment if women themselves are not part of the process that brings change.[8]

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The aim of this study is to explore how innovative and practical initiatives such as farming co-operatives can help in empowering rural women of Pakistan. This paper is divided in to four sections. The first section is the introduction while the second section of this paper analyses the impact of farming co-operatives on women's lives. Third section examines the constraints women have to face in order to join the farming co-operatives. The last section is the conclusion.

Figure 1: Impact of Farming Co-operatives on Women's lives
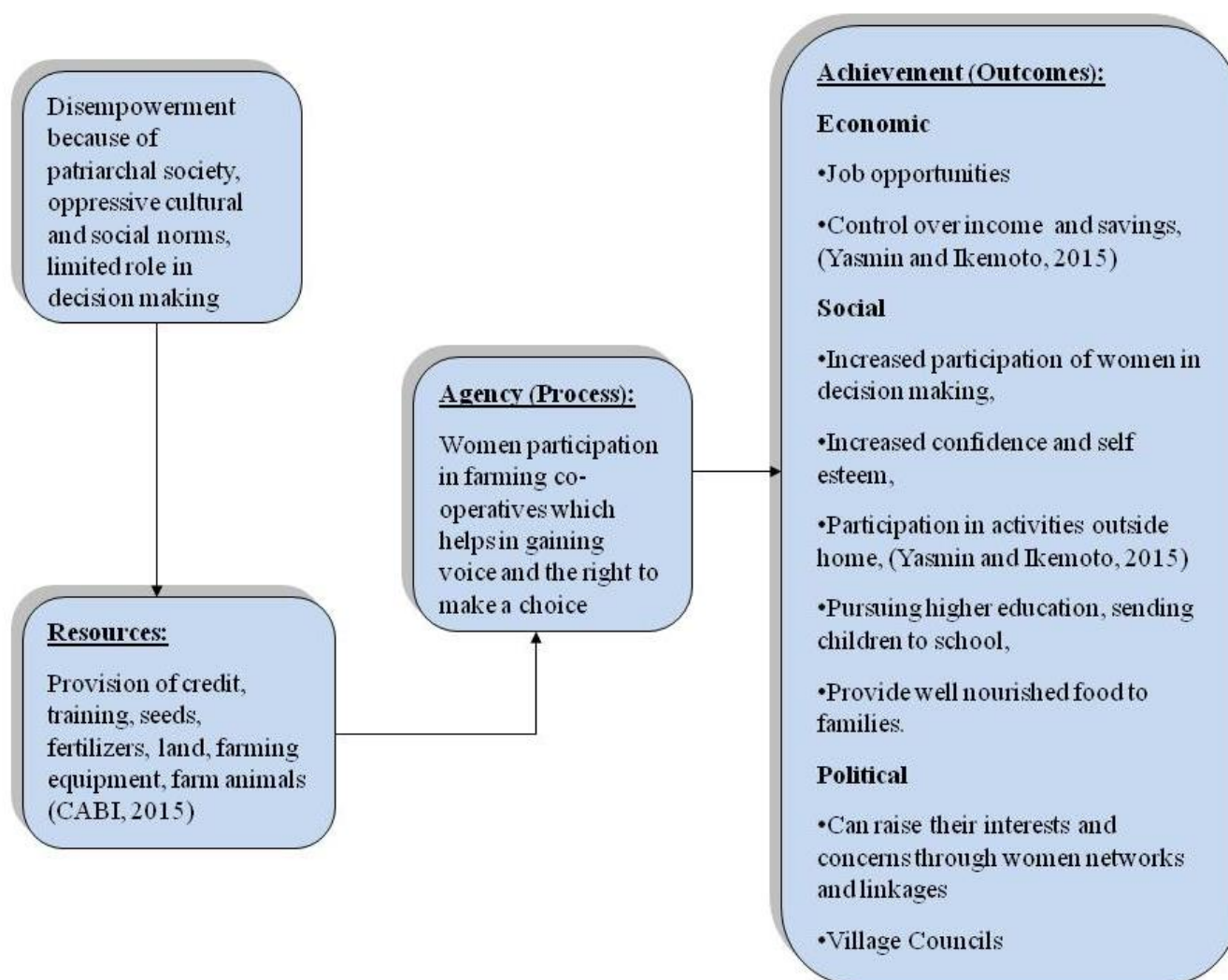
Economic Impact

Many studies carried out on farming co-operatives indicate that they play an important role in economically empowering women. According to Kabeer, 1994; Sathar and Kazi, (2000) access to income enhances the chances of women to exercise greater decision making power in households.

One such case is of Rohan Banu, a member of female farming co-operative named Aurat Sanjh in Khushab, a rural area in Punjab province of Pakistan.[9] Patriarchy has a strong grip over Khushab and women in this area are dependent upon male family members for basic necessities such as clothing, food and education. Women often face restricted mobility and need permission from their fathers, husbands or brothers before stepping out of their homes. In order to make women economically independent and increase their decision making power at household level, members of Aurat Sanjh decided to distribute goats among the neediest

members.[10] These goats helped women in generating income and they were able to take important financial decisions (regarding savings and investments) on their own thus become partially economically independent.[11]

Similarly, ActionAid took an initiative in Mardan in Khyber Pakhtunkha province of Pakistan by facilitating landless women to form farming co-operative. These women co-operative members acquired land on credit and started growing vegetables collectively. Rukhsana, one of the beneficiaries of this project says that the vegetables are consumed by the family and the excess are sold in the market. This has provided food security to her family.[12] Her family income has more than doubled and she's no more dependent on her husband for livelihood.[13]

According to Kabeer, it is not necessary that women who are able to earn income and share household expenditure also have control over assets, land, capital and other valuable resources which in most cases remain under men's control. In 2006, United Nations Development Programme (UNDP) and Government of Pakistan took a joint initiative to restore 80,000 ha of land affected by water logging in Sargoda, Jhang and Hafizabad districts of Punjab province.[14] These reclaimed areas are now being used by women farming co-operatives to grow crops and vegetables. Women are now able to contribute to the household income. Their incomes have also risen by Rs. 22,500 per acre annum.[15] However, it is pertinent to note that 96% of the respondents (women) when asked about having control over this additional income reported that their male family members had control over their earned income. While only 4% of the respondents reported that women themselves had control over this income.[16] Therefore, it is important to note that even when women are the breadwinners, they might not have the ultimate control over their incomes. However, the examples mentioned above indicate that farming co-operatives have helped women to actively take part in financial matters without relying on men.

Social Impact

Farming co-operatives also play an important role in enhancing a woman's position in traditional patriarchal societies. Studies show that after joining farming co-operatives women were able to exercise agency, take their own decisions such as pursuing higher education, sending their children to school, challenging the centuries old customs and norms and take active participation in economic activities.[17]

Naseem Mai, one of the members of Terimat Sanjh, a farming co-operative in Layyah, states that she's been able to send her children to school through the income earned from the co-operative and provide them with well nourished food.[18] Tahira Wahid, a widow and member of a dairy co-operative in Vehari states that her cattle are her most valuable asset as they help her in supporting her four children. The extra income earned from the dairy co-operative is then used to send her children to school and some is saved to buy new cattle.[19] Rukayya, a 16 year old member of a women livestock cooperative (an initiative of ActionAid) in Bhakkar, Punjab, says that she earns a reasonable income from the co-operative by rearing and selling lambs which she then spends on her education. She's the first one in her community to pursue higher education.[20] Similarly, Bibi Zubaida, a beneficiary of Balochistan Agricultural Programme launched by FAO in 2005 in Zhob District of Baluchistan Province to encourage women to actively participate in income generating farming related activities, says, "now, we are able to provide education for our children. Even our daughters are going to school."[21] Therefore this indicates that farming co-operatives encourage women to invest in their children's education, especially daughters who are otherwise neglected in a typical patriarchal society. They are also able to pursue higher education themselves once they become economically empowered.

The results of a project carried out by Oxfam called "Empowering small scale producers, especially women in the Dairy Sector" indicate that 60% of the respondents of the survey reported that women corporate members were able to travel alone to a nearby village without any male family member accompanying them and can actively participate in community group event after joining the co-operative. While only 45% of the non-cooperative members that were surveyed reported that they exercise agency in making decisions autonomously.[22] Similarly, when the respondents were asked about their views on sending daughters to school or women taking up leadership roles in community; those engaged with the co-operative were more supportive of the idea than non-cooperative members.[23] The study also indicated that women members of dairy co-operatives had higher level of confidence and self esteem than non-members.[24]

In 2013-14, Centre for Agriculture and Biosciences International (CABI) initiated a project of establishing farming co-operative in Punjab and Gilgit-Baltistan provinces of Pakistan. The project provided training to women members in order to enhance their farming skills, enabling them to grow tomatoes, store

grains and maintain livestock. Initially this project had to face criticism from the local community as women's direct involvement in the agricultural activities was not considered a norm. The community's attitude towards this programme changed once they saw the trainees making significant progress in attaining farm related knowledge and skills.[25] They also started getting respect from their family and community members on the basis of their knowledge regarding modern farming practices and the trainees witnessed higher self esteem after the training. According to a survey conducted before and after the training, less than 5% of the females interviewed by CABI before the training took part in household decision making process in Southern Punjab which rose to 50% after the training.[26] In Gilgit-Baltistan, 73% of the females reported that after the training they were respected more and were asked for advice regarding major financial decisions.[27]

Women associated with dairy co-operatives have reported that their consumption of dairy products has increased which has enhanced their nutrition intake. Similarly, women involved in growing vegetables have reported that are now able to provide fresh and nutritious food to their families. Hence, when women are involved in farming co-operatives, they're not just able to earn an income but are also able to improve the health of their family members. Twenty-nine percent of the women that were interviewed in Southern Punjab reported that the training has greatly benefited them in earning extra income by growing and selling vegetables in the local market. Similarly, 18% of the females reported that the savings made by growing and selling vegetables enabled them to contribute in the household income.[28]

Hence, farming co-operatives help in enhancing social empowerment of women as being an income earning member of the household, with knowledge regarding modern farming practices, they are respected by their community and family members. This greatly enhances their confidence and self esteem and encourages them to take decision making power in their own hands rather than relying on men. However, it needs to be considered that women often have to face double burden as they not only work on the farm but also look after their children and household chores which means more work and less time for leisure hence, negatively affecting their health.

Political Impact

Farming co-operatives not just empower women economically and socially but also empower them politically. Farming co-operatives provide a platform to women to form networks and linkages through which they can come together to raise issues of common interest and concern.[29] These networks then help them in putting forward their concerns to relevant policy makers. Co-operatives often fight for the rights of their members on numerous forums in order to empower them and hence, helping in addressing women's issues and concerns. Co-operatives have an inherent characteristic of encouraging democratic values as they are based on democratic principles.[30] Thus, they serve as a platform where awareness regarding political values and political mindset can take root. Women are also given equal opportunity as men to participate in decision making process, express their concerns and take leadership roles.[31] Moreover, the process of sharing responsibilities, working together and networking facilitates community empowerment.

Farmer organisations like Hali Sanjh, Tareemat Sanjh and Haqooq Council in Punjab facilitated formation of farmer assemblies where farmers could raise their concerns regarding price hike of agricultural inputs.[32] Hence, the formation of networks and collaboration of farming organisations and cooperatives at council, tehsil and district level helped farmers to put forward their demands in front of media, policy makers and other actors.[33]

Agarwal also emphasis on the group power of farming co-operatives in improving women's clout with government; raising their concerns at tehsil and district level and in return enhancing their access to inputs and information.[34] Somera Fareed, a woman member of Hali Sanjh states that Hali Sanjh helped them in bringing 2000 people together and protest outside government departments in favour of opening a railway crossing (which was closed for years) through which they could easily transport their crops to markets and go to school.[35] Eventually the railway gate was opened after continuous negotiations between the department officials, the local authorities and members of Hali Sanjh.

Hence, farming co-operatives encourage women to become a part of collective bargaining process and exercise agency to bring a positive change in their lives which ultimately enhances their welfare and status in society.

Constraints restricting women from joining farming Co-operatives

Religious, Cultural and Social Constraints: The patriarchal culture has a strong grip over Pakistani society, especially in rural areas where the literacy rate (49%) is way less than in urban areas (74%).[36] The patriarchal culture discourages women to exercise agency; become part of the decision making process within and outside the household[37] and discourages women and men to work alongside each other.[38] In Pakistan, Islam is often "misused as a powerful instrument of control" in order to legitimize the violations of women's rights.[39] Islam is often used to legitimize the traditional patriarchal norms and culture which hinders women to actively participate in farming activities. Another factor that constraints women to actively participate in labour market or on farms is resistance from male family members.[40] According to a research carried out in Jhelum, 15.6% of the women reported that cultural and traditional norms and customs hinder them to participate in farming activities and 24% of the women stated that their relatives disapprove of them working outside their homes.[41] The existence of patriarchy, limits women's mobility and their ability to function fully as farmers.[42]

Hence, religious, cultural and social constraints not only hinder women to actively join faming co-operatives but also pose as significant barriers in achieving women's empowerment. However, the degree to which women's participation in farming activities is influenced by family influence and traditional cultural norms varies from region to region.

Lack of Property: Land ownership plays an important role in farming co-operatives as farmers contribute their resources in order to gain benefits collectively. It is often difficult for women to join or establish farming co-operative without land ownership. Women in rural areas of Pakistan are in a miserable situation when it comes to land ownership.[43] Despite the fact that women constitute half of the population, majority of them are either landless or own less than 0.5 acres of land.[44] In 2000, only 36-38% of the rural economically active women in Pakistan owned a farm.[45]

Although Islam has given women the right to own and inherit property yet in most of the rural areas there's still a practice of women willingly giving away their share of property to their brothers. Even when women have access to land, their control over land is limited as they have to first ask for their father, brother or husband's permission before selling it, putting it on lease or using it as a collateral.[46] Same is the case with livestock; women that bring livestock in their dowry often need husband's permission before selling them[47] hence, depriving women of their right to make decisions regarding their own land and livestock.Control over land is integral part of women's empowerment in agrarian societies. Hence, without land ownership women face difficulty in becoming members of farming co-operatives and have to rely on NGOs or government to initiate farming projects that would empower them economically, socially and politically.

Lack of extension services: In order to effectively operate a farming co-operative it is necessary to have access to capital, extension services and technical knowledge. Rural women in Pakistan often do not have access to extension services which hinders them to collaborate and form farming co-operative. Extension staff consists of mostly men hence, access to these services is also restricted to men as free intermingling of men and women outside family is not appreciated in traditional patriarchal societies like Pakistan.[48] A study carried out on women farmers living in Faisalabad, Punjab province of Pakistan, states that women have very little access to veterinary and other extension services due to lack of female extension staff and low levels of literacy.[49] Lack of information, illiteracy, restricted mobility, ignorance and domestic responsibilities further restrict women to look out for extension services.[50]

Despite the fact that government has taken several initiatives to provide females with farming skills and technical training through vocational training and internship programmes, its impact at grass root level is negligible. Mostly, women farmers are unaware about these programmes. Therefore, lack of extension facilities available to women farmers reduces their chances of gaining farming knowledge and participating in farming co-operatives.

Conclusion

This paper concludes that farming co-operatives help in empowering women economically, socially and politically. Co-operatives provide women with a platform where they can exercise agency by getting involved in income generating farming activities. The income earned from co-operatives can then be invested in pursuing higher education, providing a nutritional diet to family members or sending children to school. It helps women to mobilise themselves for their common interests and challenge the centuries old patriarchal

culture. Once women become economically empowered their position in the society rises; they experience higher self esteem and increased level of confidence and their household decision making power also rises. Farming co-operatives also help in attaining better social outcomes such as increased spending on children's education, especially girls' education and enhanced nutritional diet. They help in politically empowering women by developing networks and linkages through which they can come together to raise issues of common interest and concern. These networks then help them in putting forward their concerns to relevant policy makers.

It is recommended that the government should start awareness raising campaigns in small towns and villages to inform women about their basic rights under Islam. It need to be stressed that Islam is not against but in fact encourages women to seek education, inherit property, earn income and use it the way they want, work outside home and be a part of any political, social and economic activity. The government should also try to invest in training of female extension staff in order to provide access to extension services to women farmers.

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EMPOWERMENT OF WOMEN THROUGH EDUCATION - EMANCIPATION OR ENSLAVEMENT: A CASE STUDY OF PAKISTANI WOMEN

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Abstract: *It is globally acknowledged that modern Neoliberal-Education empowers women in public sphere by providing them equal rights in private sphere. The paper presented in this conference tests this claim within the context of Pakistani society by studying influences of empowerment for women in public and private sphere. The research is conducted in two different regions of Pakistan, Islamabad Capital Territory (ICT) and Gilgit-Baltistan (GB). The study attempts to find an impact of global ideas, like modern education leading to employment for women as a sustainable development goal, in local settings of Pakistan. The research is grounded on ethnographic methods of collecting data. In-depth interviews of ten women, along with one focus group discussion and several qualitative surveys from women and girls of each region were conducted. The research reveals, though Pakistani women consider modern education as one of major sources of empowerment, yet, these women do not consider themselves to be completely emancipated in private sphere despite being educated and employed. It is because, though women are enslaved in patriarchal cultural norms women still they are not willing to disengage themselves from some of their duties or practices in the private sphere, like child-care. The focus of neoliberal education on economic empowerment in public domain, and culturally rooted gender roles in domestic domain has overburdened the local women with more responsibilities. Thus, the study shows that it is observed that empowerment in public sphere does not ensure gender equality for women in private realm within cultural context of Pakistan. In short, the paper has reviewed the claim of modern education, as being harbinger of emancipation and empowerment, by showing its uneven impact on Pakistani women positioned in different and complex social structure.*

Keywords: Pakistani Women, Education, Public sphere, Private domain, Equality, Empowerment, Human Rights

Introduction

The article aims to find influence of neoliberal education on women empowerment by examining public-private nexus. Literature review identifies that neoliberal and globalization discourse claim emancipation of women in private sphere by empowering them in public one[1]. Neoliberal Human Rights paradigm argue for for economic participation of women in public domain along with men[2]. It not only safeguards her socio-political position, but she also emerges as an independent and transcultural citizen in globalized world.[3] Hence, economic participation of women is deemed empowerment[4] and seclusion in private domain, as a patriarchal act, is considered violation of human rights[5]. Contrarily, Pakistan's consciousness, being post-colonial state, has has been built as "a politically defined 'public' and a religiously informed 'private' sphere." [6] Therefore, 'public 'public sphere' is symbolized as a power domain for man and 'private sphere' as a shelter for women.[7]

Gender inequalities related to power positions and economic status are viewed as human rights violations in today's world[8]. To eradicate these gender disparities, United Nations has asked all countries to ensure gender equality by creating equal livelihood opportunities, skill development etc. through SDG#5 (sustainable development goal). It is imperative that identification of the origin of these inequalities is considered central in any discourse on empowering women.[9] There are multiple indicators to measure gender empowerment[10] however, this paper builds upon 'mobility of women into public sphere'.[11] Primarily, I am interested in finding whether Pakistani women achieve empowerment in private sphere by moving into public domain through neoliberal education and profession.

Education as a Signifier of Women Empowerment

Education is claimed to be a fundamental source of economic growth, for it provides manpower in form of professionals and educated workers.[12] Inclusion of educated women in marketplace enhances availability of additional economic force. [13]Neoliberal education claims to ensure presence of women in public-sphere along with emancipation in domestic-domain. This is why, girls' education in Pakistan was propagated on the notion of 'problematization of women's absence in public realm.'[14] Likewise, sending girls to school is deemed foremost in progress of a developing state.[15] For, schools engage girls ideologically with the globalized world[16]

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and provide them equal social status and economic opportunities. Therefore, UN has included education for women as one of the sustainable development goals (SDG-4).It is argued that empowered local girls get awareness about their rights through education[17] which enables them to voice against violations.[18] These girls play a chief role in rescuing underprivileged and vulnerable ones who are victims of socio-cultural practices.[19] This is the reason to make modern education accessible to all girls.

It indicates, education empowers women by disengaging them from the closely knitted family system and introduces globalization[20]. Therefore, education is globally considered a major source to reshuffle the existing anti-women cultural norms. Individual development of women through education eradicates the cultural discrimination along with socio-class structures. Hence, modern education becomes a medium to eliminate religious and cultural patriarchy to reshape gender inequalities. It is deduced, if public sphere provides non-discriminatory gender space, then its affects may be visible in private sphere. Within the context of this discussion, my study employs Spivak's concept of 'saving brown woman'[21] to examine the empowerment of Pakistani women through education. It challenges the supposition that human rights violations in private sphere are contingent on existence of gender inequalities in public realm. The study attempts to decipher the impact of education as a global force on the lived-experiences of Pakistani women. The focus of the paper is to discover whether being-empowered-in-public-sphere notion of educated and professional Pakistani women achieves similar results in their private realms as well? Throughout research, I kept the historical reality of a society under consideration to understand the regional circumstances involved in its transformation.[22]The study is located within paradigm of global studies, for it analyzes the application of global idea of transnational-education in local settings of Pakistan. At the same time, the study falls within the ambits of postcolonial-feminism, for it highlights the difference in feminine issues of post-colonial state through comprehension of social, political and economic conditions responsible for shaping the identities[23] of Pakistani women.

Research Methodology

I chose two regions of Pakistan, Gilgit-Baltistan (GB)[24] and Islamabad Capital Territory (ICT).[25] The reason for interest in these two regions were multiple regardless of their contrasting difference in rural-urban lifestyles. Firstly, the rural-urban dichotomy helped me to learn difference in impact of a global idea on two different regions of Pakistan with dissimilar cultures and lifestyle. Secondly, despite the difference in geographical size of both the regions have approximately same population size, 2 million of ICT[26] and 1.9 million of GB,[27]. Likewise, both regions have a direct exposure to ideas of international community. In ICT, number of international citizens are living to work for the government and non-government institutions. Similarly, GB, a tourist hub of Pakistan, attracts number of international visitors/travelers along with international development organizations for its exploration. The globalized outlook of these two regions assisted me in deciphering the public-private nexus to examine 'mobility of women into public sphere' as an empowering phenomenon.

The research is qualitative in nature and ethnographic method was employed while conducting the study. The initial data for research was collected from 2011 to 2015 as a participant observer for three years in ICT and two in GB. However, the final data, which shaped this research, is collected in a year time between mid-2017 to mid-2018. Apart from participant observation, In-depth interviews of ten working ladies, aged between 20 years to 40 years were conducted, who were selected through snowball sampling method. Similarly, two focus group discussions of 10 respondents from both the regions were also conducted to know the collective opinion of the respondents. The conversation with the respondents took place mainly in Urdu which later was transcribed into English. Each transcription was comprehended as a cultural text to learn the challenges faced by educated and professional Pakistani women. The findings helped in discovering Pakistani society and culture as a site of negation when education impacts merely as an empowering force on the lives of local women. It is discovered, education, as a form of neoliberal politico-economic force to empower Pakistani women,[28] does not not necessarily bring the similar outcomes in public and private spheres.

Empowerment through Education - An Emancipatory Road towards Cultural Re-enslavement

The research begins with investigating the relationship between education and women-empowerment in public-sphere within cultural context of Pakistan. The results of the conversations later expanded to private-sphere as well to identify advancing and negating effects of education in empowering women. Discussions with respondents helped me to understand the ways local women feel empowered yet overburdened. Respondents showed willingness to bring change through education in existing gender-roles in private-sphere, however, they

are not willing to relinquish some of the domestic responsibilities, like child-rearing. It is comprehended that within context of developing countries, paradigm of neoliberal human rights perceives local men as a threat to women, to empowerment is to ensure gender-equality. Contrarily the study has exposed the fact of Pakistani society, the educated or uneducated women may impede empowerment of other women by imposing prevalent patriarchal gender-roles. Therefore, the findings challenge the claim, transformation of social power-structures in man-dominated public sphere alters the overall cultural gender-roles in woman-subservient private sphere. Resultantly, the results of neoliberal education are not similar in developing societies like Pakistan as expected by the International organizations.

Empowerment through Education in Public Sphere

The respondents acknowledged the importance of education in their lives and many of the women considered it an avenue to public sphere. Discussions reveal how education helped woman gain more knowledge to discover their abilities and independent identity. An ICT respondent informed, her education-cum-profession pursuits has helped her in constructing her identity to know her abilities which she couldn't have explored otherwise. Similarly, respondents from GB related education with their elevated status of life for being recognized as a person who can be heard. They informed that women who are educated enjoy more respect in society as compared to others. Moreover, the respondents accepted the possibilities of economic benefits after getting employment in public sphere. Several respondents from ICT supported this claim by informing that ever since they have started their profession they can afford luxuries of their life. Similarly, respondents from GB expressed, education has helped them to find independent professions. They can afford basic needs now for which they had to be dependent on their family members earlier. They shared that education is providing the school-going girls prospects of regular exposure of outer world, helping them to get more opportunities of pursuing careers in future. They considered the endeavors through education are different from experiences they get otherwise in the public domain or by staying in private domain.

On inquiring the respondents, about chances of gender equality in public sphere through education, most of the women responded with positive undertones. They expressed, education helped them in learning how to deal with the public sphere situations. They learnt confident ways of interaction with the other gender which was impossible if they had been uneducated or were stay-at-home. The respondents accepted that in public sphere educated women are respected more than the uneducated women. Respondents told, men at public space believe educated women are wise enough to handle the untoward circumstances because the educated women are aware of behaving respectfully in society. Respondents of both the regions perceived underprivileged socio-domestic conditions a reason for presence of uneducated women in public sphere. They informed, anyone can take advantage of uneducated women in public sphere because they are recognized as '*Majbur'* (helpless and oppressed). Likewise, the respondents recognized that uneducated women are not offered with socially respectful jobs, neither they can achieve powerful professional positions. Similarly, it is deciphered that an uneducated woman is socially deemed less empowered than the educated when entered the public sphere. One of the women, an uneducated mother of five children living in a village of GB, recognized the difference of her life-experience from her daughters because of attending school. ICT respondents with similar opinions informed, it is the confidence gained through exposure of outside world while going to the school which makes the experiences of educated women different from the stay-at-home.

Empowerment through Education in Private Sphere? Mode of Emancipation

To know the influence of empowerment of women in public sphere on their private life, the respondents were asked about the impact of being educated and/or professional on their domestic status. Almost all the respondents emphasized the importance of being educated for performing domestic tasks, especially better-quality child-rearing.[29] Respondents recognized the shift in the authority of their roles[30] as an educated mother while raising their children. Participants from ICT informed that educated women act as responsible mothers and raise better children. They qualified working educated working women as far better mothers than only educated ones. For participants, as compared to uneducated or educated stay-at-home mothers, she provides quality time and relationship to her children. Participants from GB expressed that they have changed their rural life-style of raising children, where cattle are considered more important than children. While revealing a difference between an educated and uneducated mother, the respondents explained, former is more responsible about requirements of her children than later. Likewise, respondents from ICT called educated-working women better mothers than only educated women. According to interviewees, the educated working women have

exposure of external world which helps them to raise their children as demanded by changing requirements of a society.

Empowerment through Education in Private Sphere? A Means of Cultural Re-enslavement

The research indicates, education has not carved expected empowering impressions for Pakistani women in private sphere, rather, it has become source of cultural re-enslavement in different ways. It is explored that in some settings powerfully-positioned uneducated or educated women of house deprive educated-professional women of their rights. In other contexts, the educated-professional women are unable to recognize the forms of oppression stay-at-home educated or uneducated women suffer. As a result, elimination of gender-inequalities and transformation of culturally prescribed gender-roles in private domain is not substantiated. Results from GB and ICT are presented separately to show the differentiated experience in these regions.

Participants from various regions of GB rejected education and profession as a primary source for introducing public-sphere. Culturally, farming and other agricultural chores are assumed to be responsibility of local women, like, the household duties. In this regard, participants expressed no significant transformation in gender-roles within domestic domain despite being educated. They informed that there are some educated/uneducated women in society who restrain the shift in gender-roles of private realm. For, they discourage male members to help the females in household tasks, despite efforts of other women, or men, to change these values. Thus, the traditional gender-roles grounded in patriarchal practices stay intact. The responsibility of domestic chores along with economic participation through jobs has overburdened professional women of GB. They are unable to hire any helper/maid for themselves as this practice is not much appreciated in GB. Firstly, because of the availability of grandparents/relatives in prevalent strong joint family system. Secondly, because of the unavailability of helpers/maids as the region is largely homogenous in economic class-structure.

The experiential descriptions of respondents exposed, educated women of GB, generally, do not claim their Islamic right to inheritance. The similar attitude is observed while choosing a spouse, for these practices not appreciated culturally. Many educated women feel lack of economic empowerment over their earned money, along with independence in decision-making in some of the fields of their life. The monitoring of household finances by the eldest female family member as a cultural practice leaves the young/middle-aged women with no or least control over the earned money. Participants detested these cultural norms for these are not in confluence with the Islamic or human rights principles. Since the respondents define education as a way of living without conflict in a civilized manner, therefore, it is observed that educated women do not specifically challenge these cultural rules. Participants deem, the principles preserving collective interest and identity of their society should not be renounced for individualistic purposes. Hence, the study discovered, the predominant reason for respondents of GB to value education is it helps them to maintain their local identity by conforming with socio-cultural norms.

Respondents of ICT carry multiple meanings of empowerment through education and profession. Because, unlike GB, ICT is a heterogenous urban society with multiple layers of social classes. The manifestation of education and profession as public-realm accomplishments influence private-life of women in different ways. It is explored, for the women of upper-middle class education and professions are class-status symbols than the means of introduction to public sphere or economic empowerment. Respondents of this social-class informed, their lifestyle is not dependent on schools and offices to enter public sphere. Their owned luxuries otherwise allow them to access public space.[31] However, they have become economically independent because of their jobs and education. For the women of middle and lower-middle class, education has assisted them in entering public-sphere to explore their abilities along with advancing their lifestyles. Regarding economic empowerment, middle class educated-cum-professional respondents of ICT shared the experience of being exploited in private-domain. The tasks which were culturally and religiously viewed as responsibility of men are now concerns of educated women who can earn. Because of domestic obligations, disappearance of division-of-labor in family affairs, and shift in economic responsibilities, they have least control over their earnings, so do not feel economically empowered.

The respondents believe their foremost commitment is child-rearing. They communicated their juggling efforts between domestic-chores and work-duties has dismal effects on their children. For the maintenance of children, these educated-working women generally take assistance from their in-laws as a cultural practice. These women suffer emotionally because of weak intimate relationship with their children. In addition, they

lack decision power related to their children care and/or other house-affairs. Moreover, they compromise their economic benefits with the relatives taking care of their children. Therefore, they do not get overall empowering experience from their education or professions. However, in some cases it is revealed, the educated professional women do not comfort, emotionally or economically, the stay-at-home relative women for their child-care services. Through their economically-powerful position in house, working-women deprive the other women from experiences of empowerment in private-realm. At times, working women hire female-helpers/maids to take care of their children in their absence and to perform other household chores. The respondents informed, this way these educated-professional women get enough time to focus on the needs of their children after work. They call them empowered for maintaining their gender independence along with superior socio-economic status. However, in such conditions it is observed, female-helpers suffer violations of human rights through deprivation of basic needs of life, like healthy meals and economic benefits against their services. In short, the educated women maintain colonial class-structure in society by differentiating the maids as 'insignificant others.'[32]

Conclusion

This paper examines a relationship between mobility of women into public sphere and their empowerment in private sphere. Neoliberal Feminist debates and Human Rights discourses covertly assume an inherent regulator-subordinate divide in public and private realms. Resultantly, women empowerment in public sphere emancipates them in private realm and protect them against human rights violations in all realms. By employing ethnographic methods, the study deciphered that education as a global phenomenon leave uneven and different impacts on urban and rural settings of post-colonial societies like Pakistan. Professional or educated women of sample, i.e., ICT and GB, do not want to compromise their socio-cultural roles. Yet, sometimes undesirably they are shackled in traditional patriarchal norms because of impeding attitude of women themselves. It is explored that education doesn't ensure complete empowerment for educated and professional Pakistani women. Rather, educated women conform their behavior according to prevalent cultural customs.[33] Pakistani women agreed that education and professions have empowered them in public sphere. Still majority of them acknowledged the overburdening consequences of being professional and educated within the context of their cultural norms. Similarly, it is observed, some of professional-educated women do not fundamentally help underprivileged women of society. The findings of this research, therefore, challenge neoliberal human rights claim that gender-equality in public-sphere ensures women empowerment in private sphere by eliminating patriarchal norms. An implication sprouts out from the research that patriarchal subjugation of women is not necessarily maintained by only male members of a society.

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29 To be able to communicate with their children meaningfully by helping them in their homework and inculcating understanding of moral ideas and religious affairs. Providing basic need and other facilities to their children is also considered one of the important aspects of child-rearing by respondents, yet they didn't link it with their being educated. The respondents informed that father provides the whole family to meet basic need, for it is his cultural and religious responsibility. Other needs and luxuries of child/family are achieved with the money earned from agricultural practices. Nonetheless, respondents agreed that earning from their professions is contributing positively in getting extra economic benefits for child-rearing.

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Thirdgender/Transgender: Search for Identity

Session Chair: Dr. Noreh Hashim

WHO IS A 'REAL' TRANSGENDER IN PAKISTAN? THE DEBATE SURROUNDING PERCEPTIONS OF GENDER IDENTITY IN A TRANS-WOMAN'S CONTEXT

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Abstract: There has been much debate over the last month about who is a 'real' transgender within the context of Pakistan. This debate has emanated from a senior member of the Pakistani transgender community and has provoked much reaction and action in the form of responses to both the host of the show, and the senior member. The essence of the debate was whether or not those members of the community who have not gone through nirwaan, a traditional castration process are not authentic transwomen. The reaction that took place and is still ongoing surrounds, in essence, the identity of a transwoman. Is identity something which is attached to an individual's gender assigned at birth and therefore, related to a physical organ? Or is it something which we should be thinking about in a more cognitive way? Often transwomen speak about how they feel like a woman trapped in a man's body. They speak of a feminine soul. Shouldn't those individuals who feel that way own the gender they are associating themselves with? In order for them to transition, do they need complete gender re-assignment in order to say they are women? This paper will explore the current debate as it transpires amongst the community with an application of gender theories and an exploration of what constitutes gender? The paper will further explore whether gender is determined by your assigned sex at birth, whether it is a social construct or a performance and beyond. In doing so, this paper will unfold diverse rationales as to how a sample of transwomen perceive their gender and will also exemplify the evolution of the transwoman.

Keywords: Transgender; Identity; Minority rights; gender; Transwomen

Introduction

Summer 2018 saw a debate across all forms of the Pakistani public sphere from television, to the internet. The debate was heated, controversial and one which many transgender women had an issue with as it questioned who is a 'real' transgender woman within the context of Pakistan. This debate has emanated from a senior member of the Pakistani transgender community, Almas Bobby on a programme with Hamza Ali Abbas, an actor, model, TV host and anchor. Almas Bobby was accompanied by another member of the trangender community, Sneha. During the show Bobby Almas spoke of 'fake' transgender people and how they were benefitting by coming under the umbrella of being 'real' trans-women. The show has provoked much reaction and action in the form of responses to both the host of the show, Hamza Ali Abbas and both Almas Bobby and Sneha. The both latter ones, then apologized.

The essence of the debate was whether or not those members of the community who have not undergone a traditional castration process are "authentic" transwomen. For transwomen, this was, in essence, checking on whether the person claiming they were trans had been castrated and thereby promoting castration in the context of Pakistan. Transwomen who have not been castrated are called *akwa*, whilst those who have are referred to as *nirwaan*.

Bolich (2008), uses the term *hijras* for transgendered people. Resonating Nanda's (1999) definition of who a hijra is, he too slots the *hijra's* as a 'third' sex and gender as they are neither male nor female. He highlights the linguistic distinction between those transgender people who have "bodies that are male" *hijras* and those whose bodies can be seen as female *hijria*. He *then* informs the reader of how transgender people often living in *hijra gharanas* transgender communities are divided via ritual categories where there are those who prepare for castration *akwa* and those who have been castrated *nirwaan*. Upon being castrated, a *nirwaan* ceremony is held which confers the status of a 'real' hijra unto the transgender. He, however, acknowledges that there are many hijras that are neither 'true' nor 'pseudo-hermaphrodites by birth (intersex) sexually ambiguous or castrated voluntarily. He also highlights how these hijras do not fit into Western categories such as being 'crossdressers' from a Western perspective as there are males biologically dressing up as biological females. Again, I would not hesitate to add that Bolich's lack of insight into what constitutes a transgender person leads to these very superficial and hurtful categories and distinctions of who is a 'real' transgender.

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Gender re-assignment is something which is illegal in Pakistan and castration, is often done covertly and in a "back street" manner by people lacking medical training. The procedure, therefore, renders the transwoman highly vulnerable and in a very dangerous position, the cost of which could be her life.

I will discuss the debate as it transpired over Summer 2018, this will comprise of contents of the programme that was hosted by Hamza Ali Abbas followed by the reaction of various members of the transgender community. I will then explore perceptions of transgender women followed by theories of gender and queerness by discussing gender as a social construct and the concept of being perceived as queer ending with a conclusion and discussion surrounding what actually constitutes gender.

The Debate Summer 2018 (Bobby Almas and Hamza Ali Abbas)

Upon Almas Bobby speaking of a discrepancy between fake and real transgender people, Hamza Ali Abbas went on to fuel this stance by saying: "This has also logically appealed to me that if you're a legit khwajasara then you should have a medical test before the issuance of a NIC so that there's a *chanti*, a thorough check as to who a real khwajasara is and who is a fake one. At this point, Sneha, the accompanying transgender person asks Hamza Ali Abbas if he will also appeal to the Chief Justice too. She emphasizes the importance of this as for her, the 'fake' transwomen are refusing them their rights: "*Hamara haq nah maare*, (Don't interfere with our rights)"

She, then, states that if she is fake then she will have a medical test, which in itself doesn't make sense. Why would you want to have a medical test at all, but especially if you are "fake"? Bobby at this point, added to the conversation and said:"I want one too, if were seen as men then we'll accept that."

Targeting those who they say are men dressed as women and exhibiting resentment that they are involved in certain projects and travelling abroad. Bobby hints towards the international travel that the 'fake' transwomen are involved in and mentions Sri Lanka, the Maldives, Nepal and the US. She also adds that there are people like her, the 'true' transgenders who are stuck here in Pakistan.

Abbas, at this stage again adds more salt to the wounds by expressing his surprise, that he has only just discovered this whole concept of a 'fake' transgender today. Bobby affirms this and states overtly how this is the gay community, who are coming under the LGBTQ umbrella….and thereby, under the identity of a transgender person. Hamza is seen at the end of the clip, pleading by joining his hands and saying, "Please send this to the Chief Justice, please".

The Reaction/Backlash:

The reaction that took place and is still ongoing surrounds the identity of a transwoman. Is identity something which is attached to an individual's gender assigned at birth and therefore, related to a physical organ? Or is it something which we should be thinking about in a more cognitive way? Often transwomen speak about how they feel like a woman trapped in a man's body. They speak of a feminine soul. Shouldn't those individuals who feel that way own the gender they are associating themselves with? In order for them to transition, do they need complete gender re-assignment in order to say they are women? Following are the reactions of three highly respected Transwomen: Bubbli Malik, Bindiya Rana and Kami Sid.

Bubbly Malik: Bubbli Malik, a senior trans-activist, in a response to Almas Bobby's stance of only *nirwaan* transwomen being eligible for National Identity Cards (NICs) posted a video in which she, in a very calm, collected and composed manner responded to the unjustness of what Bobby said. She addressed Bobby in the politest of ways and mentioned how she is her senior, the person who named her Bubbli and gave her identity. During her video, she spoke of how we as a society did not speak about fake men or fake women, then how can we have fake transgender people? She also got to the crux of the argument and directed Bobby to the World Health Organisation (WHO) definition of transgender.

She re-iterated how upon reading that definition, Bobby would understand the true meaning of who a transgender person is as the definition will be clear. She further directed Bobby towards the Transgender Bill 2018. In May 2018, Pakistan passed a landmark piece of legislation in protecting the transgender community. (Hashim, 2018) The Transgender Persons (Protection of Rights) Act 2018, guarantees basic rights for transgender citizens and outlaws discrimination by employers and private business owners.

Bubbli directs Bobby towards the Bill in order to illustrate how the definition of transgender within that is as according to international laws to include: intersex, castration and others. She points out that the biological definition is also cleared as is who the transgender community is comprised of and who individual people from this community are.

As per the transgender bill 2018: A Transgender person is a person who is:

> (i) Intersex (Khunsa) with mixture of male and female genital features or congenital ambiguities; or

> (ii) Eunuch assigned male at birth, but undergoes genital exclusion or castration; or

> (iii) A Transgender Man, a Transgender Woman, Khwajasira or person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

The bill further elaborates on the recognition of identity of a transgender person: A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of the Act.

Following on from this emphasis on self-perceived identity, subsection 2 states, "a person recognized as transgender under subsection 1 shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA". According to the Act, therefore, the transgender community can self-identify as male, female or both and that identity can then be registered on all official documents to include NICs, passports, driver's licences and education certificates.

Further within the Act, the Gender Bill refers to "a person's presentation of their gender identity, and/or the one that is perceived by others." "Gender identity is defined as a person's innermost and individual sense of self as male, female or a blend of both or neither, that can correspond or not to the sex assigned at birth." Bubbli continues and says to Bobby: "I want you to clear your concept of who a true transgender is? You're a senior activist, so don't say things that will hurt others. Transgenders, *khwajasara*, *zhankeh*, *hijra*, …they're all one…why care about the words?"

The message to Hamza Ali Abbas was: "Don't play with somebody's self respect for ratings. You'll get the rating but the pain to both head and heart remains with others. On judgement day, what will you answer? You're programme ratings or personality will be of no use then, so please think about it."

Later that month, June 2018, Bubbli was supposed to have a discussion with Almas Bobby on PTV news but Bobby apparently did not want to come on the show with Bubbly. Bubbli mentioned this too in the video and emphasized We need to clarify misconceptions between ourselves and between the trans community and the viewers.

Bindiya Rana: What was especially hurtful for the trans community was their struggle of obtaining ID cards without a medical inspection and how Almas Bobby's discussions on national television could again potentially confuse the cause. Bindiya Rana, (2017) told me of the huge, upward struggle of actually putting the 2009 Supreme Court decision to place a third gender on the identity card in practice without further humiliation. She told me of how initially, NADRA were asking the *khwajasaras* to prove that they were from the transgender community by having medical check ups. A protest outside the Karachi Press Club with the community of transgenders residing in the city put an end to the process of proving gender as the *khwajasaras* protested that if they have to undergo a medical examination to determine gender then so should male and female citizens as they could also belong to any of the three genders. (Bindiya Rana, 2017) In a facebook video quoted by Cutacut (2018), Bindiya Rana said in response to Bobby:

"Transgender people still have to beg for alms and dance to earn bread. There should be a check up on the brain of all those who are requesting examinations of transwomen because it's a human rights violation if you don't accept someone's gender as perceived by them." She directs Bobby to that subsection of the Transgender Persons (Protection of Rights) Act which is discussed above via Bubbli's response which afforded the right of self-identification.

Kami Sid: Kami Sid responded to Bobby by saying something she has always maintained: "Sex is between our legs, gender is in our head". Sid's stance was that the success of the Transgender Persons

(Protection of Rights) Act 2018 was very much a result of those very trans-activists to whom Bobby was referring to as "fake". In An interview with CutaCut (2018) Sid emphasized the cognitive side of gender and how identifying oneself with a gender of your choice is the essence of a basic human right. In response to the specific assertion made by Bobby with regard to linking castration to a true transgender person, Kami also mentioned the science behind gender, how this would involve an insight into hormones and chromosomes and not just genitalia. She, again, just like Bubbli and Bindiya directs Bobby to the right of self-identification within the Transgender Persons (Protection of Rights) 2018 Act.

Theoretical approach to gender identity of transgender community. An application of gender theories and queer theory providing an exploration of what constitutes gender?

According to the WHO, gender refers to: "the socially constructed roles, behaviours, activities, attributes and opportunities that any society considers appropriate for men and women, boys and girls and people with non-binary identities. Gender is also formed through the relationships between people and can reflect the distribution of power within those relationships. Gender is not static but changes across time and place. When individuals or groups do not conform to established gender norms (including concepts of being masculine or feminine), roles, responsibilities or relations, they often face stigma, discriminatory practices, or social exclusion – all of which can adversely affect health. Gender interacts with, but is distinct from, biological sex." (WHO, 2018)

Trans gender identity is hugely complex. Addressing the issue in a post partition context, the literature emanates from largely the Indian geographical context with the notable seminal work of Serena Nanda (1999). Her anthropological piece exploring identities of the transgender population brings to the fore an ambiguity with their identity with regards to them being neither men nor women.

Another ethnographic study of identities of the transgender or "hijra" population as she calls them is Gayatri Reddy's, "Respect to Sex"(2005). With regards to the ambiguity in identity, her study too, echoes the Nanda's with regard to *hijras* responding to the gender affiliation with an answer which negates both male and female and identifies as *hijra*. Pamment (2010) too places the transgender community in an almost "third space" for *hijras* with regards to gender, class and politics in the context of Pakistan. She illustrates the community's struggle in challenging social and biological determinants of gender and "jostling for a third space" which is very much what the transgender community are doing.

In fact, this challenge for a third space as noted by Pamment (2010) and the ambiguity as addressed by Nanda (1999), Reddy (2005) is something which was echoed in my own study in Karachi when I asked Bindiya Rana, the head of the Gender Interactive Alliance (GIA) as to whether she would describe her gender as male or female, she said neither, "I am a *khwajasara* (transgender)".

When I asked Nisha Rao, (Rao, 2017), her chela, the same question about her identity, she too said that she is transgender, the word used interchangeably for *khwajasara* (transgender). She went on to explain how since she was little she has always felt like a girl. She used to stay around her sisters. Up to the fifth class of her co-ed English Medium school, she studied with girls. It was after this when she entered a higher level of schooling up to matriculation where she had to study with boys who she tells me passed "bad comments" to her which disturbed this part of her education.

Again that sense of incompleteness came about in her account of her gender, the inability to fit into a gender of binaries bringing about a greyness as opposed to a cis-gender black and white. "I was very clever, in the top five. At matriculation stage of my education, I realized my life was not normal. I was a transgender, neither a complete boy nor a complete girl. I'm a *khwajasara*."What many from the transgender community both in Lahore and Karachi also alluded to was that they had a male body with effeminate mannerisms and a soul that was female. Hence, not all claimed they were neither man nor woman.

There are people within the transgender community such as Kami Sid who believe they are female and reject any idea of a first, second or third gender: "We're not a third gender," says Sid. "What is the first and second gender? You're a woman. Are you first or second?" (Sid, 2017). This brings us to feminist theory and Simone de Beauvoir's famous theory (1949) differentiating sex from gender: "One is not born, but rather becomes a woman"

Building upon this, Judith Butler (1990) interprets this as being suggestive of the fact that gender is an aspect of identity that is gradually acquired. This is something which the more urbanized members of the transgender community that I later became to know are very well aware of. Kami Sid, speaking at the Karachi Literature Festival, 2018, stated: "Gender is in your head and not between your legs", which brings to the fore a distinction between gender and sexuality and is an attempt to educate people of identities beyond mainstream cis gender male and female. (Sid, 2018).

Expanding de Beauvoir's theory, Butler (1990) writes of the social construction of gender through one's performance Butler states your behavior creates your gender. A drag performance or a person in drag would be an example of this theory. Indeed, upon being asked, when did you first feel you were female, all the transwomen I interviewed spoke about enjoying dressing up as women from a very young age, usually pre-adolescence. This included almost in every case, wearing mother's dupatta (scarf) on their head, using Mom and Sister's lip-sticks and make-up generally, playing with sister and female cousins, doing work in the kitchen with mother. This behavior would fit into the social construction of gender through performance.

Butler: "To say that gender is performed…we've taken on a role and are acting….acting is crucial to gender. Gender is performative, therefore there are effects. The way one acts, walks, speaks, that consolidates in an impression of being a man or a woman." (Butler, 2011) Judith Butler is, therefore, building upon the feminist challenge and moves from "feminist theory" and more towards a "queer theory" which builds upon the feminist challenges and notions of gender and social construction.

Butler's main claim is that nobody is really a man or a woman, it's not an internal reality. Being of either gender is, therefore, a phenomenon, no one is a gender from the start. (Ibid) She goes on to say: "How difficult is it for sissy boys or ….. tom boys to function socially without being bullied, teased or suffering threats of violence or without parents intervening to say maybe you need a psychiatrist or why you can't be normal." (Ibid)

All the sample of members of the transgender community reported bullying at school, in the domestic sphere. One of them recounted how her family would just not understand that she felt like a woman and made an attempt at a suicide. In her words she says: "They didn't get it….."

Her mother took her to see her a psychiatrist as she believed her son had a disorder. This would lead to the institutional powers Butler (1990) speaks about "like psychiatric normalisation". Further Butler notes informal kinds of practices such as bullying which try to keep gender in place. In the case of the transgender above, her family sent her to Dubai so that she could get away from the environment she was in and to think over things. She returned only to have a relapse attempt suicide. Although her family had accepted her as person who identified as transgender, they did not want to break it to the rest of the family at the time I spoke to her.

It's this element of control that Butler questions. Butler: "There's a real question from me of how such gender norms get established and policed and what the best way is to disrupt them and to overcome the police function….It's my view that gender is culturally formed but it's also a domain of agency or freedom. It's most important to resist the violence that is imposed by ideal gender norms, especially against those who are gender different who are non-conforming in their gender presentation." (Butler, 2011)

Butler's deconstruction of what gender is, or indeed, is not, gives us food for thought. What is gender? How should we approach such a topic? Is there a need for boxed categories and the binaries they form? Will society ever be able to understand freedom surrounding choice of gender and the sexual orientation that emanates from that? Indeed, these questions bring about queer theory which has developed to move away from heteronormativity and focus "on mismatches between sex, gender and desire." (Jagose, 1996)

If we look at the notion of heteronormativity, coined by Warner (1991), there is an assumption that heterosexuality is the norm for all groups (Van Leent and Mills, 2017, pg. 401).Heteronormativity reproduces inequities that exist inequities, thereby, "limiting opportunities to make connections among difference and diversity, power relations, structural inequalities, and discrimination" (Surtees, 2008). The author's stance is that defining queer theory is difficult as it is "somewhat intangible". The author's then quote Meyer (2010) who suggested, "queer is understood as a challenge to traditional understandings of gender and sexual identity by deconstructing the categories, binaries, and language that support them" (p.20). The contention, therefore, is that the definition is difficult because, as Jagose (1996) suggested, it "is an identity category that has no interest

in consolidating or even stabilizing itself" (p.11)." (Ibid, p403) To be queer is also to be somewhat fluid without being boxed in categories and classified in heteronormative categories.

Van Leent and Mills (2017) trace the term queer to what they call a "conceptual break that began in the United States and Western Europe shortly after World War II". The body of literature that grew from this was coined queer theory and became well established by the 1990s (Jagose, 1996). (Van Leent and Mills, 2017, p401) They too, note how the theory brings about a cessation of "fixed categories of gendered and sexual orientation". In this sense, again, they feel that heteronormativity becomes "interrupted" and brings to the fore the human rights of diverse people (Miller, 2015) (pg. 401).

Conclusion

Bobbi's provocative assertion, in fact, united the transgender community. On 20th June, the transgender community demanded an apology and clarification with regards to her demand of a medical examination of transgender people as a pre-requisite for obtaining ID cards. An apology from Sneha comprising a 36 second video was shared in which she said she didn't mean to offend anyone. Some activists believed that the harm had already been done because Abbas's show received far more attention that the number of views of the video of Sneha. However, the essence of three very influential transwomen quoted above directs everybody to the question of gender and transgender and what constitutes a transgender person. The essence of which would be a self-identification as a human right. One can affiliate themselves to a gender of their choice as a basic human right and that is now the law of the land which cannot be ignored. By merging gender and queer theory I have also looked at concepts of heteronormativity which were used prior to queer theory to define gender. The very crux of queer theory is to de-stabilize those very rigid boxes that we are so used to ticking in a hegemonic heteronormative society. In grappling with the very complex notion of trans identity and what constitutes a transwoman, this paper has provided an insight into how a majority of transwomen perceive their gender and also exemplifies the evolution of the transwoman.

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TRANSGENDER IDENTITY AND HUMAN RIGHTS: A STUDY OF BARI IMAM SHRINE[1]

Mariya Nazar[*]

Abstract: This paper is an attempt to understand the performativity of gender and how this performativity results into denial of equal citizenship to the Trans-genders in Pakistan. The year 2018 has seen the passage of Transgender Person (Protection of Rights) Act from the Parliament of Pakistan. The act guarantees citizens the right to self-identify as male, female or a combination of both genders. The Act is eventually expected to give trans-genders the rights to have national identity cards, passports, driving license and educational certificates. Laws, however, do not always translate into the consequent change in the behavior especially in societies where there exists a gap between state and society. This gives rise to such questions as to what it means to be a transgender in Pakistan and how and in what ways their identity is contested or challenged. These are exactly the questions this paper seeks to answer. The paper also attempts to highlight the factors due to which trans-genders were denied access to equal citizenship and how across segments of the community views this new legislation. The paper takes Bari Imam Shrine as a locale. It is an area where most of the trans-genders from different parts of Pakistan come down to live in their dera under a 'guru'. It relies on extensive interviews form Trans-genders living around the shrine to show the issues that bar them from enjoying equal citizenship even after the passage of Trans-gender Person (Protection of Rights) Act. The present study borrows its theoretical insights from Judith Butler's theory of 'performativity'. For Butler, gender is not a given reality rather it is an act i.e. one does not live ones' gender but acts it. It follows from this that the transgender identity is determined by how trans-genders act or 'perform', and laws cannot change the way they are made to act their gender.

Keywords: Transgender, Identity, Citizenship, Gender Performativity, Rights

Introduction

Transgenders, *Hijras* or *Khawaja Sirah*, once an integral part of court culture of the sub-continent are now living a life of marginalization and stigma. The discrimination against them eventually translates into acts of violence. It is not surprising then that the discourse on transgenders is usually centered on the victimization. There are however trans-rights activist who by making conscious use of their agency is changing the way their identity is perceived. Their fight for universal rights and citizenship is directed at acquiring a permanent identity. To this effect, Pakistan passed an act Transgender Person Protection of Rights Act in 2018. This paper shows that laws, however rigorous these may be are insufficient to ensure mainstreaming of transgenders, as the laws are not based on a nuanced understanding of the gender categories and how these categories are constructed. The paper uses the idea of 'gender performativity' by Judith Butler to establish that transgender identity is constructed and performative and any attempt to streamline transgender should include this configuration.This research seeks answers to following questions:

1. How is transgenders identity being streamlined and what impact(s) does it have on gender construction?
2. How the laws regulating gender non-conformity work?

Universal Human Rights: A Critique from Gender Perspective

The idea of rights of citizens emerged within the peculiar conditions of 17th and 18th century Europe. This part of the paper first attempts to show inherent flaws within the liberal universal ideas of Human Rights and then it also highlights the pitfalls within gender theory using the idea of the multiplicity of genders.

The liberal conception of citizenship included all citizens. It failed to differentiate the distinction along the class, race, ethnicity and gender lines. By universal human rights, it meant the rights of men. "The rights of women had been marginalized through the continuous focus on the rights of men"[2]. This model of human rights was explicitly gender-blind as "the laws on universal human rights were formulated within the male heads of family in the mind"[3].

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The liberal model of citizenship could not appreciate the categories of human beings and thus proposed a set of universalized ideals applicable to the citizenry subjected to different levels of marginalization. It focused primarily on 'middle class', 'heterosexual', 'white' and 'western'. Liberal universalism seemed to have overshadowed the ways in which the desire for citizenship is situated. Not only was the liberal conception of citizenship inadequate but even the gender theory proposed by earlier theorist was not enough. It reduced the gender category to the crude binary of male versus female. The complexities of today's world, however, show that recognition of genders as male and female alone is problematic in its own way. Gender is not binary. There are many ways in which subjects tend to identify themselves along gender lines.

The early gender theory might have been revolutionary in its own time. But the latest theoretical understandings on trans-genders and queer show that binary notions of gender are as hegemonic as the universalizable human rights. What the complexity of gender issue demands is an appreciation and recognition of the various ways in which gender identity is distributed. One of the ways in which this distribution can be approached is that of 'performativity'.

Theoretical Insight

The present work derives its theoretical stance from several concepts. The foremost is the idea of 'gender performativity' by Judith Butler, a radical gender theorist. For Judith Butler, gender is a social construct which is shaped by forces that are external to it. To quote from Butler, one does not live one's gender but acts it. To say that gender is performative is to assume that gender is not a reflection of the prior internal essence but "constituted through the repetition of culturally intelligible and stylized acts[4]". This marks a shift from the early position taken by Simon de Beauvoir where gender was a social phenomenon, but it was limited to the binary of male and female. Butler's position vis-a-vis gender is far more nuanced and radical. When de Beauvoir says that one is not born a woman, rather becomes one[5], she only had female subjectivity in mind. When, however, Butler says that gender is performative, it means the scope of the debate is expanded to the idea of fluidity and multiplicity of genders. Gender cannot be compartmentalized in the binary of male and female alone is the conclusion one can draw. Butler, in such a situation, would argue that there are as many genders as one performs. To Butler gender then becomes an 'act of theatricality[6]' and performativity. Transgenders are what and how they act, behave- what Butler calls performativity. Their gender is determined and constructed based on the way they perform. Performativity here means the outward ways in which are taken as an expression of gender identity

The debate around citizenship began in the 1990s and the major focus at the time had been to see the pitfalls within the liberal universal idea of citizenship. This idea made promises of overall rights without taking note of the discrimination along race, ethnicity and gender lines. The discrimination along gender lines is a reality familiar today. The neglect of gender within the various legal documents and laws is a serious omission. This demands a "redefinition of human rights within the context of the historical absence of gender non-conformity"[7]. The present work is a step in this direction. It suggests that laws such as Protection of Transgender Persons Right are needed but these laws cannot change the way Trans-genders are made too 'act' their gender.

In the case of trans-genders, their actions and outward expressions are taken to determine their gender and hence their social positioning. The inhabitants of the locale[8] show that it is their apparent actions of the transgenders that act as a key determinant of their identity. It is the society that makes them 'perform' their gender. It is their biology that defines their social status. In such a situation the apparent attempts to make trans-genders a part of the mainstream through such governmental mechanisms as Transgenders Person (Protection of Right) Act 2018 are bound to fail. The paper shows that legal remedies can go only to the extent to grant citizenship rights to transgenders.

Literature Review

A great amount of scholarly work on transgenders deals with such issues as social exclusion, non-recognition, the commercial sex work, and the legal issues pertaining to their citizenship. Important these issues may be but there is more to be explored on the day to day lived experience of transgenders and how they make use of their own subjectivity to retain their identity. The existing literature on transgenders largely revolves around specific themes. An overwhelming majority of writers focus on the exclusion and marginalization of the transgenders. The discourse largely portrays transgenders as a banished and liminal community with little agency or desire for mobility. (Arafat 2009, Jami 2005, Mal 2018, Ahmed 2014, Abdullah 2012, Lloyd

2005)[9]show how transgenders are excluded from society and how their exclusion leads to alternatives such as sex work. Their focus also has been to make transgenders good citizens by introducing reforms. The emphasis on the good citizen is misleading because it imposes certain legal prerequisites for them to be accepted in the society.

Another strand of literature deals with the legal as well as scriptural contingencies related to transgenders. For instance, Chowdhury and Tripathi 2016[10] look into the Hindu personal laws pertaining to inheritance and marriage and then extend those rights to transgenders. Likewise, a bulk of literature produced on gender categories by a non-traditionalist look into scriptures to show how religion has or has not spoken of transgenders rights and identities. Alipour 2007, Naraghi 2015[11], have shown how a non-traditionalist and rational interpretation of the Quran can lead to guarantees for the rights of gender minorities. While the former digs into *fatwas[12]*by leading *Shia* and *Suni* theologians (Khomeini and Tantawi) to show how they extended the domain of human rights to transgenders using a method of reasoning known as *Ijtehad[13]*. The later sets out to establish Quranic justice and assert that a just and fair treatment of gender minorities is quite in line with the Quranic idea of justice for the victim.

Most of the work on transgenders carried out national and international by Non-governmental organizations overtly focus on the victimization of transgenders at the cost of neglecting their agency. A recent study conducted by USAID and *Aurat* Foundation[14]identity showcases the harassment and abuse faced by the community and how immediate reforms are needed to address the issues. Similarly, another study conducted by UNDP[15] brings to light the link between sexual work carried out by the transgenders and the spread of STDs such as HIV. Researches of the former kind increase the downgrading by linking STD's with transgenders. The declared objective of these researches is to attract donors to bring about immediate reform. Thus, the discourse on exclusion, victimization, and stigma is needed for funding. This paper, however, shows how transgenders from the locale i.e. *Bari Imam* make use of their agency to change the notions of performativity associated with transgenders.

Research Methodology

The main point of examination is what it means to be a trans-gender in Pakistan and how and in what ways their identity is contested or challenged. To avoid partiality in research immersion in the field is a crucial phase. In a context like Pakistan, the debate of Transgender people is full of complexities which call for an in-depth understanding of the phenomenon. To extract relevant data semi-structured interviews with individual and group are conducted to open new frontiers for understanding societal consequences of the Act. This obviously then requires the content analysis of documents especially the documents that have been produced after 2017 Act. The paper also attempted to scratch the surface of on-going challenges, for instance, usefulness and effectiveness of the Act.

Sampling and Locale

The selection of Imam Bari Shrine Islamabad as research site is intended and purposeful. The locale has a place called shelter house which hosts transgenders. It is also where the office of *SAFFAR[16]* is located. The idea was to mark a shift away from the traditional discourse of the marginalization and stigmatization. For this reason, a group of transgenders who were ambitious, active and upwardly mobile was chosen. In addition, the purpose also was to locate transgenders who had undergone a transition in their performative character. This eventually has helped in establishing the constructed and performative nature of the gender. The sample of respondents was reached out through a method of snowball sampling[17].

The respondents share some characteristics in common. They belong to different age brackets ranging from 25 up to 45. They include both formally educated (Nayab Ali)[18], formally employed (Nadeem Kashish)[19] uneducated (Gogi Aapa)[20]. None of the transgender is formally a part of *Guru Chela[21]* the system as they are doing different jobs which make them aspiring and mobile.

Questions that were being asked

1. How would you define a Transgender person?
2. What if you do not act/ perform your gender? What other options are available to you?
3. Do you know that the government has now passed a law Transgender Persons (Protection of Rights) Act 2018 that gives you the right to have a NIC?

4. Do you have a NIC? Why and Why not?
5. What are the benefits of having a NIC?
6. What does it mean to be a citizen of Pakistan?

Discussion and Analysis:

The respondents 'own positionality, exposure, and experiences were reflected in the answers. There are, however, certain findings that emerged out quite clearly. These findings revert to the original contention i.e. gender is performative and legal regimes such as Transgender Person (Protection of Rights) Act 2018 cannot bring change as far as the performativity of gender is concerned since the laws itself are not grounded in a nuanced understanding of the fluidity and multiplicity of the genders.

There is apparently a contradiction in the way transgender identity is perceived. This misperception not only runs deeper into the society but is also reflected in legislation related to transgenders. There is a confusion in the law as to who counts as a transgender. "A transgender is biologically a male who converts into a female or a person who is a biological female and changes into male"[22]. This understanding of transgender identity is not reflected in the law. In other words, the law fails to define who a transgender is by confusing transgenderism with transsexualism. The implication of such a misunderstanding is deeper than one thinks. It exposes the gap between the state laws and those specific needs that the law is made to address.

The second implication is far graver as the laws regulating gender identities are designed to ensure inclusion and streamlining of the various gendered identities. The desire for inclusion thus remains an elusive dream as the laws do not consider the performativity and the fluidity of the gender. Gender then, "is essentially about the feelings and not about the body".[23] The body and the feelings are not always along the same lines, it is because of this reason that some transgenders are increasingly undergoing sex reassignment surgeries "to acquire a gender that matches with their inner feelings."[24]

The problem also lays with the way state laws that regulate gender non-conformity. In this specific case, the transgenders have been issued Identity cards bearing "X"[25] as their gender identity. An "X" identity is no identity[26]. Therefore, the issue of non-recognition persists irrespective of the laws. As per the date, the issue of mainstreaming and inclusion is contentious also because many transgenders are still reluctant to have ID cards. "They cannot perform *Hajj*[27] with the X identity written on their cards"[28]. The Saudi Laws make it obligatory for a female to have a *Mehrem*[29] accompanying her. Since most of the transgenders are registered as male at the time of birth. Therefore, the Saudi laws do not clearly spell out the decree for transgenders. The empirical data also suggests that all the transgenders have not been issued cards as "there are only 1300 cards issued with X identity"[30] across Punjab which is nothing in comparison to a total number of transgenders in the province. An idea of citizenship based on such a fragmentary and compartmentalized notion of identity cannot bring any meaningful change as far as universal rights are concerned.

Conclusion:

The traditional approach towards conceptualizing rights does not consider differences along gender lines. In such scenario laws related to gender identity and gender mainstreaming are needed. Protection of Transgenders Persons Rights Act of 2018 was, therefore, a step in the right direction. But it fails to reach at a comprehensive definition of transgender, as is evident from the interviews covered in this paper. Laws, however, well-meaning cannot guarantee transgenders the right to identity if the definition agreed upon by all the stakeholders is not reached. Moreover, the laws hardly translate into behavioral changes if gender identity is not understood as a performative and constructed act.

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1 Bari Imam is a shine located beneath the Margala hills near Red Zone Islamabad and is revered by Both Shias and Sunnis. Slums and temporary dwellings have sprung up around the shrine. It is in one of these temporary dwellings where the transgenders under the study reside

2Sally Hines, "A Pathway to Diversity? Human Rights, Citizenship and Politics of Transgender", Contemporary Politics, 15:1, (March 2009): 87 –102.

3Ibid, 89.

4Jay Prosser, "Judith Butler: Queer Feminism Transgender and Trans-substantiation of Sex ", in The Transgender Studies Reader, ed. Susan Stryker and Stephen Whittle, (New York: Routledge, 2006),262.

5, Simon de Beauvoir, The Second Sex (New York: Knoph,1953), i.

6Jay Prosser, "Judith Butler: Queer Feminism transgender and trans-substantiations of Sex,262.

7 Kelley Kolman and Mathew Waites, "The Global Politics of lesbian, gay, bisexual and Transgender Human Rights: An Introduction", Contemporary Politics,15:1, (March 2009): 1-17.

8 Bari Imam Shrine, Islamabad.

9Arafat, Shoheal Mehmood, Joya Sikandar," Living on the Extreme Margin: Social Exclusion of Transgender Population in Bangladesh", The Journal of Health Population and Nutrition, 27:4, (Aug 2009): 441-445. Humaira Jami and A. Kamal, "Attitude towards Hijra Community and their Reciprocal Perceptions", Unpublished raw data, Doctoral Dissertation, National Institute of Psychology, Quaid-i-Azam University, Islamabad. (PDF) Condition and Status of Hijras (transgender, transvestites etc.) in Pakistan: country report. Available from: https://www.researchgate.net/publication/294427308_Condition_and_status_of_hijras_transgender_transvestites _etc_in_Pakistan_country_report [accessed Oct 06 2018].Sibsankar Mal, "The Hijras of India: A Marginal Community with Paradox Sexual Identity", Indian Journal of Social Psychiatry, 34:1, (Jan:2018):1418-1431. Umair Ahmed and Asad Umair," Factors Affecting the Social Exclusion of Eunuchs (Hijras) in Pakistan" Mediterranean Journal of Social Science, 5:23, (2014): 2277.M.A Abdullah, "Is Social Exclusion Pushing Pakistani Hijras towards Commercial Sex Work", BMCA International Journal of Health and Human Rights,10:1186, (2012):12-32. Abigal .W Lloyd," Defining Humans: Are Transgenders people Stranger to the Law", Berkley Journal of Gender, Law, and Justice,(2005), 20:1, 150-195.

10Dipayan Chowdhury and Atmaja Tripathi, "Recognizing the Rights of the Third Gender to Marriage and Inheritance Under Hindu Personal Law in India", BRICS Law Journal, 13:3, (2016): 42-60.

11M.Alipour," Islamic Sharia Law, Neo-traditionalist Muslim Scholars, and Transgenders Sex re-assignment Surgery: A Case Study of Ayoutallah Khomeini and Sheikh Tantawi's Fatwa", International Journal of Transgenderism, 18, (2017): 91 -103.ArshNaraghy, "The Quran and Human Rights of Sexual Minorities, Lesbian, Gay, bisexual and Transgender Rights in Iran: Analysis from Religious, Social, legal and Cultural Perspective, International Gay, Lesbian, and Human Rights Commission, (2015), 27.

12 A religious decree promulgated by an Islamic Jurist.

13A method of reasoning by an Islamic jurist on a matter where there are no clear injunctions in the scripture.

14USAID and Aurat Foundation," Silent No More, A transgender Community in Pakistan: A Research Study", (2016): 1-68.

15UNDP, Transgender Health and Human Rights (December 2013): 1-36.

16SAFFAR, She-male Association for Fundamental Rights

17 It is a research technique where the researcher is laid from one respondent to other, i.e. one respondent refers the researcher to his/her acquaintances with same characteristics.

18Nayab Ali 26 holds an Honors degree in Botany from the University of Punjab. She originally hails from Okara where she runs a school and from where she also contested general elections 2018. Lobbying for trans rights is her passion. She has been actively advocating pro-trans laws in Pakistan. She aspires to reach at policy-making level to affect legislation.

19Nadeem Kasish 40 is the Founder President SAFFAR19. She is an Intermediate. After 1 year of activism for transgender rights, she now works as a makeup artist at a leading private news channel. Abused at a young age, Nadeem left her hometown Multan, migrated to Lahore and adopted Kashish as her new name. She made a livelihood out of dancing. Rebelling against the Guru-Chela system, she migrated to Islamabad (Bari Imam) and started speaking out for trans rights

20GogiAapa 45 is a caretaker at the Shelter House20. Identifying herself as a female, she originally belongs to Multan, but later migrated to Karachi and has also lived in Sindh. Gogi has no formal education but she aspires to do a small job.

21Guru is ahead of a transgender Dera, a place where Hijras reside. Chela literally translates as a disciple. Gurus give Chelas the protection and shelter while the later give them money made from dancing and begging.

22 Interview with Nayab Ali (Transgender Activist Okara), October 03, 2018.

23 Interview with Nadeem Kashish (Founder President SAFFAR), October 01. 2018

24 Ibid.

25 Transgenders have been issued NICs which shows their gender identity as X.

26Interview with Ali.

27Muslim holy pilgrimage to Makkah.

28 Interview with GogiAapa(A Transgender at the shelter house), October 02, 2018.

29 It is a male relative of the female who is a father, uncle husband or brother.

30 Interview with Ali

REPRESENTATION OF TRANSGENDER IN PRINT MEDIA: A STUDY OF OP-ED PAGES OF FOUR DAILIES OF PAKISTAN

Kausar Parveen ∗

Saba Sadiq ∗∗

Abstract: Transgender issues are highly debated in contemporary media of Pakistan. Such debates create awareness among cisgender about their identity and civil rights. Media is the key source to influence the perception of the community regarding transgender and can change attitude. The aim of current research is to examine "transgender representation in print media". Representation of such a diverse group of people in the media is directly related with the gender identity construction. Objectives of the study to examine the role of print media highlight their issues and the contribution of media for their social inclusion in mainstream society. The content analysis used to measure the print media contribution for their social inclusion and problems faced by the transgender community by applying purposive sampling. The op-ed pages have been examined of "The News", "Dawn", "Daily Times" and "Express Tribune" for three months. The data has been compiled in the form of frequencies to know its duration of publication and Chi-Square has been applied to measure the relationship of variables. The research study found that valuable placement has been given to transgender for their issues and social inclusion in mainstream society. Although the coverage is given in these famous dailies still the issues of Transgender are not properly addressed as per the need. In this regard, the journalists and known columnists are required to work more on this noble cause to provide rights to the Transgender, so they will be a significant part of society and can contribute.

Keywords: Transgender, print media, Identity Construction, social inclusion, civil rights.

Introduction

Sex is biologically defined but gender differentiates with the lens of culture. Transgender "khawajasira" is a term used, who do not fulfill the criteria as male or female gender as socially constructed. They considered socially queer due to their erotic expression. Khawajasira, usually, apparently a huge and repugnant person, wearing vibrant colors and maquillage with plaudit, non-lingual activities also as wicked witticisms, applause, the dialogue in an ill manner and mimed with unrealistic actions. Transgender community exists around the globe with their own identities, culture, norms, and rites. The logic that why identity representation is important through media content is "good" representation will educate and "bad" will harmful for minorities, race and gender identities in society (Shaw Adrienne).

In the times gone by of south Asia, they survived with unique power and identity as caretakers of the Mughal emperor's personal rooms (Harams). They were appointed powerful positions in army, courts and as an intimate of Mughals. When the British got the rule on subcontinent their status deteriorated. They were considered as strangers, castaway, leper and pariah (Yasin, & Umair, 2014).

Now a day, in South Asia (India & Pakistan) they lived their own communities divided into family groups under the supervision of their "Guru". The members' of family groups are commonly known as "Chellas". They have very limited occupational choices to earn their livelihood because they have labeled as dancers at wedding, carnivals, births, begging and as sex workers. It is a false assumption that they have ambiguous sex. Khawajasira may wish to be regarded as women because they wearing saris and shalwar-kameez or such clothes which are specifically known for the females. Female affinity is used for them like "sister" "Aunty" in oration. Due to this 72% transgender stated that they faced discriminated behavior in the society, even such behavior showed by the doctors due to this they derived from the health facilities (Ahmed et al, p.5-23).

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Objectives

1. The core objectives of this research are given below;
2. To measure the frequency of coverage given to the transgender by the print media in Pakistan.
3. To examine the nature of coverage of transgender through print media content.
4. To examine the role of media regarding their stereotypical representation.
5. To analyze the coverage of the print media regarding problems faced by the transgender community.

Research questions

1. To what extent print media of Pakistan give coverage to transgender?
2. Whether the print media is contributing positively for social inclusion of transgender or otherwise?
3. To what extent do media portrayal transgender in a stereotypical way?
4. Are media portraying trans-genders issues?

The Rational/Significance of the Study

This study is important because it will investigate the role of media for the stigmatized and marginalized group of people Khawajasira's social inclusion in the society and their identity construction. Anyhow they are contributing their efforts for the developments of the society and how media represent their attempts and depict them through the content.

Khawajasira is neglected and socially excluded in society due to their gender identity. This study will examine the media efforts for their identity construction and social inclusion in the society.This study will contribute to the existing literature in the respective area with empirical data support. It will also help media persons to sensitize the issue of transgender identity construction and their social inclusion as a normal member of the society.

Theoretical Framework

This scheme seeks to supply awareness into the current landscape about transgender community representation in media content and their social inclusion in the mainstream society and media's contribution for this great purpose.This study seeks to provide insight into the highly conflicted phenomena transgender identity and their social inclusion in mainstream society and the contributions of Pakistani media for this purpose gate-keeping theory has been applied. This theory explains that information in media outlets receives from various sources and which will be published decided by the gatekeeper. Its basic purpose is to publish the useful material to maintain harmony in the society and avoid the controversial situation in the society; but most of the time much important information overlooked due to the political, cultural, social or organizational restrictions. To abide by the rules of the news organization is compulsory for the news editor/gatekeeper. It could be said that news editor/gatekeeper played a vital role to publish the news content regarding any important issue (Cassidy, William P, 6-23).

Method

Content analysis (Dominik &Wimmer "Mass media research" 156-157) defined as a "method of studying and analyzing communication messages in a systematic, objective and quantitative manner for the purpose of measuring dependent variables". Selected content could be analyzed as per explicitly and consistently by applying rules. Particular guidelines are followed throughout the study. Content analysis is an accurate and unbiased representation of the body of data.Quantification fulfilled the requirements of the objectivity and it also helps the researcher to fulfill the quest for precision. Content analysis is a study of what media messages contained content, context, and intentions. It can be interpreted as a way of investigation in spite of inquiring the public respond through a questionnaire.

Steps of Content Analysis

Universe: All newspapers of Lahore (Pakistan) are the universe for this study in the selected time period.

Population: In this study, the population for the content analysis will be Dawn, The News, Express Tribune and Daily Times taken by the researcher due to the heavy readership of these newspapers in Pakistan. The publish content like editorials, columns and letter to the editor and any type of published information on OP-ED pages related sexual minority of transgender community of the Lahore (Pakistan) in the selected time period

are included. Op-Ed pages have consisted; the point of view of a common man, experts and newspaper opinion regarding any societal, political and any type of hot issues.

Sampling technique in the content analysis

Purposive sampling technique will be used for this study. This is the type of non-probability sampling technique and used due to the distinguishing qualities of the informants or content. The rationale for selecting the purposive sampling is, in this study required data analysis of the published piece of information in print media; contained diverse nature and data will be analyzed by chi-square and frequencies (Ma Dolores C, "Purposive sampling" 153) relating to the issues of the transgender community. So that's why the researcher selects this sampling technique.

Unit of Analysis

Unit of analysis is the very least part of the content that is coded into the content set/category. The units of analysis vary data to data in nature and depend on the objectives of the research. Bernard. "Content analysis" precisely defines: "Content analysis stands or falls by its categories. Particular studies have been produced to the extent that the categories were clearly formulated and well adapted to the problem and the content".

Social inclusion: The provisions of certain rights to all individuals and in societal groups, such as employment, adequate housing, health care, education, and training etc (Collins English Dictionary, 2017).

a) Supportive   b) Against   c) Neutral

Nature of representation: People think that sexual minorities are immoral, unnatural, unhealthy and harmful, due to their sexual preferences, such people do not deserve equal rights/civil rights.

a) Supportive   b) Against   c) Neutral

Supportive: Such publish content like the letter to the editor, columns, editorial, articles and any piece of writing has been written for the favor of transgender community will be considered supportive. **Against:** Such publish content like news, features, columns, articles and any piece of writing has been written not in the favor of transgender community will be considered against. **Neutral:** Such publish material/content which is not in favor/support nor in against in nature of transgender will the community be considered neutral.

Identity construction: Identity is the set of qualities of an individual like beliefs, personality, and belongingness to a particular group of people or social category.

a) Positive   b) Negative   c) Neutral

Positive: Such publish content which will be in favor of transgender community and portray them as a normal member of society will be considered positive. Negative: Such publish material which will be used derogatory or discriminated language for the transgender community will be considered negative. Neutral: Such content which will be neither in favor and nor inoffensive nature against transgender community will be considered neutral.

Findings

Table 1: Newspapers data collected from archives (1ˢᵗ Mar to 31ˢᵗ May 2018)

Dawn	The News	Daily Times	Express Tribune

Four newspapers were selected by the researcher to analyze the content of the Op-Ed pages to check the coverage and representation of the transgender community; due to the popularity or high readership in the Pakistani society. The data was collected from 1ˢᵗ March 2018 -31ˢᵗ May 2018. For this purpose, the researcher visited the public library and collect the data easily.

Table 2: Op-Ed Pages

Editorial	Column	Letters to Editor	Issue Highlighted (%)
3	0	2	5
2	0	1	3
1	0	1	2
3	2	4	9

Op-Ed pages of Dawn, The News, Daily Times and Express Tribune contained, in the selected time period was nineteen which represent low coverage of the marginalized group of people. Op-Ed pages gave coverage when the government took some steps for their betterment; otherwise, this community is overlooked by the media. Due to low framing in the media cis-gender are not well aware of the problems faced by the transgender community. Some people appreciate the steps taken by the government and wrote the letter to editors and some people criticized the poor behavior with them. Columns have great importance to build the public opinion regarding any issue due to expert's opinion. In the selected duration only two columns were written which is very low coverage.

Table 3: Content Indicators

Social Inclusion	Representation	Identity Construction
Equal rights	Empowerment	Sexual Identity
Protection	Crossdresser	Begging
Education	Discriminated	Dancing
job Placement	Socially excluded	Crossdresser
Mainstreaming	Politically excluded	Role model
Acceptance	Minority	
Political Inclusion	Marginalized	
	Medically unfit	

Table 4   Content Categories

Positive	130	4	37	161
Negative	53	0	31	18
Supportive	72	40	49	166
Against	0	0	18	18
Neutral	57	18	12	87

The researcher selects the three main indicators that indicate the representation and frequency of the coverage in the print media on Op-Ed pages to highlight the problems faced by the Transgender community and used positive indicators which support them. These indicators can alter the views regarding identity construction and can include the Trans community in mainstream society. Selected content represent this community marginalized and stigmatized in the mainstream society, who deprived their basic rights and suggest suggestions for their betterment. Such transgender who has achieved great success in their professional life represented them as a hero or role model for others. It was a very positive step taken by the news media. Such words encourage the other members of this community and taught them they can also change their fate.

Chi-square Test

The chi-square statistic is 0.1909. The p-value is .662147.
This result is not significant at $p < .05$.
a. 5 cells (100.0%) have expected frequencies less than 5. The minimum expected cell frequency is 1.0.
b. 4 cells (100.0%) have expected frequencies less than 5. The minimum expected cell frequency is 1.3.
X^2 values in Table 5 shows that the significance level is less than 5% which rejected the relationship among variables and indicate the low level of coverage in the print media regarding transgender issues.

Analysis and Discussion

(McInroy and Shelley 'Transgender representation in offline and online media' p.614) found that the media gave enough coverage comparing the past. Media took great initiative regarding Transgender community. Such representation will educate the masses for their basic rights and portray them as a normal member of the society. Anyhow lack of research in Pakistan regarding positive and supportive depiction in contemporary

media. Some content enforced the prejudice and stereotypical depiction of transgender community. They represented by the media as a bagger, dancer and useless part of the society as they have labeled such dishonorable words (Jessica N, p.3). Due to such depiction, they faced discriminatory behavior by the other member of the society even well-educated community.

Conclusion

Due to the popularity of media published content can change the perception of the masses and can play a pivotal role to become them as a normal member of society. So the media should give prominence to their

	Newspapers	Editorial	Column	Letters	conclusion
Chi-Square	.000[a]	.600[b]	.000[a]	.600[b]	not significant
D.F	4	3	4	3	not significant
Sig.	1	0.896	1	0.896	not significant
P-value	0.662147	0.662147	0.662147	0.662147	not significant

basic rights. This research work focused on the social inclusion of the transgender community in mainstream society due to different media content which will provide moral support. Around the globe, mass media has dynamic effects on viewers through its content. Mass media is the prime source of constructing diverse ideas among people.

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Academic Session: 7

Dynamics of Inter-culturality, Ethnicity and Racism

Session Chair: Dr. Zulkhumor Mirzaeva

COUNTERING ETHNIC VIOLENCE, EXTREMISM AND TERRORISM OR HUMAN RIGHTS VIOLATIONS? CASE OF CENTRAL ASIAN REPUBLICS

Dr. Adam Saud [*]

Abstract: Central Asia has been declared as 'not free' region by most of the global human rights organizations. The region has been governed by the old socialist minded leadership since its independence. This style does not give room for the civil liberties and human rights. Furthermore, the region has been marked with extremism, terrorism and ethnic violence for a long period of time. The regimes are also supported by other 'not free' states especially Russia and China. Such kind of regional dynamics have encouraged the states to adopt oppressive policies in order to strengthen themselves. This research focuses; to understand the social and ethnic demography of Central Asian region; to understand the hyper-presidential political systems of the region; to understand the violent and non-violent movements against the 'system'; and to analyse the state policies towards human rights and civil liberties. This research addresses the questions; what are the socio-economic conditions of Central Asian region? How have ethnic and clan identities been incorporated into the political systems of the region? What role religion plays in the Central Asian societies? And what are the states' policies towards protection of human rights and civil liberties This research is primarily descriptive, critical, and analytical in nature. It relies on secondary sources. The research is supported by theory of Social Constructivism.

Keywords: Hyper-presidentialism, Counter-terrorism, Ethnic Violence, Human Rights, Central Asia

Introduction

Central Asia has been declared as one the most non-democratic and authoritarian region by all the global human rights organizations. All the regional states i.e. Tajikistan, Kyrgyzstan, Kazakhstan, Uzbekistan, and Turkmenistan got independence after the disintegration of former Soviet Union in 1991. Except Kyrgyzstan, rest of the states went with the old Soviet Socialist styled governance with minor changes especially in case of Kazakhstan and Uzbekistan. The whole region was totally dependent upon Russia for its economic and political necessities. The Soviet authorities build such an infrastructure that gave Moscow an upper hand over this region. The region was disconnected from its eastern and southern neighboring regions thus, making it totally dependent on Russia. All the major land, rail, and energy transportation routes from Central Asia went to mainland Russia. Furthermore, Moscow deliberately kept the region underdeveloped that could not lead Central Asia towards self-sufficiency.

As this region is landlocked, it has to depend on its neighboring states for its international trade. The southern routes lead through Afghanistan, Iran, and Pakistan. As Afghanistan is facing instability and violence since last four decades, trade through Afghanistan is difficult for them. Iran is facing international sanctions for a quite long time, therefore, Central Asian dream to do international trade through Iran has also faced blow. In order to do their trade through Pakistan, Central Asian states have to cross Afghanistan, which is not feasible for them to cross right now or in near future. This situation has forced them to look towards east and north in the form of China and Russia. Dependence on Beijing and Moscow has further strengthened the "un-democratic" regimes in the region.

All kind of "real" opposition, secular or religious, is banned or is facing extreme hardships to operate. The Central Asian regimes have devised such a political system backed by favorable legal system that any political party, organization, and even individual cannot criticize human rights violations and undemocratic practices in the region. Those who are vocal are either in exile or in jails. The global War on Terrorism provided these regimes with a kind of legitimacy to crackdown the opponents alleging them as terrorists. The region is fragile, poor, and borders with instable Afghanistan. Such conditions have made it vulnerable for extremist tendencies. Some of the local, regional, and global terrorist organizations like Islamic Movement of Uzbekistan (IMU), Islamic Jihad Union (IJU), East Turkestan Islamic Movement (ETIM), and Islamic State of Khurasan (ISK) have presence in Central Asia. Presence of these terrorist networks have given legitimacy to the regimes violate human rights and curb civil freedoms.

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Historical Background

Modern day Central Asia remained under the Soviet colonization for more than seventy years. Those seventy years are considered as the worst era of human rights violations during the history of this region. This region was cut off from its neighboring regions, primarily Muslim regions of Xinxiang, Afghanistan, South Asia, and Iran, thus depriving it of its historical religious, cultural, economic, and social ties. A hybrid political, economic, and cultural system was imposed on the Central Asian Muslims by Stalin's regime. It brought a paradigm shift in the whole structure of Central Asia. The region which was one of the seats of Muslim learnings in the form of Samarqand and Bukhara faced religious persecution. Except a few mosques, all mosques and madrassahs were shut down, demolished or transformed into stables, community centers, gymnasiums etc. In order to keep the Muslims away from their heritage, script of their languages was changed from Arabic/Persian to Latin and then to Cyrillic. It was done in order to force the new generations to forget about their Islamic history.

The Soviet authorities forced all the women of this region to get 'modern' education in a system that was not acceptable to the local population. This co-education system was disliked by the clergy and *Sufi* brotherhood who had deep influence not only on the social network but the political system of the Central Asian region. Women were forced to work in the fields, offices, and factories and that too alongwith the men. Local population had to bear such atrocities throughout the Soviet occupation. Any movement against such oppression was dealt heavy handedly. Most of the critiques were executed or imprisoned. Underground Islam kept its activities in one or the other form that kept Islamic teachings and rituals alive to some extent. Perestroika and Glasnost policies of Gorbachev regime in Soviet Union provided the Central Asian population with a chance to know about their religion and rights. The underground madrasahs surfaced with new mosques opening up and the Islamic literature pouring into the region with the financial support of wealthy Muslim states. Afghanistan war of 1980s also influenced the Islamic "revivalism" in Central Asian region.

When the region got independence after the disintegration of Soviet Union, 'Muslims' of the region hoped for Islamic revivalism as well as political and economic liberalism alongwith the protection of human rights and civil liberties. Since all the presidents of independent Central Asian states were 'elected' before independence, they continued with their chief executive positions. Moreover, they continued with the old Soviet styled economic and political system because all of them had been part and parcel of the Communist Party since long. Therefore, public dream of change in their lives could not come true. Young Islamists from Fergana Region[2] of Uzbekistan and United Tajik Opposition (UTO)[3] led by the Islamic Renaissance Party (IRPT) against Emomali Rehmanov regime in Tajikistan forced the regional states to chart out a hardcore policy towards the Islamists.

Rise of Taliban regime in Kabul and the establishment of IMU in Afghanistan in 1998 were also not acceptable to Central Asian states. When IMU incurred into Uzbekistan and Kyrgyzstan in 1999 and 2000, not only Central Asian states but Russia and China also got worries. The fear of 'Islamic' extremism led to the creation of Shanghai Cooperation Organization (SCO) in June, 2001. Similarly, after 9/11, Russian led Commonwealth of Independent States (CIS) also established Collective Security Treaty Organization (CSTO) in order to combat terrorism in the whole extended region. CSTO is based in Tashkent. SCO established Regional Anti-Terrorism Structure (RATS) with its headquarters in Bishkek, Kyrgyzstan which was moved to Tashkent later on in order to have coordination with CSTO.

Tajik Civil war of 1992-97 which killed almost 50,000 people and damaging the Tajik economy by $1 billion, Rehmanov regime adopted strict policies towards the religion.[4] Tashkent bombing of 1999, 2003, and 2004 and the Andijon incident of 2005 also forced the Uzbek regime to follow stricter policies so far democracy and human rights were concerned.[5] Other regional states especially Kazakhstan and Turkmenistan also followed their counterparts in Uzbekistan and Tajikistan. However, Kyrgyz regime remained a bit open towards 'freedoms'. Nevertheless, with the passage of time, Askar Akaev's regime in Kyrgyzstan also adopted harsh policies towards the political opposition. Kyrgyzstan faces wor st ethnic crises in the whole region. The hotspot of ethnic crises are Osh and Jalalabad regions in the southern Kyrgyzstan which is part of Fergana Valley. The first Turkmen president Supramurad Niyazov had personality cult. He had also been declared as 'oppressor' by all international human rights organizations.

When NATO supplies to Afghanistan were disrupted in Pakistan, US had to stuck a deal with the Central Asian regimes in the form of Northern Distribution Network (NDN) in order to provide a smooth NATO supply

in Afghanistan. This deal has forced the West not to criticize Central Asian states for their undemocratic practices and human rights violations. All these local, regional, and global conditions have given a sort of free hand to the Central Asian regimes to violate human rights and curb civil liberties. The War on Terrorism is the most important tool in the hands of regimes in this regard.

Civil War in Tajikistan and Subsequent Human Rights Violations

Since 1992, Emomali Rehmanov is the single president of Tajikistan. All the presidential and general elections have been "won" by Rehmanov's Peoples' Democratic party of Tajikistan. Being the poorest of all the Central Asian states, Tajikistan has long been plunged into economic crises. Furthermore, Tajikistan does have any substantial natural resource or industry except hydroelectricity. The landlocked nature forbids it to even export its surplus electricity. Majority of its land is comprised on high mountains where cultivation is also difficult. Such conditions have worsened the socio-economic conditions of common Tajiki man. Having a long border with Afghanistan and past experience of bloody civil war have forced the Tajik regime to adopt strict policies.

In order to control the extremism and terrorism, Rehmanov regime has introduced several measures. Tajikistan has a hyper-presidential system where almost all the powers are directly controlled by the president. All the potential political opponents face severe consequences. Even two very close friends of Rehmanov during the early decade of independence, Salimov and Safarov were eliminated from the power politics. Rehmanov wants everyone to see him as the only president. According to Salimov "a man (Rehmanov) who came to power is eliminating his comrades. He needs only those who know him as the president. He destroys those who remember him as a shop assistance."[6]Overall, media is not free, judiciary is politicized and under the office of the president, elections are rigged, real opposition is banned, children less than 18 years of age are restricted from getting religious education,[7]controlled internet services, and *Majlis* (legislature's name) is a rubber stamp.

Imprisonment and harassment of the political opponents is a routine in Tajikistan. "Rustam Faizov and Mahmudi Iskandarov (Progressive Party), Dodo Jon Atovilloyev (editor-in-chief of *Choraghi Rouz* newspaper) Nizamuddin Begmatov and Nasim Jan Shukarov (Social Democratic Party) and Tajuddin Abdur Rahmanov (IRPT)" have been imprisoned on different charges.[8]The rival presidential candidate during 2013 presidential elections, Salimboy Shimsiddin disappeared right before the elections. Similarly, Umar Ali Quvatov, an opponent of Rehmanov was captured by Interpol from Dubai and sent back to Tajikistan. Sultan Quvatov and Mohammad Ruzi Iskandarov were disqualified to contest the presidential elections.[9] Another renowned political opponent of Rehmanov was tortured to death in March 2011 in "Sino Police Station in Southern Dushanbe." [10]

Independent newspapers and magazines like "*Roz-e-Nao* (New Day), *Nerui Sukhan* (Power of the Word) and *Nejot* (Salvation)" had long been under fire from the regime.[11]unwanted foreign journalists are deported from the country. Two female journalists of BBC were departed in 2012. Similarly a Russian newspaper *viktoriya Ivleva* has also been banned by the states.[12] New media laws introduced in 2005 banned the then 'only' private TV channel *Somonian* besides ban on newspapers like "*Odamn Olan*."[13]

"Law of Public Association" asked all the Non-Governmental Organizations (NGOs) to re-register as per the new rules of 2006. Out of total 3500 'registered' NGOs, only 1040 were given registration.[14] During 2012, a Human Rights group "Ampro" was banned by a local court. The charge against the group which disqualified that was the group did not provide an official address to the authorities.[15]

After the General Peace Agreement in 2007, IRPT was included into the government of Tajikistan. Nevertheless, it has never been able to win substantial seats in the Tajik legislature. IRPT alleges that the rigged elections and strict laws for a political party to operate have hindered the success of IRPT. The Party was banned in 2015 on the charges of terrorism.[16]head of IRPT, Mohiyyidin Kabiri went in exile to Iran and there are reports that he has been acquitted of the charges against him.

Religious figures are under constant watch and are harassed/banned on false accusations. Former Islamists cannot move freely even within the country. Supporters of IRPT (the only legal religious political party throughout former Soviet Union till banned) are always under watch. Most of the times they are accused of having contacts with the militants. In a statement, IRPT stated that "more than 100 former party members have been detained since the beginning of 2017 -- two of them died in custody due to pressure and torture."[17] Ten Imams from Israfa region were banned in 2002 to perform their duties on the allegations that they had contacts with IRPT.[18] In 2006, a law was proposed to cut down the number of mosques in Tajikistan. It also

wanted to bring the pilgrimage to Macca under direct control of state. However, sever criticism to such policies forbad government to implement such law.[19]

Since IRPT is the only "real" opposition political party which has public support in Tajikistan, Rehmanov regime has taken all measures to restrict and even ban its activities. The Party has always been under fire on the charges of contacts with the Islamists. However, the Party has gone through a radical transformation where it got rid of arms and took part in Tajik political system. It never stated to implement sharia laws in Tajikistan. Its manifesto always revolved around the socio-economic problems of Tajikistan. According to Steve Swerdlow, Central Asian specialist with Human Rights Watch, "the IRPT is nothing like the Muslim Brotherhood…It's a much more moderate and democratically oriented group of people…Even during the civil war…party leaders were always adamant that they didn't want an Islamic state modeled on Iran or Saudi Arabia. They wanted a secular state where Islam was given a more prominent position."[20]that means state accuses IRPT for its contacts with terrorists.

Tajik regime uses mixed strategy to defame and control IRPT. For example, "in the summer of 2015, using a combination of arrest, intimidation, and propaganda, President Rahmanov's regime swept the party (IRPT) away, inflicting massive human suffering. Its local supporters are cowed while its activists are either imprisoned or scattered across the world."[21]Tajik regime also uses "state controlled" imams for this purpose. During March 2018, "imams at several mosques across Tajikistan urged Muslims to support the closure of the Islamic Revival Party, calling for a referendum to dissolve the party. A letter distributed to imams before Friday Prayers on March 27 said that dissolving the party would help Tajikistan 'avoid the fate of other nations where Islamic extremists are disrupting peace and order.'"[22]

Torture and killing of the Islamists in police custody is a matter of routine. One of such prisoner, Ilham Usmanov says that 'we' are given electric shocks besides being poured by boiling water on our bodies. [23] the leadership of IRPT also comes under fire through different charges. Qasim Rahimov, a senior member of the IRPT was arrested on rape charges in July 2003 while Shamsiddin was imprisoned for sixteen years on murder charges.[24]The human rights violations against the Islamists in the name of war on terrorism still go on and it is expected that Tajik regime will continue using 'terrorism and terrorists' for its vested political interests.

Islam Karimov and the Worst Human Rights Violations in Uzbekistan

Islam Karimov regime in Uzbekistan had been a symbol of terror. Uzbekistan had been included into the top ten countries for human rights violations. Like most of his counterparts in Central Asia, Karimov remained extremely critical to his opponents. Since Uzbekistan is the most populous of Central Asian states, many political parties and civil society groups emerged right after the independence. Nevertheless, in order to bring "order" in Uzbekistan, Karimov regime banned all kind of opposition and civil society groups soon after the independence. Young people from Namangan region of Uzbekistan came out on the streets and demanded that Sharia laws must be implemented in Uzbekistan. The violence in the region forced Islam Karimov to visit Namangan and negotiate with the Islamists. However, negotiations failed as Islamists wanted Islamic laws to be implemented on the spot while Islam Karimov stressed that their demands to be put in front of the parliament. While reaching back in the capital Tashkent, Karimov ordered a crackdown on the Islamists. Some of the leaders were captured while other fled to Tajikistan and joined UTO in the Civil War.[25]

Tajik Civil War, rise of Taliban in Kabul, establishment of IMU, 1990 and 2000 incursions into Uzbekistan, and Tashkent bombings of 1999, 2003, and 2004 were the major causes that the Uzbek regime dealt the Islamists heavy handedly. Not only the Islamists but also the secular opposition political parties were banned and their leadership went into exile. Human rights activists are under watch and are usually tortured and imprisoned.

Under Article 54 of the Uzbek constitution, all the opposition political parties like *Erk, Birlik,* and Islamic Renaissance party of Uzbekistan were banned. The article states that no political party of group is allowed to function in Uzbekistan if it has "nationalistic or religious principles." All the political parties must be highly patriotic. Under this article, in 1993, *Erk* was banned as authorities decaled it as a nationalistic party while Abdullah Utaev, head of Uzbek IRP was jailed in the same year.[26] The Law on Freedom and Conscience and Religious Organizations (1998) says that all anti-state activities against state are illegal. The human rights activits question this Law on the grounds that without an independent judiciary, who will decide that which activity is anti-state and which is not.

Article 61 of the Constitution: "Religious organizations and associations are separate from the state and equal before the law. The state does not interfere in the activities of religious associations."[27]however, the laws in Uzbekistan "prohibits the private religious teachings, bans religious education in schools and forbids wearing of religious clothes in public except for clergy."[28]'Prisoners of Conscience', a human rights group stated "opposition in Uzbekistan, whether religious or secular, is banned. Efforts of few independent human rights activists are inadequate. Their protests are few and inefficient and all are scattered. The authoritarian policies force common man not to come on streets against the brutalities."[29] The regime deals all the criminals, suspected Islamists and political opponents under the same law. The former British ambassador to Uzbekistan, Craig Murray says that "Uzbekistan does not have any democracy nor is pursuing the democratic process. There are no checks and balances on the authority of president. Parliament is like a rubber stamp and real opposition political parties are banned."[30] Nigara Khidovatova, leader of the Independent Farmers Party of Uzbekistan stated that "Uzbekistan is like the Soviet Union, but the wrong way round. Everything bad about the Soviet Union we still have. But everything that was good, like its welfare and education, has disappeared."[31]

Islam Karimov says that "we will never allow religious slogans to be exploited in the struggle for power…in this we see a serious danger to the stability and security of our state."[32] In the name of state security and stability, political opponents are under wrath. Many of the Islamists from Uzbekistan have been missing. They include; Abdullah Utaev (IRP), Abdul Wali Qari (cleric) alongwith his two students, and Abid Khan Nazarov (Imam masjid).[33] Forced confession statements of the political opponents and Islamists are produced before the courts and media. According to Momina Whitlock, the BBC correspondent in Tashkent "long confession could lull the listener into a sort of mesmerized acceptance; a sudden job of the unbelievable jolted are awake. Sometimes, it seemed as though at least some of the young men in the cages might be guilty and at the same time their confessions seemed to be pure fabricated.[34]She stated this during the trial of accused of Tashkent bombing of 1999.

When Israeli and American embassies were attacked by the terrorists in 2004, a new wave of persecution was witnessed in Uzbekistan. The obvious target was IMU and IJU who were blamed of those attacks. A total of 85 members of these organizations including 17 women were arrested and persecuted.[35]relatives of the absconder militants have to face the state wrath. Relatives of the most wanted terrorists of Uzbekistan, Tahir Yuldashev and Juma Namangani[36]is a good example in this regard. Tahir's mother was forced to curse his son in public. She had to say that "may Tohir be swallowed up by the earth, may he and his accomplices rot in their graves."[37] Namangani's mother was publicly defamed by the relatives of 1999 terrorist attack deceased with black paint on her face. His brother was sentenced fourteen years imprisonment in the same case.[38]

In order to keep the population away from IMU and IJU, many of their former militants were given amnesty by the regime. There are reports that almost one hundred former members of such organizations were given amnesty by Karimov regime in 2002. They denounced their organizations and criticized their strategies and anti-state activities.[39] IMU is accused of attacks on border posts and official buildings besides suicide bombings across the whole country. When a police post in Andijon was attacked in 2009, regime was quick to blame IMU but the locals stated that the attackers were speaking foreign language and had a translator with them.[40]It is clear that almost all the violent activities in Uzbekistan are blamed to IMU and other militant organizations despite the fact that IMU is inactive in Uzbekistan since 9/11. It is based in Afghanistan and Syria right now.

The government has a "Black List" of the religious figures. They are frequently interrogated and are banned to travel abroad. Many of the imprisoned on religious grounds are charged with false and vague charges of fundamentalism. When a court sentenced eleven suspected extremists to imprisonment in May 2017, Surat Ikramov, a human rights activist severely criticized the 'fabricated' charges.[41] According to Forum 18, a human rights activist group in Uzbekistan, "followers of all religions and beliefs -- with no exceptions -- face freedom of religion or belief violations"[42]Although, there has been an improvement in the overall human rights conditions in Uzbekistan after the regime change in late 2016, Tashkent has to go long to improve its human rights and civil liberties. The falsified accusation on the terrorism and extremism charges must be stopped. Religious freedom rights "cannot be sacrificed in preventing or countering violent extremism"[43] said Ahmad Shaheed, UN Special Rapporteur on Freedom of Religion or Belief after an eleven days long tour of Uzbekistan.

'Democratic' Kyrgyzstan and Human Rights.

Kyrgyzstan is the only democratic state in the entire Central Asian region. It's a beacon of hope in the authoritative sea. However, despite such characteristics, civil liberties and human rights have never been safeguarded in true letter and spirit. Political opponents are usually harassed. The potential political competitors are either banned or are under strict surveillance. There is ban on religious political parties in Kyrgyzstan. The first president Askar Akaev, when consolidated all powers in his hands, he started oppressive styled government. He became one of the corrupt regimes. When (relatively open) media started to highlight his corruption, it came under strict restrictions. When Zamira Siddikova wrote about presidential corruption she was sentenced to twelve years in prison.[44] The ex-Prime Minister of Kyrgyzstan Flex Kulov was given seven years sentence on different charges. Kulov became a popular political figure and was perceived as a potential political threat to Askar Akaev. All this happened to him because he created his own political party *Ar-Namys* (Dignity). [45]A military court gave him amnesty later on.

Religious figures are also no exception in this regard. A counter terror operation killed Qari Rafique Kamaluddin in 2006 in southern city of Kara-Suu. [46]Peaceful protests against the presidential corruption in 2002 in Aksu were dealt heavy handedly by the regime. Security forces killed six peaceful demonstrators.[47]such harsh policies provided popularity to the underground Islamist groups like Hizb-ut-Tahrir (HTI). In December 2016, a constitutional amendment declared that nationality of those Kyrgyz who join international terrorist organizations will be revoked.[48] This has been done in the wake of Kyrgyz nationals joining the ISK.

Kazakhstan

Kazakhstan is ruled by NurSultan Nazabaev since its independence in 1991. Corruption and nepotism are the features of Kazakh political system. Opposition political parties and media have to face strict policies. Most of the independent TV channels were banned in 1997. Not only political parties but also the media came under attack from the regime. During 1997, strict laws were introduced which banned almost all the independent TV channels as well as newspapers. The family members and cronies have been appointed on lucrative positions. These include president's daughter and son in law.

President NurSulatan Nazarbaev was given lifetime immunity from prosecution in 1998.[49] Strict laws were imposed on the recognition of political parties. Every political party has to get minimum of 7000 members from each Oblast (region). Similarly, every political party must have at least 50,000 members across the whole country.[50]While those political parties which endorse the presidential policies and "evolutionary democracy" are given recognition even without complying the minimum numbers law. The Democratic Party of Kazakhstan is one such example. Media, civil society, and religion are under strict state control. Activists critical to government are constantly under oppression. Courts conviction on falsified ground is a matter of routine. Activists like Maks Bokaev, Talgat Ayan, and Vadim Kuramshin are imprisoned. Journalists critical to regime also have to face wrath of the regime. Zhanbolat Mamay and Seitkazy Mataev are in prison.[51]

Nazarbaev regime was relatively open towards Islamic Revivalism during the initial years of independence. In order to get national integration and cohesion, he supported some of the Islamic laws in the society. Nevertheless, Tajik Civil War and Namangan crises of 1992 forced him to rethink about his religious policies. Kazakhstan strong economy has given less hopes against the authoritative rule of the president as majority of its population enjoys a god life. However, appeal of Islamic State (IS) got a positive response as almost 300-500 Kazakh citizens have joined its ranks.

Since a presidential candidate has to show 100,000 signatures in his support to contest elections, oppressive policies force the citizens to refrain doing so. One of the candidates, Hasan Kojahmadov got the required number of signatures before the elections but could not contest because the secret agencies snatched that list from him. All the potential political opponents face hardship in Kazakhstan. The president was critical to even his own daughter Dariga Nazarbaeva's political party *Asar*.[52]all the presidential elections are one man show.

The constitution pf Kazakshtan provides its citizen with religious freedoms. However, On December 22, 2017, President Nursultan Nazarbayev introduced new amendments "on countering extremism and terrorism" bringing more restrictions on religious groups and more powers to the anti-terrorism forces.[53]Other steps to curb religious practices include; ban on foreign travel based on religious motives, tight control over

religious teachings, restriction on publishing religious material, depriving citizenship to those kazakhs who join foreign terrorist organizations, and restricting independent candidates to contest presidential elections.[54]

Twenty two people were convicted by the courts on religious charges in 2017. The Forum 18 reported that during 2017, "authorities brought administrative charges against 279 individuals, religious communities, charities, and companies for attending worship meetings, offering or importing religious literature and pictures, sharing or teaching faith, posting religious material online, praying in an unapproved manner in mosques, bringing a child to a religious meeting, maintaining inadequate security measures at places of worship, or failing to pay earlier fines."[55] Law on Religious Activity and Religious Associations of 2011 "increases state controls on the exercise of freedom of religion or belief still further [and] will ban state officials being founders or members of religious communities."[56] The also includes; no religious literature, even approved by authorities, can be distributed outside of the mosques and public places; all kind of religious material needs official permission; and ban on every kind of "unregistered missionary activity.[57]

Turkmenistan

The first president of Turkmenistan, Supramurad Niyazov created a personality cult in his country. He had controlled 'everything' in Turkmenistan into his hands. He was declared as one of the worst dictators of the time. Turkmen parliament give him and his family life time immunity from prosecution. Like its counterparts in Central Asia, 'real' opposition and 'independent' media is banned in Turkmenistan. Criticism to president means criticism to state. Durdimurad Khojamukhammad stated that "wiretapping, provocating, dismissal from jobs, all kinds of intrigues and telephone threats" is a routine in Turkmenistan.[58]In order to run Turkmen state and society according to his own thinking, President Niyazov wrote a book *Ruhnama,* which provided "guidelines" for the whole life. Status of this book was declared to Quran and Bible. Clergy opposed to this move which resulted in imprisonment of Nasrullah Ibn Abdullah, former chief *imam* of Turkmenistan. [59]

There is no 'genuine' political opposition the country. Any political party or group against the existing political system has to face legal procedures.[60] Niyazov was "declared as lifetime president in 1999 by the legislature which was comprised of 100% membership to Democratic Party of Turkmenistan which was headed by none other than Niyazov."[61]he banned tobacco in the country. He also banned dogs in the capital. Once met office' prediction went wrong and Niyazov sacked its chief.[62] Former foreign minister of Turkmenistan, Boris Sheikhmuradov, Khudaiberdy Orazov, ex-Central Bank's head and Mukhammad Khanamov, ex-Ambassador of Turkmenistan to Turkey were given different years of sentences under "Betrayers of the Motherland" Presidential decree.[63] 9/11 and the subsequent war on terrorism gave a freehand to Niyazov regime against political opponents.

Ethnic minorities, especially Uzbeks and Russians are treated as second grade citizens. Corruption is rampant. Religious figures are no more exception. Turkmen constitution provides religious freedoms to its citizens. Religion is under tight control. Religious prisoners have to face the infamous Ovadan-Depe prison. It is assumed that " Many individuals convicted of religious crimes are presumed to be sent to the notorious desert prison Ovadan-Depe, where prisoners regularly die from torture and starvation."[64] "non-traditional" Islam is banned and many people including soldiers have been sentenced on the same charges.[65] Religious figures like Lukman Yaylanov, Narkuly Baltayev, and Aziz Gafurov have also been sentenced imprisonment in Ovadan-Depe.

All 'unregistered' religious groups are banned and their members and activities are liable to heavy punishments and fines. All religious material needs to be scrutinized by the authorities. No formal religious education is allowed in Turkmenistan. Very basic instructions about religion and an institution to train imams is allowed. Pilgrimage to Macca is also under state control. "During 2005 to 2008, only 188 people each year. Indeed, in 2009, the Turkmen government allowed no hajj pilgrims to travel at all.[66]there are reports that in 2016, "52-year-old Yoldash Khojamuradov committed suicide at home after police accused him of being a Wahhabi (the term used by the government to designate people as extremists) and interrogated him for several weeks, pressuring him to name other Wahhabis."[67]

The scars population of about 5.2 million, oppressive regimes, and economic stability of Turkmenistan do not allow its citizens to adopt extremist ideologies. Nevertheless, situation in neighboring Afghanistan and the rise of ISK has rung the alarm bells. The strict religious policies may lead the Turkmen youth towards radicalization.[68]Turkmen security is also vulnerable to terrorist threats.

Conclusion

As most of the Central Asian regimes have not changed since independence, the prospects for change in their policies towards human rights and civil liberties are also low. This region is marked with, a variety of problems including extremism, terrorism, poverty, corruption, unemployment, and authoritarian regimes, to count few. Situation in Afghanistan and separatist movements in Chechenia and Xinjinag has forced not only Central Asian regimes but Russia and China to introduce strict policies to control separatism, extremism, and terrorism. However, harassment and persecution of the potential 'secular' opponents are also dealt heavy handedly under such policies. There are no 'real' freedoms in the whole region. Kyrgyzstan is an exception but human rights violations especially ethnic violence is a major issue there as well. Media and civil society are not free. Potential political opponents are barred to contest elections through 'different' means. Almost all the elections, presidential and parliamentary, are rigged. Even the Uzbek and Kazakh presidents had to take measures in order to keep their daughters away from the power corridors. Ironically the region is also surrounded by not real democratic states as well. Therefore, Central Asian regimes are considered as oppressors by almost all the global human rights organizations. However, with the change of regime in Uzbekistan and the release of thousands of 'religious and political' prisoners, it can be expected that a slow and gradual change may happen in this region which will also strengthen the human rights' apparatus in the region.

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CHANGING DYNAMICS OF KURDISH CONFLICT IN 21ST CENTURY

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Abstract: The Kurdish Conflict has been raging on since the past century. The Kurds are divided among five states of Europe with Turkey having a population of fifteen percent. These Kurds have been residing in Turkey since the era of the Ottoman Empire. Recently the Kurdish conflict has gained importance as the forces of globalization and modernity come into clash with the forces of cultural and ethnic nationalism. The modernist assumption of homogeneity has been negated, and heterogeneity in the form of ethnic/cultural nationalism prevails. There are several examples of such minorities as the Rohingya of Burma, Tamils of Srilanka, Sikhs of India, that face an identity crisis in changing socio-political circumstances. This paper utilizes the Instrumentalist approach to evaluate the significance of ethnic nationalism in the Kurdish conflict. This study is significant to analyze the changing dynamics of the conflict in the globalized modern world. The constitutional barriers faced by the Kurds in Turkey and the securitization process underway in Turkey, has transformed the Kurdish issues to a Security-military problem. Eventually rendering political integration a rhetoric than a reality. The Turkish policies after the creation of the modern secular state, led to major grievances of this minority group. The imposition of the Turkic civic values upon the Kurds have affected their ethnic nationalist values. A qualitative analysis depicts that the Kurdish conflict has been constantly evolving in the 21st Century; the forces of modernization in Turkey have fueled the conflict and has also led to the ethnic deconstruction and reconstruction of the Kurds. The autonomy provided to the Kurds in majority areas, has only marginally dealt with the issues of ethnic identity. This issue has not only serious implications at state level but also at regional level due to increased complexity in recent times.

Keywords: New Ottomanism, Human Rights Violations, Securitization, Instrumentalists, Minority Rights

Introduction

Turkey has been faced with the Kurdish issue since the republic of Turkey came into existence. The early Turkification policy of the 1920's based on the six Kemalist principles met with a strong resistance from the Kurdish minority and resulted into unrestsand, violent confrontations. The Kurdistan Workers Party (PKK) since 1984 exacerbated the situation, as they began conducting terrorist attacks against the Turkey. Their secessionist movement shaped the latter half of the century as Turley remained involved in this insurgency at home.

Over all 40,000 lives have been lost in this conflict[2] , though gains are far and few.The Turkish Kurdish issues has evolved with time, the political integration process has brought political parties like the AKP and DTP into the limelight to address the issues faced by this Kurdish minority. Though Turkey does not classify the Kurds as a minority group. The evolution of the Kurdish issues from a secessionist movement to a minority rights problem is credited to some key major developments like the increased control of the civilians on the Turkish military as the military had strained relations with the Kurds throughout the 1990's. The National Security Council only referred to the Kurds as security problem thus securitizing the Kurdish issue. This has allowed a great ease of Turkish –Kurdish relations. Secondly, the role of the external actor, as the United States has helped Turkey to effectively curb the Kurdish insurgency through military support and the European Union who placed pressure on Turkey to resolve Human rights concerns to consider to become an EU member. This though does not mean that PKK lost its capacity or capability to launch attacksagainstTurkish targets, indicating this struggle will not end with military means[3].

Isiah Berlin a historian of ideas informs that nationalism and national identity were born as a result of counter enlightenment[4]. The enlightenment ideas meant that cultural hegemony of European powers was being rejected by the German thinkers like Johan Gottfried von Herder. He a counter enlightenment thinker states, "Germans must be Germans not a third-rate Frenchman, local feelings and uniformity is death"[5]. This was

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against the French cultural hegemony at the time, this sentiment sowed the seeds of German nationalism that shaped events in the 19th century up to the unification of Germany in 1871[6]. This nationalist sentiment stands true in today's world as well. Nationalism and ethnicity has significance, homogeneity is an idea unachieved and un-favored, heterogeneity is valued and strengthened, even as the forces of modernization and globalization enact upon the nation states.

The Kurdish people is the case of such an ethnicity that withstands the forces of homogeneity and modernization, through the assimilationist polices of the state of Turkey. The struggle of the Kurdish People for Self-determination has been ongoing since the 1920's. The Kurdish people believe that as a Nation, their practice of Ethnic nationalism is thwarted by the state of Turkey. As the states tends to homogenize and declared that all Muslims in Turkey are Turkish people and that there are no Kurds. The states prohibits the practice of cultural and expression in Kurdish language. The Kurdish nation thus feels deprived. John Breulliy, building on the works of Anthony D. Smith, Where Smith in "Chosen Peoples" defines a **Nation** as " a named human population occupying an historic territory and sharing common myths and memories, a public culture and common laws and customs for all members".

Ethnicity, nationalism and secessionism have an intricate relation. The very concept of a nation state entails the creation of the state for the nation. This practice of this very concept shaped the post-World War I era and the significantly altered the world during the decolonization movement in the post-world war II. The practice of ethnic nationalism thus came about as a strong unifying force that transformed that challenged the Modernist Ideals of a nation.

Ethnic Nationalism – at the Core:

Nationalism has two major divisions ethnic nationalism and civic nationalism. Ethnic nationalism is based on the socio-biological ethnic affiliation and cultural bond these ideas focus on the Primodialties and Ethno Symbolic ties[7]. Where as civic nationalism is based on the rights and duties that the state imposes on the individual which are adopted as a means of association to that particular state this Approach is Modernist in nature proponent of which is Ernest Gellner who focused on the idea of a High Culture.

Ethnic nationalisms originates from the ethnicity itself, the theories of ethnicity describe the various methods to establish ethnic affiliation based on Primordialist approach, Constructivist approach and the instrumentalist Approach. This paper utilizes the Instrumentalist approach to describe the Kurdish minority issue. We first begin to define the major ideas of ethnicity. Though Roger Brubaker emphasizes that several definitions of ethnicity exist, they have not significantly advanced the knowledge on the concept. The scholar focuses on the fact that "ethnicity, race and nation should be conceptualized not as substance or things or entities or organisms, or collective individuals – as the imagery of discrete, concrete, tangible, bounded and enduring " groups" encourage us to do – but rather in relational, dynamic, eventful and disaggregated terms"[8]. This definition establishes a ethnicity is an ever changing and dynamic process , this rejects rigidity of ethnicity and thus allows a factor of change to be acknowledged.This is the operational definition of for this paper.

The second important concept is Ethnic Identity that is defined as "a segment of a larger society whose members are thought , by themselves or others, to have a common origin and share segments of a common culture and who, in addition, participate in shared activities in which the common origin and culture are significant ingredients"[9]. Then we come to assessing Ethnic groups describing that "those human groups that entertain a subjective belief in their common descent because of similarities of physical type or of customs or cloth or because of memoriesof colonization and migration"[10].Ethnicity gives meaning and association to an ethnic group. Ethnic affiliation and ethnic membership differs from kinship groups, as an assumed identity it is not a group with ambition for concrete action. ethnic membership does not constitute a group it promotes group formation in the political sphere.

Instrumentalist Approach to Ethnic Identity:

Instrumentalists believe that ethnic identity is flexible and variable, that the ethnic groups change according to circumstances. Several approaches fall under instrumentalism, that are based on economic , social and political processes. Hence labelling ethnicity as adaptable and flexible. Ethnic groups are not fixed , reconstruction and deconstruction takes place that keeps on redefining the barriers of the group. According to Lloberta, Fredirck Barth, the most influential instrumentalist, defined the following features of ethnicity, as a form of social organization, ethnicity is based on the boundary that defines the group. Abner Cohen further

elaborates the instrumental approach of ethnicity to explain that "ethnicity should be regarded as a type of political resource for competing interest groups, and therefore, unlike Barth he refuses to take ethnic boundary for granted". He focuses on the fact that ethnic groups and ties are effective for attaining individual and collective goals. The Theories of Ethnicity further explains that the Marxist theories, believe that Ethnic affiliations are a tool for promoting economic interests and the individuals exchange group membership. Ethnic ties however prevail though" ethnicity is dynamic"[11]. The Marxists assumption of the ethnic affiliation has been negated in the age of modernization as a classlesssociety was not achieved. Competition theory, accounts for to the rise and fall of ethnic movements, ethnic identities appear and reappear, because of the competition for resources. Each group aims for exclusive access a process that Max Weber labelled Social Culture. Then we come to the most pertinent, the Rational Choice Theory,this highlights the role of Individual preferences in ethnic affiliations. This school is based on the fact that Individuals behave in a way to maximize benefits and their approach is pragmatic that may restrict future choices.

Max Weber's Duality in instrumentalism:

In his book the Economy of Society, proposed four categories of social action[12] Instrumental rationality, Value rationality, Norm oriented and Affective impulsive. The first two, provide an essential base for understanding, a rational duality to decipher nationalism,that is focused on its appeal. According to Varshney[13]. Instrumental rationality: focuses on the cost –benefit analysis of the goal, to judge abandoning it if the costs are too high. The "goal" may or may not continue based on the strategic behavior of the ethnicity. This covers the stages of evolution of the political/economic or social struggle. Value rationality, focuses on such behavior that is produced by a conscious, ethical or religious belief, independent of the prospects of success. Such behaviors can lead to greater sacrifices, values can be based on pride or prejudice to a belief system or goals and above all commitment to a group or a set of ideals and values.

Value rationality has a lot to do with national and ethnic mobilization. It is instrumentally used by the leaders to utilize the existence of ethnicity as a valued good. Though value rationality alone cannot ensure ethnic mobilization strategic planning and thought is subsequently required. As many join this progression a momentum is developed. The dominant group imposes its own values on the minority group within a society and excludes the group from power avenues. By enforcing language, religion and culture to practice by the state. This nationalism of resistance[14] The dominated group seek to preserve the cultural identity of and resist hegemony of the dominant group. Driven, the resisting nationalists are willing to endure very high costs for long periods of time to pressure their own cultural identity. Such rationality cannot be easily aligned with instrumental rationality as the cost benefit analysis as such of long period of time and conflict high and low make such an alignment quite complicated[15].

Donald Horowitz asserts that two forms of nationalism exist and impact ethnicity, the nationalism of exclusion and nationalism of resistance. "As far as nationalism of resistance is concerned, the issue is not culture or religious, diversity per se, but a relationship of dominance, subordination and differential worth that often gets historically built into many group relations , if not all"[16].

Value rationality and Ethnic mobilization:

Value rationality leads to ethnic mobilization, a strong group identity – leads to ethnic mobilization, Mobilization itself can beidentity forming – depends on the response of the dominant group and the behavior of the dominant group pre determines conflict .Extremism is value rational behavior (to kill or to be killed) as instrumentality would prevail, even if of the other (dominated or dominant) group. Ethnic partisans consider this a privilege even though they may not see the dream fulfilled[17].Where as Instrumental rationality prevails only whennationalists are close to getting power and the law and order situation has significantlydeteriorated.

The case at hand of the Kurdish minority we can say that Value rationality is used for mobilization of the Kurds and later instrumental rationality employed to assess the cost benefit analysis of the conflict.the nationalism of resistance is being followed by the Kurds while nationalism of exclusion is followed by Turkey. these two opposing forces are fueling the conflict.

Value Rationality in the Case of Kurds:

The value Rationality that forms the basis of analysis was pre-requisites to mobilization, in case of the Kurds these can be traced in history. the downfall of the Ottoman empire after world war I saw an exposure of

various ethnic groups to the international environment. Nationalism itself is an exclusive, those who are not members are not a nation. The Treaty of Sevres (1920) and treaty of Lausanne (1923) are the two most important documents that have shape the Kurdish conflict upon origin. The first promised the Land of Kurds as Kurdistan and the Later recognized the existence of only the Turks in Turkey, denying the ethnic group identity of Kurds in the former Ottoman Empire.

The Treaty of Lausanne (1923) signed between the Western Powers and Turkey in 1923. It led to the recognition of Greeks, Armenian and Jews as minorities, and all other ethnic groups were considered as a part of the Turkish national because they were Muslims. Hence the categorization of minorities was based only on Muslims and non Muslims without regards to their cultural, ethnic, historical or linguistic differences. The foundation of the Turkish republic was based on deemphasizing Ethnic, Linguistic and religious distinctions[18]. The resettlement law of 1934 also added fuel to fire when the Kurds were resettled in to the West of Turkey to change the demography of the Kurdish majority areas.

Ottomanism , described as the association with the territory was also applied to formulate a symbolic relation between the people with the territory of the empire. The aim was to forgo emotional and cultural beliefs[19] The efforts of modernization started shortly after the Ottoman Empire a Multi-Ethnic, Multi – religious state of Turkey came into existence. The preference of Turkish identity, as observed during the ottoman empire in the last decades, the Millet system was also a recognized institution. Turkish Identity was considered a grander as a choice for the Turkish state after the downfall of the Empire. The state of Turkey founded on the principles of Modernization, divided people on the basis of Muslims and Non Muslims. Hence nation building that began after 1924 continued ethinization and political expectations that demanded Non – Turkish allegiances to be a private matter. The pursuit of homogeneity resulted in further assimilation efforts.

This Turkish policies adopted against the Kurds was a state of exception as described by Barry Buzan and in their theory securitization. the Kurdish minority have been securitized since the creation of the state , it was resecuritized when the PKK started its activities, this continuedextensively as the military establishment made this their first order of business[20].

Turkish nationalism is civic in nature – loyalty to the state is the basic requirement. Turkey has constitutionally opted for civic nationalism as a part of the modernization. However this process of insistent modernization, implementation of civic values and Turkification has resulted in a violation of Kurdish rights. The role of modernization was to develop a society that is all inclusive. When in fact the Turkish rationalization policies have exclusively favored ethnicity and has created a gap within the state and society. The tug of war between civic and ethnic nationalism, has resulted in to a divided society. where the state practices the exclusionist nationalism and the minority practices the resistance nationalism.

Turkey has gone through various political changes, these include the rise and fall of democracy, new constitutions both liberal and conservative, civil wars and insurgency and the deteriorating civic military relations even in present times. The constantly changing political landscape of turkey has provided room or conflict and political growth. Therefore positive and negative variables were present side by side and the state of Turkey struggled for its equilibrium. The modernization efforts and the promotion of civic nationalism have been the key agendas of the Turkish state, though taking place under the umbrella for assimilation. The pursuit of what Ernest Gellner explained as being the High culture has been a constant for the state.

McGarry and O'Leary discussed two methods to regulate ethnic conflict the first is to eliminate ethnic differences and the 2ns is to manage the differences. The Turkish policy of assimilation has majorly been a bone of contention. The policy to assimilate or absorb the minority into the majority has only widened the gulf between the Turks and theKurdsthus the policy was to forcefully eliminate the differences . For Kurds integration is a favorablepolicy that recognizes ethnic identity and the culture, these factors is what assimilation ignores .the Kurds had been thwarted from expressing their identity over the course of years due to major constitutional barriers (Table 1) that ensured the promotion of Turkish nationalism and . These policies of assimilation favor the unison of national and Turkish identity.

Table 1: Constitutional Provisions that affect Political Participation

Constitution	Features
1924	Banned other languages –except for Turkish (based on the Six Kemalist Principles)
1961	Some civil liberties were granted – liberal constitution (lead to Kurdish Radicalization)
1982	Secular state – non recognition of Kurdish Identity
Amendments (in the 1982 constitution 17 amendments were made – most recent in 2017)	• Defines citizenship • Multiparty system • Increased role of military • Ban on minority languages was lifted (for teaching and dissemination of information) in 2002 and 2004. • Abolished the office of the Prime Minister in Favor of increased Presidential powers.

Creating Space for Dialogue:

In order to curb a secessionist movement political integration has an integral role to play, this process of political integration requires bureaucratic penetration, social mobilization, industrialization and mass communication. the minority groups are viewed from the perspective of deviation from modernity. the post-colonial state faces the problem of ;nation-building'.[21]the process of integration began late , it was in 2002 when the Erdogan Government introduced reforms designed to improve his situation . the Kurdish – languagebroadcasting was introduced on limitedbasis. Teaching was also to be done in Kurdish language. these reforms helped, initially, the AKP to improve and gain political support. These reforms faced bureaucratic obstacles, as the implementation of this language use relief reform was not uniformly being allowed. Private TV channels had to wait two years and the Kurdish language lecturing was allowed for only 45 mins. These reforms did more harm than good because of the obstacles that they faced. Erdogan was welcomed to Diyarbakir in 2005 with open arms due to his pro Kurdish stance however in by 2008 he faced a boycott. AKP lost its popular support due to increased frustration. The government launched an initiative the 'Kurdishopening', in 2009 to address the Kurdish issue. The initiative failed is purpose of as being national unity project. The aim of ending and eliminating the PKK insurgency due to political biases and rivalries of the DTP and AKP. The Kurdish nationalists were being excluded as it was poorly managed[22].

Consequently, the majority of the Kurds now do not favor secession, the dream of the independent Kurdistan, does not posit international support or regional backing, due to their dispersed geographical demography. The Kurdish struggle is now being fought on an political front, rather than a military front. The Kurdish demands of bilingualism, cultural rights, and amnesty for the PKK members, democratic autonomy. The Peace and democratic party (successor of DTP) , is the one forwarding these agendas, they are recognized as the political wing of PKK[23]. The division in the voting pattern of the Kurds thus also suggests that many Kurds that have been living in several other part of turkey now vote according the socio economic requirements rather than their ethnic affiliations. This is a growth of the political process but it is inversely related to the cause of Kurdish secession. The Kurdish nationalism has thus evolved into a minority rights problem, where the state of Turkey is slowly progressing towards the provision of basic rights to the Kurds as per their demands.

The Turkish Policies have shifted dramatically in the late 1990's.The PKK terrorist activities lasted from the mid of 1980's to almost 15 years after the capture of the leader Abdullah Ocalan. Since then the organization has evolved. The change in the international system, the end of the cold war, economic globalization with its positive and negative impacts. The internationalization of the Kurdish question in contemporary era. The role of the European Union, the membership of which is an important milestone for Turkey. However due to the blame of large scale human rights violation the membership is EU has become a major challenge for Turkey. The current factor that brings the Kurdish Question back to life with claims of the creation of Kurdistan is the resurgence of Terrorism in the region. The battle between the Syrian Kurds and the

Islamic state of Iraq and Levant has brought the secession of Kurds back to light. The complicated regional dynamic of the Middle East have become a huge challenge for the state of Turkey. In this way the forces of globalization have also contributed to the changing dynamic of Turkish – Kurdish conflict.

Conclusion

The Transformation of the Kurdish nationalism did not take place in isolation. The positive correlation that developed in the early 2000's as President Erdogan came to power was due to both the ethnic reconstruction and deconstruction of the Kurds. Also to the changing political dynamic of Turkey that gave rights to the Kurds, thus the space for the resolution of the conflicts or developing a road leading to it, was carved by both the Kurds and the Turks. However this is a long road, the systemic intrinsic and inherent violation of rights of the Kurds has to be eliminatedmethodologically to ensure the political integration and reorganization of the Kurdish people for their integration not assimilation into the Turkish state and society;

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MOBILITY AS A HUMAN RIGHT UNDER THE CHINA-PAKISTAN ECONOMIC CORRIDOR

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Abstract: Mobility stands at the basis of human and labour force dynamics and freedom of movement and has strong economic, social and cultural underpinnings. With its railway, road and maritime infrastructures, the China-Pakistan Economic Corridor (CPEC) is a project of mobility itself, granting and facilitating transport and free movement throughout its projects and routes. The facilities it offers (re)conceptualize mobility and space altogether by bringing cities closer to one another and redefining proximity and trade. The study of mobility as a human right under CPEC is aiming to reveal the benefits of CPEC in terms of human mobility and is a part of the author's endeavour to research the strategic rationales of the corridor. The methodology involved entails analyses of newspapers articles and specialized literature, interviews of the author and documents resulted from internet research. The results of the study aim to reveal the way in which the CPEC projects and prospects (re)conceptualize the human right to mobility and its afferent space. Rediscovering the CPEC as a space of mobility, of freedom of trade and of cultural and economic enrichment also attracts connectivity with other major projects included in the integrated economic systems around the corridor. Finally, the conclusions of the study present mobility as a human right under CPEC projects as an underpinning of regional connectivity, economic benefits and trade. As part of such a cycle, mobility as a human right is (re)conceptualized by the new dimension of goods' mobility which redefine the human options and proximity. .

Keywords: mobility, human rights, China-Pakistan Economic Corridor, access, resources

Introduction

The Universal Declaration of Human Rights marks the freedom of movement in its thirteenth article stating that '(1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country.'[1] So, movement, human mobility that is, is described as the right to the access to the opportunities, dynamics and, eventually, the identity that people strive for. Human rights have been facing multiple challenges and mobility is one of the challenges that entails economic, social, geographic and cultural aspects. And when we refer to the China-Pakistan Economic Corridor (CPEC), we may understand some of the strategic underpinnings of this mobility, too.

The CPEC projects say a lot about inter- and intra-continental connectivity and mobility as it links the Persian Gulf (one major nexus for the trade between Asia, Africa and the Middle East) to the Asian and European markets configuring also a stronger relationship between China and Pakistan. This connectivity has brought people and goods closer to each other and has increased mobility as its effect. One major challenge that it faces is the mobility of the goods and services which may inhibit the human mobility, as people from the countries within the BRI projects, therefore including the CPEC, may travel less, increase their immobility, in order to obtain the facilities that they search for. This paradox is explained by the multiple facilities created by the Chinese projects in terms of space, geography and services and the needs they cover. Human mobility is the effect of one's searching for missing opportunities, for the filling in of the blank space in their wishes. The more that blank space is covered, the less mobility one gets. On the other hand, one may say that a better accessibility may increase mobility, as access may produce the wish for more access and mobility.

Based on these views, we will further on try to analyse the human mobility under CPEC, its objectives and challenges to human rights and the way it redefines space, trade and access to resources. This is also an endeavour to describe connectivity as an origin of mobility and human development.

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Brief History of the China-Pakistan Economic Corridor

Announced in 2015, as part of the Belt and Road Initiative (BRI), the China-Pakistan Economic Corridor is one of the most ambitious infrastructure and connectivity projects from Asia. The corridor connects Pakistan's Port of Gwadar and Shanghai in China, passing through the Xinjiang province and through Pakistan from the north to its south. The CPEC was announced in April 2015, during the Chinese President Xi Jinping's visit to Pakistan. Since then, various infrastructure, industrial, mining, energy and hydropower projects were implemented and many others are to be put in place in different economic sectors.

Among the projects of CPEC which enforce mobility one may mention the Peshawar-Karachi Motorway, the motorway between Karachi and Gwadar, the development of the Port of Gwadar, the Havelian Dry Port, the development of the Pakistani railways system etc. These projects enable mobility between cities and regions from Pakistan and the country's connection to other countries from Africa, Asia and the Middle East. Seeing the profile of the aforementioned projects, one may observe that mobility has been increased both by land and by sea.

'Under BRI model China is going to connect South Asia, South East Asia, Africa, Europe, Central Asia, Russia and Middle East Asia with six major economic corridors and "China Pakistan Economic Corridor (CPEC)" has been declared a flagship corridor of BRI due to its geo-strategic positioning. Regional Integration became a necessary seed in the field of economic prosperity by boosting connectivity through internal and external linkages. Under this model Eastern emerging economies will be interlinked with each other through diverse modes: roads, rails, energy lines, communication networks, dry ports, sea ports, aerial and people to people.'[2]

Today, three years after the announcement of the corridor, mobility has been increased throughout the corridor's projects and many projects have still not reached their final implementation. The corridor allows the Pakistani territory to become one mobility network for a better transport of goods and people.

(Re)conceptualizing Human Rights

Resource availability, production and consumption shape most of the projects that the CPEC encompasses. But it is the social importance of resources and opportunities which determine mobility and the access to production and labour market, food security and mobility of aid are reconfiguring urban and rural potential and agglomerations nowadays. These facts involve certain dynamics which call for conceptualizing of human rights in a manner that triggers a better understanding of the geographic, spatial and human changings.

Since the right to the freedom of movement is already a fact and a dimension of mobility, reconceptualising it and the human rights that generate it could mean making infrastructure-based access to resources a human right on which human mobility mainly relies. As described above, there are two main views related to the generation of mobility based on the access to resources: one that states that the improvement made by mobility may generate more access and bring more mobility, and the other is based on the statement that an increased mobility might lead to the decrease of human mobility, as people may fill their needs faster and closer to their proximity and travel less in order to fill their necessities.

The first point of view that we will analyse is based on the premise that the more access and mobility people get, the more they may try to improve their living conditions and try to reach for more access. If we consider the labour force mobility, for example, we may agree that 'cross-border supply […], consumption abroad […], commercial presence […], presence of natural persons describes the process by which an individual moves to the consumer's country to provide a service, whether on his or her own behalf or on behalf of his or her employer.'[3] Once we consider this point of view, we may also notice that an increase of labour force mobility through the corridor may trigger an increase of the human mobility due to the labour opportunities that various industries throughout the corridor may create. Urban connectivity, sustainability, resilience and structure under an increased mobility may be developed in order to support the changings that mobility entails at different levels, such as social, economic, transport etc. Once mobility increases, authorities need also to improve the resilience and sustainability of infrastructures that allow this mobility.

Moreover, human mobility could be seen as a means to decrease poverty and increase the quality of life of the dwellers from different regions. A better mobility could mean extended labour opportunities for those who travel to other regions of the corridor in order to work. This may improve the living conditions of the

workers who find such jobs and determine other workers to join the flux. The same may happen to merchants who need to travel in order to find the products that help them continue their commercial activities.

On the other hand, we have the opinions of those who believe that an increased human mobility may not lead to more mobility, as access to goods and opportunities could be faster satisfied by the already increased mobility of people and goods. Once we consider this view, we may observe that it is based on the statement that people might not look for other improvements of their living conditions by themselves, but mobility could be assured by the infrastructure developers who might be more interested to develop their trade networks. Therefore, in this case we may face a decrease of the human mobility for labour reasons for example, as this mobility may also create jobs closer to the regions where workers live. Another aspect of mobility is the mobility of goods and supplies, which, once increased, could lead to the decrease of human mobility due to increased access to resources.

Moreover, the way space is organized can change the functions of the habitat. More industrial projects developed along the corridor may lead to a stagnation of the human habitat and reorient that space to the industrial use or to mobility projects only, which may cause a deviation of the human opportunities to develop. These facts may have a strong impact on the improvement of accessibility and human mobility in the regions where such projects are developed. Besides, the development of industrial sites also leads to the redefinition of the core and the periphery of a city or of a region. Such an effect comes also with the social changings related to the way the human living conditions and expectations change.

Geography, space dynamics and human living conditions need to be thoroughly considered when such projects as mobility infrastructures are projected. Since they have strong impacts on the sustainability of the human life, mobility projects need to meet the human needs and expectations. And geography, space dynamics and living conditions are fields where human rights take place and develop. The improvements brought to the transport infrastructures need to be considered in the same time with the human development and vice versa. Such an approach leads to the unity of purposes and effects of the corridor's projects.

Conclusions

Mobility as a human right faces multiple challenges nowadays, as the way in which human rights are being applied speaks a lot about human expectations and needs in all sorts of fields, such as economic, spatial, transport etc. The two views mentioned above share the common core of the concern for human right to mobility and to the access to resources, just as the human right to education is shared by the international community.

Encouraging production and supply may bring Pakistan the added value that it needs in order to become a stronger part of the supply chain of the BRI. Production, exchange and consumption could prove essential for the mobility of goods and people.

Finally, access to resources may become a new dimension of the human rights challenge, since it requires strong focus on the human right to mobility. Access to labour, to goods and resources shapes the markets transforming them into spaces of trade and distribution. 'Access to resources is important not only to the existence of associations, but also to the enjoyment of other human rights and freedoms for those benefitting from the work of the association.'[4] As part of a network of access to resources, Pakistan shares the social value of the infrastructures and the mobility it creates on its land.

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MOBILITY AS A HUMAN RIGHT UNDER THE CHINA-PAKISTAN ECONOMIC CORRIDOR

Sana Ullah∗

Gul Arab ∗∗

Abstract: *The 1973 constitution of Pakistan grants the right to security of person, minority's rights, preservation of language & culture and safeguard against receiving instruction of other religion in institution. All the above mention rights is a necessary catalyst for a peaceful coexisted, just, pluralistic and democratic society, where premium is placed on human dignity through the provision of basic needs, liberty and freedom. The situation of the Kalash people in Pakistan is precarious with multifaceted issues affecting their natural rights and survival as an ancient people and minority in Pakistan that can be grouped in two main categories: loss of cultural identity and loss of ethnic-religious territory. As religion is fundamental to the Kalash people's lives, existence and identity which act as bedrock for setting them apart as different people. Therefore the religious conversion of the Kalash people to Islam, transculturation and modernization is the greatest threat of all time in the history of the Kalash, which putted them in row of extinction. This paper carries three main objective: To identify the key cultural and religious issues of Kalash Community: To uncover causes and its impact that diminishing the indigenous cultural identity, games, folk songs and other social event of the Kalash community and unearth research based suggestions and recommendations for policy guideline. Qualitative anthropological techniques were used for data collection, which mainly included participant observation and Focus group discussions (FGDs). The present research study conducted in Bamburait, Rambur and Birir Valleys of Kalash, District Chitral Pakistan in October-September, 2017. The study reveal that if cultural-cum-religious and social issues were kept unnoticed, it will lead Kalash culture and religion toward extinction as well as will disastrously impact diversity, tourism and Peace building process in Pakistan.*

Keywords: Kalash Religion, Culture, Extinction, Diversity and Policy Recommendation

Introduction

South Asia has been remained as dwelling place for diverse culture and religions in the world. However unlike the West, many indigenous community and ethnic minorities in this region are marginalized and unacknowledged systematically.[1] Particular in South Asia, Indigenous peoples and ethnic minorities' representation at national and regional level is still in embryonic stage.[2] Moreover, there is unavailability of literature on ethnic and indigenous peoples of Asia.[3] Similarly, Pakistan contain diverse ethnic minorities and indigenous groups that possess unique culture and religion. Unfortunately, indigenous people, ethnic minorities and their rights have always been viewed with admiration and suspicion individually cum institutionally in Pakistan by Muslim. Forwarding critics on minority and indigenous groups' current state of affairs in Pakistan, Naeem Bukhari said:

The sectarian legislations have seriously suffered the minorities in Pakistan. Consequently non-Muslim population has been kept at bay of mainstream of national life… the constitutional and legal right of minorities i.e. equality and dignified citizen has been always at stake. Such undesirable state of affair gave birth to growing sense of insecurity in minorities about their right to life and right to property.[4]

All regimes have actually followed their own political motives rather than any just rights based policy to set an agenda for indigenous people and minorities' socio-political and economic rights. It Owes to Pakistan's roots that lies in religion. No wonder that all regime have generally worked more for Muslim majority. It is obvious from the process of Islamization in Pakistan that aim to preserve the power of Zia-Ul-Haq regime[5] and un-acknowledgment of indigenous people institutionally.[6] Consequently, Indigenous people and ethnic minorities always remained at stake. Luke Rehmat∗ said:

Within Minorities and indigenous peoples in Pakistan, some need more legal support for their survival,

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preservation and protection because they are on the road toward extinction.[7]Among the marginalized indigenous groups, it is the Kalash tribes in Northwest Pakistan[8], which represent one of the oldest minorities' cultures and popular throughout the world for their divergent polytheistic belief.[9]

Although, there are an adequate legal and constitutional provisions regarding ethnic groups at national and international platform. The 1973 constitution of Pakistan grants right to practice their religion[10], security of person[11], minority's rights[12], preservation of language & culture[13] and safeguard against receiving instruction of other religion in institution[14] but Unfortunately the state has generally legged behind in careful planning and taking affirmative action to actually mainstream minorities' preservation, representation and voice on national scene until recently like including Kalash religion in national database and registration authority (NADRA)[15] and Proposal by UNESCO, Islamabad for inclusion of Kalash in intangible Cultural heritage list in June, 2016.[16] Historically, despite the constitutional amendment in 2002, Kalash had little representation in provincial legislation, while non at national level.[17] It happen when Kalash people development network requested UNESCO for protection of Kalash cultural heritage since 2008.[18] Despite it discrimination on base of religion, forcibly conversion in systematic and institutional methods[19] remains.

At international arena, Pakistan has ratified or signed various international human right treaties and declaration, which includes International Covenant on Economic, Social and Cultural Rights (CESCR), International Convention on Civil and Political Right (ICCPR), Convention on the Right of the Child, the International Convention on Elimination of all form of Racial Discrimination[20] and voted for United Nation Declaration on right of Indigenous Peoples (UNDRIP) ON 13th September, 2007.[21]

Although, The Kalash people face difficulties in the practicing cultural, religious liberty and freedom. The spirituality conversion of the Kalash people to Islam and Wave of Modernization is the greatest threat in the history for the Kalasha. Their spiritual beliefs make basic fabric of their distinct cultural identity.[22] Statistical data showed that number of Kalash community has shrunk to 3000 people, who consider themselves to be Kalash, in terms of loyalty to their ancient religion, language and culture[23] and it dwindle in recent past century.[24] The culture of Kalash is endangered due to numerous subjects which included loss of ethnic territory due to Muslim increase in Kalash valleys and lack of culture sensitivity education for their kids.[25] All the above mentioned subjects also disastrously impact tourism, peacebuilding process, interfaith harmony and tolerance for diversity in this region.

It's no gainsaying the fact that language play vital role in nourishing and developing particular culture. Keeping the significance in view, Pakistan has adopted Urdu, as an official language but English widely used in official correspondence.[26] Particular to District Chitral, several valleys in Chitral, which including Rumbur, Bumburet and Birrir spoke Kalash language[27], which is an ancient Dardic language.[28] Unfortunately, Still Kalash children in school is deprived from curriculum based on Kalash religion and language (Kalashmun)[29] and are forced or compelled to take Islamic studies subject [30], Which act as bedrock for the decline and elimination of their language. It is pertinent to unearth the cultural cum religious issue of Kalash community that has threaten their survival.

Theoretical Framework

Combining Protective factor and Psychological processes a Gunnestad proposed a resilience development model for indigenous people (Figure.1).[31] He also discussed the significance of cultural variables in resilience development which develop from diminishing threats and portraying positive image by holding strongly self-identity.

According to existing past studies, the marginalized and indigenous culture and communities boosted up when their cultural values and tradition were maintained.[32] Therefore there is inverse proportion relation between the ethnic identity and level of environmental threat perception.[33] Applying the concept of Ethier and Deaux, one can say that if the Kalash people grasp their cultural value and ethnic identity with pride, they will be more resilient irrespective of threat they face. Thence an important strive to uncover the belief system and culture of kalash peoples in order to understand the prevailing challenges and develop a prospects. This research paper aim to focus on subordinate theme as given below in Figure. 2 "perception of marginalization, which carrying sub theme of challenges and threats" in order to identity the cultural and religious issue and explore protective factor that assist them in maintaining their language, religions and culture

Figure 1: Gunnestad model of development of Resilience
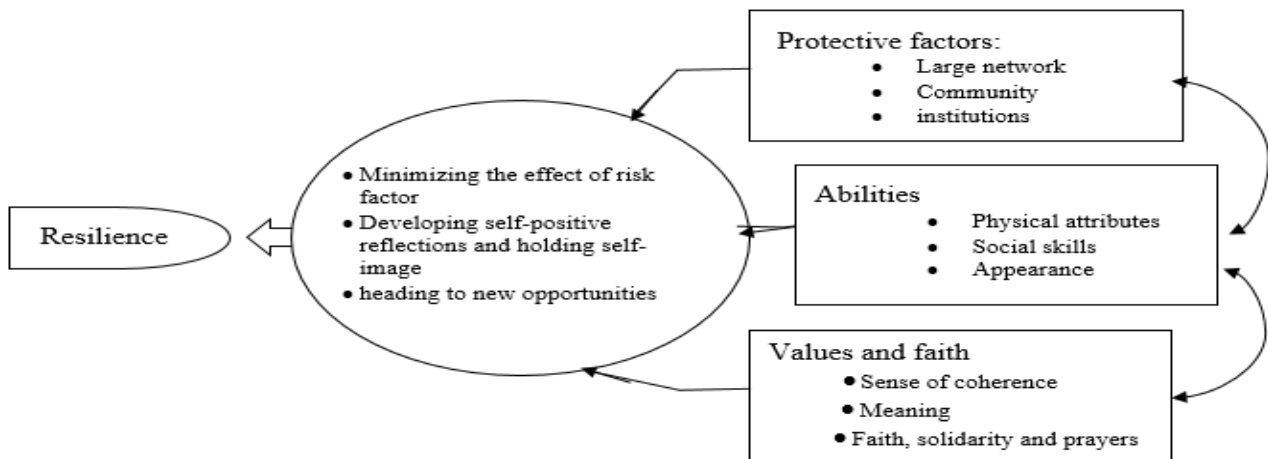
Figure 2: Thematic Structure
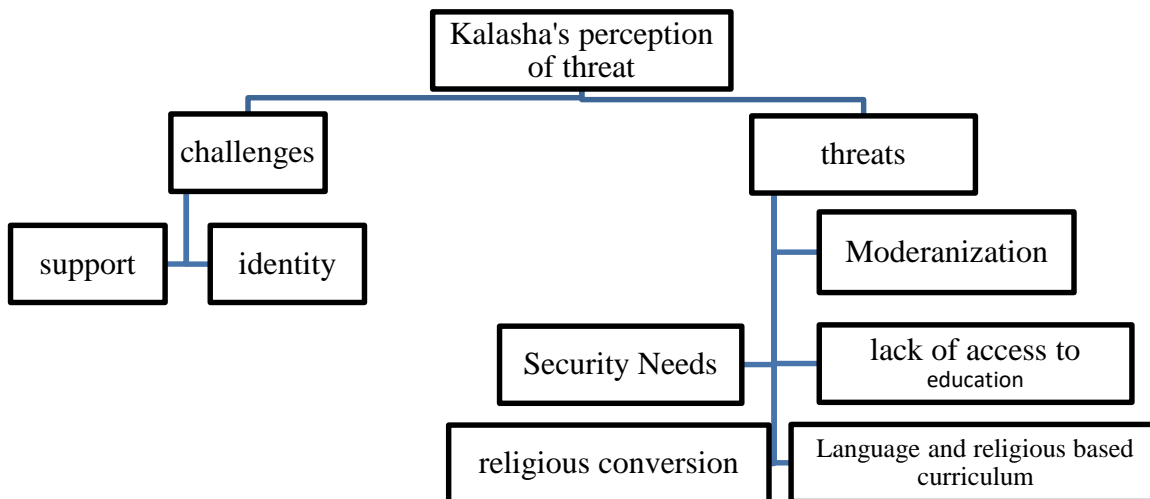
Aim of the study

This research is an attempt to contribute to the understanding of Asian marginalized minority, further investigating the religious and cultural issue of kalash community and possible protective that can be opted for their survival and preservation. Keeping in view its reducing rate, one can assert that one day Muslim majority will overtake them.

Methodology

The current study is purely based on interpretative phenomenological analysis (IPA), which attempts to describe the phenomena with special focus on Kalash community's religious cum cultural issue and develop

protective factor. Academically, it is ethnographic research therefore three valleys of Kalash were selected for data collection (Bamburait, Rambur and Birir) with selected sub nine different villages in the three mentioned valleys. (Kalashgram, Grom, Blangur, Krakal, Batreek, Anish, Gumbraitgol, Goru and Aspar). Absence of any prior vantage grounds, this research strives to unearth the broader contours of Kalash cultural-cum-religious issues. In study non-probability, convenient sampling technique has been used to approach the respondents for gathering and collecting the data.

The researchers conducted total nine Focused group discussion in the three valleys (03 FGDs in each valley) and several unstructured interview. The participants were selected on based of similar demographic characteristic. Two local Kalash community members were also hired in order to communicate with the community member easily.

Development of data collection tool: The tools for this study have been developed on the basis of secondary data and study objectives. Different techniques were applied to design tools according to the selected groups. Questionnaires have been designed for focus group discussion (FGDs) and followed by open ended interview. In first stage the questionnaire was testes so that correct data can be collected. Focused Group Discussion headings and Question asked during open ended un-structured interviews.

1. Tell us what you know about Kalasha culture, tradition and religion
2. Shed light over the challenge/threats you face a community
3. How do you tackle and overcome those challenges/ threats?
4. What are the contrary and hostile event you have experienced in past or recent days?
5. What are major barrier in practicing your culture and enjoying religious freedom?
6. Can you tell us about your personal life in Kalasha valley
7. What is your view about neighbor and how Muslim viewed you?
8. Do Kalasha Community forced for Conversion to other religion?
9. Your view about teaching of Islamic studies to Kalasha community
10. Does language play vital role in cultural preservation?
11. Kalasha Folklore, Poetry and language is in written form or not?
12. Is your curriculum is based on kalasha language and religion?
13. Do you know that kalasha Community satisfaction level regarding Government intervention for Kalasha culture preservation and protection?
14. What are the possible solution to community issue?

Study Phases and Survey Coverage

At the outset of study an exposure visit were made to Bamburait, Rambur and Birirwith aim to mobilize the community kalash religious elders (Qazi) and other stakeholders for the research study. In The next phase 09 FGDs were conducted in the community with all the selected groups mentioned in the table below.

Table.1. Represent selected groups mentioned for the FGD's and open ended interview, along with the probable religious elders which have to be 110 in numbers to find the exact detail.

Characteristic	Variable	Frequencies	Percentage
Gender	Male	63	57 %
	Female	47	43 %
	Total	110	100 %
Valleys	Bamburait	43	39 %
	Rambur	38	35%
	Barir	29	26%

a. Data Processing and Analysis

The data gathered from FGDs along with secondary data from desk review of various literature available.

b. Constraints

i. Geographical overstretch:Three Kalash valleys were selected for research study, which is located northwest Pakistan[34]. The team visited the areas in September 2017.

ii. Holding information due to personal security threat:The team observed that it was perhaps the first time that questions regarding culture and religious issues were asked in some areas, especially in birir and Rambur. A research team holding some information because according to Kalash peoples disclosing their details could dishonoring the pride and prestige of the community due to intra-state majority pressure on them.

iii. Worst law and order situation:The province of KP continues to bear the brunt of terrorism and a large part of the province has been a conflict zone. As Kalash is border area and the security situation was very tense in the recent past so conducting FGDs in all three valleys were very difficult. The security agencies keenly observe visitors to the valleys.

An Overview of Kalasha religion and Culture: Findings from FGD'S

Practicing polytheistic beliefs, Kalasha dwelling in north Pakistan.[35] As Kalasha religion and spirituality is focal point of kalasha culture and is based on a series of inter related stories and holy festival of thanking God and have certain symbols to represent him. Then there is a whole set of rituals and festivals.

Festivals: The Kalash people thank the Creator during their festivals with high regard. A kalasha celebrate five festival in year. Among the Festival, "chilim-Jusht" is biggest and celebrated from 13th to 16th May on the eve of the spring season. "UCHAO" festival observed from 18 August to 22 August and they prepare cheese, buttermilk and corn for it. "ROT-NOT", although not famous in all valleys but continue in respect of loving couple through singing and dancing from June 21 to August 21 at "charsu and Krakal". In month of October, a cultural and religious festival "PHOO". In the last one, "CHOIMUS" a sacrifice were made from 7th to 22 December to god Mahandeo.

Holy places and their Significance: "Jastak han" is holy place that has peculiar look with huge wooden room and used for ritual at time of birth, death and other sacred festival. "Mahadev, Engro and Molash" is places for sacrifices and only man can go there for prayer, who return with meat and followed by dancing and singing. "Bashali" is secluded place for woman during their pregnancy and menstruation period that aim to ward off their impurity. "Warin" is covered place where kalash go to ask for Goodness of God while "Greemon" holy place is used for asking questions from God. "Ethain and Deradol" places are used for pilgrimage collectively and for diseases prevention. The last one "Madok jal" is sacred burial ground.

Social Custom: Funeral and Marriages: The funeral ceremony is absolutely mysterious, fascinating and blend of shriek & thumping of drums. Death is mostly celebrated as an occasion of joy, where it is believed that it is union of soul with creator and supernatural power. The bereaved family and relative arrange grand feast to the villagers. In olden days, dead body were kept in wooden box in open air but contemporary they bury dead body and over turn Sen (bed) on his/her grave at "Madojol". In following picture old graveyard and contemporary graveyard has been given.

Photograph of Old and historical Graveyard   Photograph of contemporary Graveyard

According to information gathered in FGD's, the Kalasha do believe in love marriage and during the fourth day of JOSHI an elopement of young couple can be observed that followed by consent taken from girl either by her parents or elder brother about her choice for days ahead of her. The analysis indicate the parent often don't resist to decision of their kids. The age limit for male is 17-20 years and for female in range from 14 years to 15 years.

## Perception of marginalization: Erected from FGD's and interviews

The significant finding and analysis of this research study can be broadly divided in two sub theme: Challenges and Threats

Challenges: Kalasha community faces numerous challenges in which Identity and lack of individual as well institutional support are major.

Identity issue: Exclusion of Kalsaha identity from the mainstream national and regional life is one of greatest challenge that Kalasha people are facing for decades. They have been discriminated one the base of their religion and identity which disastrously impacted their daily life. During the FGD's and interview they discussed this issue. According to Millat gul, "There is no option for Kalasha religion in NADRA as well as Passport that we select during formation of national identity card number and passport.it is only with us because other minorities name are there"[36]. Wazir zada further added that I personally make noise for this issue at every platform and especially through KPDN (Kalasha people Development network). After the minister visit to Kalasha valley gave us ray of hope. Just after that NADRA official added Kalasha religion but soon vanished after few month without telling us the reason till now.[37]In spite of holding strong pride on national identity, they grant utmost significance to their cultural and religious identity.

Lack of support: Geographically sayings, it's hard to maintain a smooth and fast communication with urban area in Chitral due to mountain range. Consequently, least development has been done in the valleys in term of infrastructure and services. Such situation closed the door of employment, opportunities and wellbeing in the valleys. The participant and elder in FGD's were aware of importance of development through education. They also expressed financial instability. As stated by London Bibi, "Several school as well as medical dispensary are there in valley. Due to their poor facility they are not effective. During emergency we need to travel a lot first to reach dispensary". London Bibi further added that NGO and foreign man comes here that run project which helped us a lot then government. Many young educated girls and boys got job due to their developmental projects lunched in our valleys.[38]The participant expressed their grievances against government due to lack of support they are providing to them.

Figure3: Kalasha Community satisfaction level regarding Govt intervention for Kalasha culture preservation and protcetion
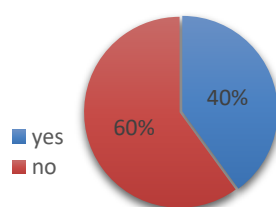
Threat: This theme has been appeared in all discussion and participant interview as major element that diminish the indigenous culture and religion. Therefore it contribute to existing literature significantly. It contain several sub-theme which are the following:

Religious conversion and Restriction on traditions: Violating the Articles 7, 8, 9, 11, 12, 25 of UNDRIP and Article 18 of ICCPR. According to the Article 7 of UNDRIP, "indigenous community have collective righto dwell with freedom, security and peace as distinct and separate peoples…"[39] moreover article 8 shed light over

"the prohibition of forced conversion and diminishing their culture".[40] Furthermore article 18 of ICCPR grant right to religious freedom.[41]

According to the participant response, this threat can be broadly fragmented into two aspect: threat that arise due to religious violence from northern side and other is internal strives of Muslim majority to pursue Kalasha for altering their faith and religion. This threat has been perceived as major threat putted Kalasha traditions and religion in danger. Gul Arab said, Muslim Tableghi working here in different form to convert Kalasha people to Islam. Palwashay further added that Kalasha people are not only converted to Islam but also converted to Christianity due to inflow of Christian with NGO by giving financial benefits and scholarships to young teenage in abroad.[42]

The participant also discussed the threat due to abandoning Kalasha traditions by Kalasha through process of relocating. This process contributing toward washing out kalasha traditions from the ground.[43] A resident of bamborait valley Fida noted that its usual practice to receive threat from those people who pursued us for leaving behind our kalasha traditions.[44]

Besides these the culture of kalasha extend its respect to the nature and perceive spring as holy and sacred. Traditionally and religiously, kalasha people don't wash clothes and take bath in spring season.[45] Unfortunately, in 2016 an incident of washing clothes by the group of near Muslim bathed and washed their clothes in said season. Not just this, but the kalasha community has been labeled as causing factor of earthquake as anger of Allah on believers by the Muslim majority.[46]

Figure 4: Do Kalasha People forced to covert to other religion?

■ Yes ■ No
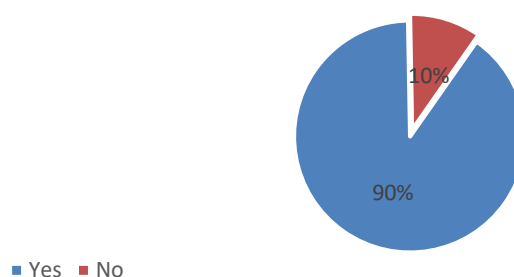
This graph show the response of participant. 99 out of 110 participants said yes to answer with possible detail that varied from person to person in FGD's participants.Unavailability of Access to education and documentation based on Local language: Violation of Article 14, 15, 16 of UNDRIP. According to the Article 14 (1), all the indigenous groups have right to receive formal education in their own language[47] and have access to all level of education.[48] Since the inception of Pakistan, indigenous linguistics are hugely ignored.

Figure 5: Kalash Foklore, Poetry and Languauge is in Written form ot not?
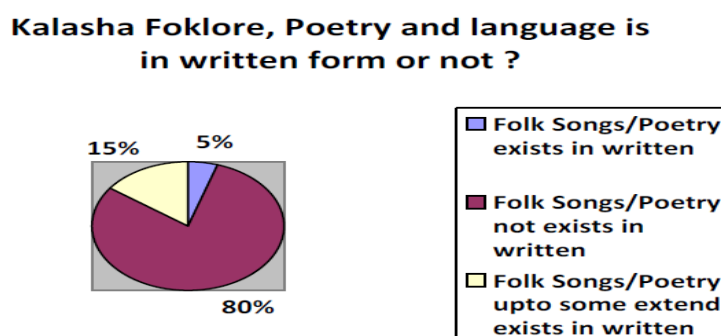
Inspite of reasonable number of Kalasha children in local primary school as well as in secondary institutes and university[49] but private school in Kalasha have no space for them at primary level.[50] At the same

time, Government primary school use Urdu as medium instead of Kalasha language.[51] While at secondary level, there is absence of curriculum that teach about kalasha culture, traditions through Kalasha language. Furthermore Islamic studies is mandatory and integral part of curriculum.[52]
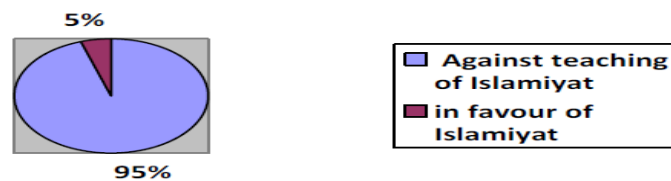
Conclusion

On the base of findings and analysis, researchers suggest following recommendation to the government of Pakistan for maintaining and sustaining the worldwide popular culture and religion, which are on road toward extinction.

- Government should take some solid step to implement the constitutional as well international treaty and declaration like UNDRIP's provision regarding Ethnic minority and Indigenous people. UNDRIP aim and objective should be inculcated into domestic law so that encounter all those issue that effect indigenous people.
- Take some concrete step to stop the forced conversion of vulnerable Kalasha and ensure their safety.
- Kalashamun is the main language that is only spoken among the community but no written literature and documents of the said language are available. It is highly recommended that Kalashamun language literature should be brought in literature form and documented in written form.
- Qazis(religious elders) were paid by the government , It is highly recommended that they must be enlisted, enrolled on the government scale and according to their ability should be paid again on monthly basis.
- Bring amendment in curriculum so that children of kalasha are not compelled to study Islamic studies and ensure that they are easy access to education based on their culture, beliefs and language.
- Gave an appropriate space for voice of kalasha at national and regional level especially in legislation.

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FROM DISPLACEMENT TO AGITATION: AN ANALYSIS OF ISSUES AND THE STATE OF HUMAN RIGHTS IN THE TRIBAL AREAS OF PAKISTAN

Dr. Sohail Ahmad *

Sadia Sohail **

Abstract: *The recently merged FATA with Khyber Pakhtunkhwa has gone through one of the most challenging phases of its history over the past fifteen years. Right after the US invasion of Afghanistan in 2001, the people of this area were affected by terrorism. Soon after the rise of militancy, they faced the brunt of counter-terror measures by the state in shape of displacement from their homes. A whole generation grew up amid conflicts and displacements. That generation makes up to the 64% of the total population of Pakistan and contributes to the youth bulge. However, disappointed by their circumstances in the impoverished conflict zone of the country, they started agitating over different issues including the issue of their constitutional rights as well. Both military and civilian establishment rightly express their fears that this agitated youth can be easily hijacked by the anti-Pakistan elements to materialize their nefarious designs against Pakistan. The proposed study aims to look objectively into the causes which gave rise to the agitation by the youth in the tribal areas of Pakistan. It will also analyse the implication of the merger of FATA with KP on the sentiments of the youth in the tribal districts. A qualitative method of research will be used to explore the issue and come up with various findings and how displacement contributed to the awareness of the youth of former FATA about their constitutional rights. The conclusion of the study may help kickstart debates revolving around various human rights issues involved in the transition from FATA to KP. Besides a way forward would be suggested to cope up with the issues discussed during this research.*

Keywords: Tribal Areas, Displacement, Conflict, Youth Bulge, Khyber Pakhtunkhwa (KP).

Introduction

In the war on terror, Pakistan had allied with the US to fight against violent non-state actors in Afghanistan during 2001 to safeguard its national interest. The strategic shift in the defence and foreign policies of Pakistan towards Afghanistan has brought multidimensional impacts within the country itself. This war was although not the war of Pakistan, but it had endured a lot of internal and external pressure. In the post-Cold War era, Pakistan was not even able to manage the settlement of Afghan refugees within its territories where majority reside in the adjoining of Pak-Afghan border, and an ample number of Afghan refugees were settled in KP (then NWFP) and in other provinces of the state[1]. These unwanted but victims of strategic interests of both states were not even compensated till 2001. Meanwhile, the situation of internal displacement mainly from the frontier regions and agencies of FATA to KP and other provinces shook the foundations of the fragile economy of Pakistan. The state was also facing numerous challenges on other fronts, in the form of political instability, a fragile economy, insecurity, conflicts, diplomatic failures and impractical policies on the national and international level[2].

The unstable and declining economic condition and overindulgent behaviour of Pakistan in the war of United States in Afghanistan have provoked anti-state sentiments among the youth of internally displaced people[3]. However, the emotional youth was not only provoked by the wrong policies of the government and mismanaged system for the settlement and rehabilitation of IDPs, but certain other elements also played their role under the cover as the invisible hand that was governing these victimised people of military operations against militants in the conflicted zones. Different governments served their terms, but the grievances of displaced people remained unaddressed. However, various political advancements have been carried out along with this wave of anti-nationalism like the major one is the merger of FATA with KP. Ideally speaking, it would have been done long ago, as the series of military operations against insurgency had created a mild sense of detachment in the minds of young people that no one is taking care of his or her needs and hampered

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development. Majority of IDPs residing in camps had refused to go back to their towns as there was left nothing for them, houses are devastated, business activities had been ended, failure of government in providing essential services and facilities, now they have no resources to start their lives over there once again[4]. Already they are the sufferers of the draconian rule of FCR in a region further gelled with the terrorists and military attacks in their areas. Moreover, the unorganized system of government for the settlement of displaced people had perceived by locals as injustice and ignorant policies of both provincial and federal government[5] [6].

The victims of all those challenging situations have mixed views over the merger of FATA with KP[7]. This merger is political reform; however, for the people of ex-FATA, it is still unsuccessful to a more considerable extent to bring those desired results in term of socio-economic development that masses were expecting. Some of the people in ex-FATA are still not satisfied with this merger. Moreover, the dominant political parties like JUI, Pakhtunkhwa Milli Awami Party and some local tribesmen are also playing monopoly in former FATA for their political interests and are resisting the merger. They are manipulating masses by building a narrative that this merger will never bring the desired change in their lives[8]. These political figures fear that once FATA merger with KP is completed, their political careers will face doom[9]. The masses that were traumatised from the militancy, terrorists, military attacks and internal displacement are now more confused about whether to support the government or follow the agenda of political parties.

However, the result of military operations in the conflicted zones of FATA and KP regions has also produced positive results, and the return of IDPs towards their hometown was once again started after clearing the whole region from militants, but there arose significant challenges not only for IDPs but also for the government of Pakistan[10]. While going through the whole discussion, the readers will able to comprehend some of the major causes that led from the displacement towards agitation.

Conceptualising the Potential Constraints of Youth in FATA

For understanding the elements of agitation among the displaced people especially the young people, one should realize the fact that the internal displacement that has happened via government and military joined venture has dramatically impacted the minds of the young people about their fundamental rights and the injustice that, they think, had been done with them for many years. It is fascinating to understand this point that during dislocation while staying in different areas of KP and other provinces they had realised that provincial and federal governments had worked a lot for natives and young people are enjoying more rights and basic facilities in the settled areas. When these displaced people who are also the citizens of the same country look back towards their localities and lifestyle, they find a huge difference in term of unavailability of rights, injustice, massacres, level of citizenship and lack of essential amenities. The suppressed feelings of this oppression had come to the surface when the youth from FATA started agitation after the assassination of Naqeebullah Mehsud[11]. This movement has been flared up with one of the most dominating features of missing people from former FATA. The leadership of this movement have got fame and popularity among some of the Pashtuns of Pakistan and abroad[12]. Though, anti-Pakistan forces are said to have triggered the agitation of the youth from tribal districts; however, such distress was caused by realization of fundamental rights and citizenship through the situations of internal displacement.

To address the grievances of youth from former FATA, the political leadership and military officials sat together. There exists a fear of fair chance of rebel as well as the start of a new wave of terrorism in a country. To control the law and order situation in a country and intervention of militant groups among the youth of the ex-FATA, with the mutual consensus of the civilian and military wing, FATA has been merged with the KP to provide them with all social and political rights which other citizens of the state already have[13].

Indeed, this constitutional reform is a milestone in the history of the tribal areas and Pakistan having a national consensus; this is the rare event when military and civilian government are on the same page to address the problems of the youth of conflict areas. However, there is a point that the government has taken the initiative for the betterment of youth in the form of the merger, but there arises several questions whether this political reform has addressed the issues and problems of masses especially the empowerment and development of youth who is displaced in large number from their hometown to other localities. FATA is the underdeveloped and socio-economically downtrodden region of Pakistan. It is comprised of seven agencies and six frontier regions with complicated problems like low of literacy rate (7%) as compared to other provinces of state (45%) while the percentage in female is just 3%, one bed in hospitals for every 2327 people, one doctor is available for a population of 8189, for average only 43% of people have access to safe drinking water[14]. These critical problems

and many other problems are needed to be addressed on an urgent basis. The newly elected PTI government has promised and included in its first 100-day policy to address the underlying problems of the tribal region[15].

Impacts of Internal Displacement and Mainstreaming of FATA with KP on the Development of Tribal Areas

The boom in the level of awareness about political rights, sense of citizenship and social development in FATA has been aggravated after internal displacement among youth. However, the government has allotted a specific number of seats for people of FATA after its merger in KP provincial assembly. The steps taken by the government has increased the sense of nationalism among local people especially the youth of FATA as they were seeking grounds for their representation and reforms for their region. The constitutional reform has significant value for promoting the sense of nationalism and equality among the youth of tribal areas. There is no doubt that these political reforms will bring people of tribal areas at par with the rest of the citizens of the country. Also, they will take their proportion of budget in the annual budget that will help in the fast socio-economic development of these remote areas[16].

The merger of FATA with KP will also bring employment opportunities, and systematic administrative system consists of Commissioners, the appointment of a senior police officer (Deputy Inspector General of Police). Moreover, the establishment of district courts and establishment of Brigade level cantonments that will further organise other institutions and pave the way for the development of infrastructure, irrigation, mineral development and integrated health, education, vocational training, economic and industrial zones in a backward region[17]. The ten years plan is divided into three phases, the first two phases consist of three years that is followed by four years, and a different proportion of the budget is divided for each sector of the tribal areas[18]. It would have multiple positive impacts on the young generation of tribal areas to give them a sense of responsible citizen for their country, remain loyal to the state and not to join any terrorist group operating against the national interests. While there are some political strands, Former FATA Grand Alliance (FGA) who are against the FATA merger and working on agenda to manipulate the minds of local people by projecting the idea that these reforms will bring no change in the socio-economic condition of local people[19].

The formation of PTM was also based on deep grievances and feelings of oppression among its young people although apparently they had raised voices for the human right violation and discrimination. However, there is another real fear that is more logical in a sense that ex-FATA is located near Afghanistan already Pakistan and Afghanistan have a border dispute along with other skirmishes. On the merger of FATA, Afghanistan was not happy and had raised insecurities and suspicions over its mainstreaming because the unresolved border dispute is still providing them the firm basis of tensions in bilateral relations. Pakistan might face a strong reaction from Afghanistan, in shape of support to the PTM, if the government is failed to fulfil all its promises and couldn't do enough for the betterment of young people. In contemporary issues of Pakistan, there is a need of time for one more year for further road mapping for the fulfilment of remaining tasks of the merger of FATA with KP. According to the report of FATA secretariat, almost 76% of the total funding allocated for FATA development has still not been utilised[20]. The slow progress of government is required to be replaced with pace to carry forward the agenda of the development of tribal districts with lightening speed.

The PTM is mainly comprised of young people from founder till followers so there are brighter chances if the situation in FATA does not change then this movement (or the likes of it) may bring drastic consequences both for the provincial and federal government. The PTI government should take these young people into confidence by showing them their efforts for the development in all sectors. Such an effort will not only mainstream the tribal youth but it will also immune them from any anti-Pakistan influences of regional and global players operating in the region.

The long interval in the complete implementation of FATA reforms in tribal areas will provide benefits to the dominant political leader's agendas that already declared it as "forced and unjustifiable reform for FATA" or "disaster for FATA". Moreover, a delay in the implementation of reforms will lead also provide benefit to the bureaucracy, at the expense of the local population, that has a vested interest in the status quo, influential forces, non-state violent actors, Afghanistan's claims on border areas and the old system of FCR[21]. This will further increase the sense of deprivation, and trust deficits among young people of tribal areas as the people of former FATA are eagerly waiting for the development of their areas from a long time and looking at every elected government for the reforms in their areas.

Conclusion

The FATA reforms and its merger with KP mainly aim at to deliver constitutional protection to the tribal people by encompassing them in the formal justice system, familiarising with contemporary policing and monitoring system, instituting local government, and starting a full range of activities for economic and social development. With the full-fledged implementation of FATA reforms, the highly critical issue of return of internally displaced persons, reconstruction and development of the war-torn areas due to military operations by the end of 2018 is also the highest priority. Although, the government has achieved a milestone in the form of FATA merger with KP as constitutional and political reform while bearing all pressures internally and externally. One should understand the fact that the merger of FATA is not only the solution of all problems and bringing development in tribal areas, but it provides for a democratic way for the resolution of all complicated problems. The current government is also aiming high for tribal areas, but the policies and pace of its implementation will determine whether FATA merger with KP proposal has worked for the development of young people of tribal areas by addressing their problems and issues.

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SECTARIAN VIOLENCE: A GROWING THREAT TO HUMAN SECURITY IN PAKISTAN

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Abstract: *Since its inception, Pakistan has been confronting existential threats to its security. The nature of these challenges demands a paradigm shift from traditional security focused on states to human security which prioritizes individuals, aiming at their well being. To that end, through the case study of Pakistan, this paper analyzes causes of sectarian violence and the threats it poses to human security. Sectarian violence emanating from internal security threat perceptions has implications for external security concerns. It is a multi-causal phenomenon and its dynamics involve internal and external factors. It divides people on sectarian lines entrenching polarization among sections of society and possibly leading to increased violence. Growing sectarian divides contribute to socio-economic underdevelopment and transform a religious divide into a massive human security dilemma. This paper makes the argument that peace is a possibility despite deep divides. To that end, it suggests recommendations to curb sectarian violence in order to enhance human security in Pakistan..*

Keywords: human security, sectarian violence, fear, paradigm shift, peace, policy recommendations.

Introduction

Sectarianism is an old phenomenon. Its traces can be visible in every society since the advent of human civilization on earth. New millennium had inherited the legacy of previous century's unresolved issue of violence based on sectarian and ethnic lines. Pakistan bears the brunt of sectarianism, which seems a stumbling block in the way of national cohesion and assimilation. It is imperative to know about the meaning of 'sectarianism before debating its link and impact on human security.'[1]

The word 'sectarianism' stems from 'sect', which refers to a group of people within same religion stick to diverse views.[2] Sectarianism denotes devotion to a distinct sect or party, especially in a dogmatic manner. In sociological context, 'sect' means a group split from the mainstream religion on the basis of doctrine. In Islam, Shia and Sunni are two main sects whereas Shia follow Hazrat Ali(A.S.), son-in-law of the Prophet Muhammad (S.A.W). Multi-faith societies like Pakistan are vulnerable to fall an easy prey to the menace of sectarianism. People of different sects have divergent ideologies and show inflexibility towards others view point. In sectarianism, adherents of a discrete sect or religion, develop the feeling of uprightness and adopt a stance of bigotry towards other sects of the same religion[3].

Historically, the first major wave of sectarian trends had hit Pakistan during the late 1970s and early 1980s, whereas politicization of Islam under Zia's era increased sectarianism in the country. The internal policies of the then military ruler (Zia ul Haque) coincided well with the emerging interests of USA when the former USSR attacked Afghanistan and Pakistan entered Afghanistan to fight a proxy US war against the former USSR. During the same era, a massive wave of sectarianism and related violence was seen in the country pushing the Pakistani society to new higher levels of sectarian violence. As Zia also pledged unconditional support of Afghan Jihadi groups that led to the arming and supporting of the Jihadi groups who held strong views regarding minorities, particularly Shias. These trends supported sectarianism and provided institutional set up for sectarianism. In pursuant during the 1990's, sectarian violence stayed on as the Pakistani state allowed them to flourish as part of its efforts to support sectarian groups deemed to be waging jihad war in Indian-held Kashmir in pursuance of achieving a strategic lead against India.[4]

History seems to have repeated itself only a decade later when 9/11 brought an acute wave of terrorism towards Pakistani soil primary caused by Pakistan's involvement in US led global war on terror. Sectarian violence followed suit in Pakistan and the incidents of sectarian violence have been on rise both in numbers and intensity. The policies of emerging Pakistani regimes allowed the situation to worsen while making it possible for the external powers to exploit sectarian trends for their global interests.

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With this backdrop, sectarianism today remains a complex phenomenon in Pakistan. It has deep roots in the country's political history and has been shaped by a host of reasons that range from domestic policies of successive governments to the geo strategic location of Pakistan to proxy wars fought by foreign powers. However, trends in sectarian divides over time show how violence has spiked in the post September 11 period. Questions abound what factors contributed to the rise of sectarian violence in Pakistan and what are the prospects of sectarianism in Pakistan? This study will carry out a qualitative study to addresses these questions.

Sectarianism has badly hit the civic life in all major parts of the country and the peace and security situation in Pakistan has gone from bad to worse over the last few decades. The emerging political and military regimes have always responded with plans and actions but any lasting solutions of rising sectarianism have always been elusive. Pakistan continues to live in the web of worsening economic, political, financial and cultural crises augmented further by the growing sectarianism over the last few decades. [5]

Sectarian trends prevalent in Pakistan got aggravated with the use of advanced technology by terrorist networks. Suicide bombings, explosives, suicide jackets, fixed and non fixed detonation devices, remote control bombs and explosives and Vehicle Borne Improvised Explosive Devices (VBIED) are few to name in addition to conventional means of creating havoc and terror. [6]

Pakistan faces serious challenges to the security and well being of its people since its birth. According to a report Global Peace Index 2009, Pakistan is included in the 10 least peaceful states of the world[7].The real benchmark of human security of any state consists of two dimensions: freedom from fear and freedom from want. From the perspective of the first dimension, Pakistan could not provide its people freedom from fear and numerous threats placed their lives in constant fright.[8] The existing situation makes evocative of Bernhard Henry Levy's depiction that Pakistan is "the most delinquent of nations" [9].Stephen Phillip Cohen, although, contested this but the depiction seems similar to the truth.[10]

The study of Pakistan's internal sectarian issues deserves to be carried out in conjunction with the study of external factors contributing towards them. The two can be linked together to understand the problem in totality in order to find lasting solutions for sectarianism in Pakistan. The inter and intra state conflict of Pakistan has increased the vulnerabilities of millions of its people. The twenty first century stresses upon the need of solving those issues which adversely affect the people by immense insecurities in political, economic, social, cultural, personal and health sectors.[11]

Human security as a widespread phenomenon led to the exploration of new dimension in international security patterns and has provided the basis for new world view. This concept has challenged the debate about security by exploring it from a different perspective which is 'human centric'. Simultaneously, it discovers the threats to security: they can take place for instance from economic predicament, environmental devastation, or epidemics which cause danger to health. [12] Therefore, security does not only refer to the securing of physical existence or survival, but also promoting social and economic welfare as well as human dignity and protection to basic rights. The notion of human security is amalgamation of traditional concepts of security with human development and human rights better than previous concepts of security which concentrate on the lack of physical threat. [13]

State security is considered conventional security and takes into account facets concerned mainly with sovereignty and territorial integrity. The military might and the balance of power, concepts linked with deterrence and defence, are discussed at this level. Another dimension of security which includes large masses of humanity is called human security. It also includes worldwide issues that influence people directly or indirectly, such as ecological issues and pandemics. [14]

The central part of human security is minimizing the mutual risks through investigation, decisions, avoidance and actions deliberated to reduce causes and factors breeding insecurity.The model of human security is relatively new; it can be traced in the speeches of the Secretary of State of the United States, Edward R. Stettinius, when he stated at the meeting of UN that "the battle for peace has to be fought on two fronts," the first concerns defending "freedom from fear" and the second, "freedom from want". [15]

However, state security over shadowed the human security for a long period. Factually the conception of Human Security came to surface in the United Nations Development Programme (UNDP) report in 1994.Mahbub ul Haq, the adviser to development programe at that time is regarded as the inventor of the concept; he was also among those who created the concept of human development.

Research Objectives

1. To identify the factors contributing towards sectarian violence in Pakistan
2. To highlight the threats sectarian violence pose to human security in Pakistan
3. To suggest way forward to eliminate Sectarian Violence in Pakistan and enhance human security

Significance of the Study

Today the world is living in a chaos and dispersion. Muslim world is divided into Sectarian fault lines threatening the peace and stability of not only Muslim countries but the human civilization around the globe shares the uncertain future. Violence is a transnational phenomenon and sectarian violence destroys human bondage by creating sectarian divides. This is one of the most critical themes to be researched to make the Muslims united, progressive and synchronized. Thus its significance is obvious and beyond any doubt. Muslims, all over the world and particularly in Pakistan, are on the doorstep of self destruction. They are entangled into this quagmire especially after disintegration of Russia, the former USSR (Union of Soviet Socialist Republics) and outbreak of civil war in Afghanistan which paved way for Saudi Arabia to enter into power play of this region by creating factions supporting divergent version of Islam.[16] The Iranian revolution in the same year yielded an additional predicament. This critical venture of history left Muslims of this country killing, slaughtering and dehumanizing one and other. The study signifies to explore and identify the major factors and dynamics behind this blood bath so that the policy makers could devise policies vehemently for the well being of the people of this land and inhabitants of the world at large as security at personal, national and international level is inter connected and inter dependent.

Research Methodology

In this study qualitative research has been conducted, moreover descriptive and historical analysis has also been done. All the data has been collected through secondary sources through multiple books, journals, newspaper articles, official reports and policy papers. Collected data is arranged into different figures and analyzed through content analysis method. For analytical understanding researcher has also studied previous literature on the topic. Moreover the researcher also has analyzed historic trends of sectarian violence in Pakistan and its debilitating effects on human security.

Situational Analysis

Human security puts people at the helm of affairs: The concept of security is divisive and complex and lacks a consensus on its unanimous definition among states. The proponents of the concept of human security bring the newest discussions about the dimensions of security. The traditional concept of security, originating from the 1648 Treaty of Westphalia, also viewed as the beginning of the modern state, defines the state as the entity experiencing security. In the idea of human security, on the other hand, security is discussed from the stand point of individuals and their communities.[17] Human security implies that people and their insecurities are identical irrespective of gender, race, religion, ethnicity, citizenship, or other factors which delineate a human being. Human security is a ever growing concept but at the same time problematic to put into practice since the feeling of security or lack of security is a subjective experience. This makes it more significant to find the tools which promote security and make people feel less insecure.[18]

Multifarious threats: The notion of security gained ground, since the 1990s.The concept becomes "deeper" when one discusses individuals and the social order as the subject matter of security. Widening the concept of security signals that one admits that people's security is exposed to more threats than it was assumed in the past. Those threats can be examined from either a narrow or broad perspective. From a narrow perspective, only the threats to physical safety directly, such as armed conflict and torture, are accepted as the threats to the safety of the inhabitants. The less broad point of view is also referred to as "freedom from fear".[19]A broad outlook, on the other hand, examines the varying degree of the fears fears putting the security of the people at risk. Human security entails safety from persistent threats such as starvation, ailment and subjugation in addition to assuring the smooth patterns for well being of the public. The description given by the Human Development report of the UNDP provides the first exact definition of human security. Additionally, economic, social and political threats, which are called "freedom from want", are included. "Freedom to live in dignity", the third perspective added later entails the protection of basic human rights. [20]

Elements of human security: Understanding of the serious and widespread threats facing human security can be deepened by placing them into seven different components, which UNDP defines in its 1994 Human Development Report. [21] Post Cold war trends emphasized on the new global concerns other than inter-state wars and conflicts and the changed contours of international politics defined new components of security. These tribulations, like epidemics, financial crises, environmental hazard and intrastate tensions, do not only impact states but most of all people. Most of the time threats are negatively interdependent and hence they should be viewed from as comprehensive perspective as possible. This also means that human security and state-centered security is not opposite terms; instead they, if anything, complete one another. Threat to a state can also be considered to be a threat to human security and vice versa.

Figure 1: Different Types of Security and Its Description

Type of Security	Description
Economic Security	Economic Security means that people have the opportunities to work and participate in economic activity. People also have to have the probability of social support in case they are unable to earn their livelihood.
Food Security	Food Security refers to people having both physical (availability of food) and economic opportunity to have food resourceful enough for a good health.
Health Security	Health Security entails low exposure towards different ailments and easy approach to health care facilities if needed.
Environmental Security	Environmental Security builds on actions which reduce the impact of natural and man made environmental problems on human life.
Personal Security	Personal Security means freedom from physical or mental violence exercised by state, community or another individual.
Community Security	Community Security arrives from belonging to a small or large community whose identity and values a person can share. Community Security is strengthened if there is no inside or outside threat against it.
Political Security	Political Security means respecting human rights.

Source: Human Security and Practical Example [22].

Sectarianism: Implications for human security in Pakistan

Sectarian violence is a significant threat to human security in Pakistan. Analyzing the core three components of human security implies not only to provide security to people but delivering socio economic justice and protecting their human rights as per the constitution. Sectarian trends remained on rise after 9/11 in Pakistan.[23] Internal factors of sectarian violence i.e. poverty, illiteracy, unemployment, religious indoctrination and political instability combined with external determinants of violence including foreign funding, divergent religious ideologies further aggravated the country's challenges to human security.

Pakistan ranks 151 globally according to Global Peace Index 2018.Though it has slighted improved the score by moving to one rank up than its previous ranking 152 in 2017 but the current ranking shows the very low state of peace in the country. Moreover Pakistan and Afghanistan have emerged as least peaceful countries in the region.[24] Least peaceful countries continue to decline in safety and security domain and per capita income of their people.[25]

Figure .2: Human Security and its Perspectives

FREEDOM FROM FEAR	FREEDOM FROM WANT	FREEDOM FROM INDIGNITY
• Freeing people from threats, • Averting violence and war • Living in peace	• Free from poverty,disease, • enviornmental degradation • making progress & development	• Free from discrimination, • free from social exclusion • Protection of human rights

Source: Author's own

Determinants of Sectarian Violence in Pakistan

Sectarianism is an outcome of internal and external factors influencing the respective ideologies in Pakistan. Religious divide was deepened in Zia's era as a result of Islamization policies promoting Hanfi law shedding waves of insecurity among Shi'ah community.[26] The massive protests of Shi'ah community resulted into 'Islamabad Agreement' giving them the right to be treated according to their own fiqh.These insecurities further led this community to organize them on political lines and forming a political organization which could safeguard their interests.[27]

Religious disparities led to the growth of sectarian organizations. Hate speech is promoted via printed material of these organizations. Hate literature breeds intolerance among the followers of a specific creed against others. Material in these all these pamphlets and booklets falls under the offence of 'incitement to religious hatred.' The hate speeches of religious leaders delivered in their congregations add fuel to the fire.[28]

Iran Saudi led proxy wars plagued the country with unending scuffle over religious superiority between two sects. According to a research, initially the Iranian financial support to Pakistan's Shia community prompted Zia ul Haq to invite Saudis to help in aiding Pakistani Sunni group. So the Sunnis could attain a position to harass Shia minority to empower the Sunni factions of the society. Consequentially, Shia community also decided to handle Sunni extremism in similar fashion. [29]

Iranian revolution and Afghan jihad to oust Soviet forces in Afghanistan in 1979 with help of American Central Intelligence Agency (CIA) left deep scars to national unity in Pakistan and outbreak of civil war in Afghanistan after Soviet withdrawal concluded to Kalashnikov culture in Pakistan.[30] New safe havens and training centres mushroomed in different areas of Afghanistan which aggravated the sectarian divide in Pakistan. Places like Khost and Kunar remained areas promoting hatred towards Shia minority by giving armed training to Sunni extremists.Shi'ah

Militants of Pakistan were trained at Hazarajat area of Afghanistan. So Afghanistan became epicenter of sectarian trainings leaving its shock waves to all areas of Pakistan.[31] Iran Iraq war which was war of two ideologies than two countries impacted the sectarian divide in Pakistan. Other than Muslim countries role of USA and India cannot be ignored to exploit sectarian differences in Pakistan for their vested interests.[32]

Table 1: Sectarian Violence in Pakistan: 1989-2018

Year	Incidents	Killed	Injured
1989	67	18	102
1990	274	32	328
1991	180	47	263
1992	135	58	261
1993	90	39	247
1994	162	73	326
1995	88	59	189
1996	80	86	168
1997	103	193	219
1998	188	157	231
1999	103	86	189
2000	109	149	NA
2001	154	261	495
2002	63	121	257
2003	22	102	103
2004	19	187	619
2005	62	160	354
2006	38	201	349
2007	341	441	630
2008	97	306	505
2009	106	190	398
2010	57	509	1170
2011	30	203	297
2012	173	507	577
2013	131	558	987
2014	91	208	312
2015	53	276	327
2016	35	137	182+
2017	16	231	691
2018	5	7	4
Total*	**3072**	**5602**	**10780+**

Table 2: Sectarian Violence in Pakistan*Data till June,2018
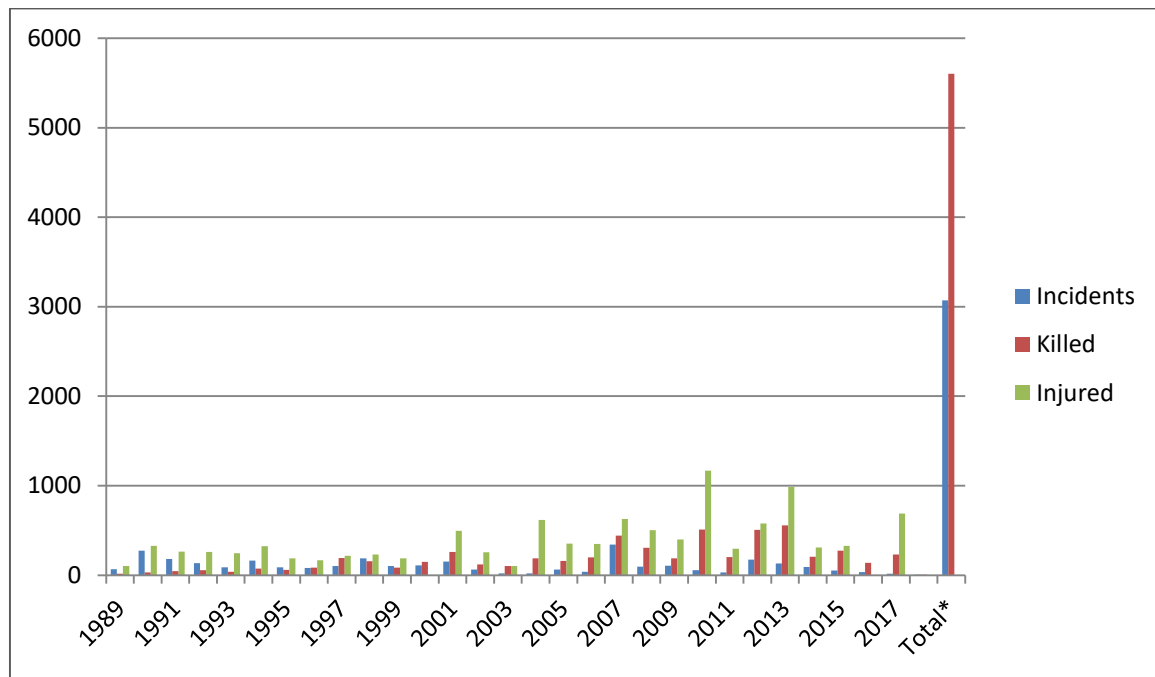
Source: http://www.satp.org/satporgtp/countries/pakistan/database/sect-killing.htm[33]

Alternative perspective-A paradigm shift

The nature and magnitude of the challenges confronted by Pakistan demand adoption of an alternate unconventional human security model which integrates the human masses and the state security comprehensively and views the development of humans similar to the protection of the borders. [34]

Traditional security concept remained futile so far to make the states peaceful and stable. Human security is a concept which shifts the focus from state to people and ultimately makes the state more prosperous. It broadens the scope of the state activity by counting the humans as primary concern of a state. It is more suggestive in nature to address the common concerns to humanity. Human security is intertwined concept as political, economic and personal security will ensure the minimum internal threats.[35]

Pakistan's adoption of physical security of the state since inception mainly lies in its insecurity from a bigger neighbor, India, who has larger size and resources. So the threats emanating from a bigger enemy resulted in the militarized security arrangements in the form of US supported military alliances.[36]

Pakistan's active participation in US war against terrorism in Afghanistan and life losses of citizens' further demand the need to espouse an all-inclusive security approach where political, economic, social and environmental safety of the people is uppermost priority of the State. Sectarianism threats the basis of human security as it shatters the fabric of a society by breeching the human rights of people. Citizens live in constant fear while development of a country is significantly hampered. Target killings, suicide bombings and assassinations of religious leaders reflect that people remain trapped in indignity and cannot lead a dignified life.

Way forward

There is a vital need to curb sectarian trends in Pakistan. It sounds that there has been inability and incapacity of political leadership to control this evil. The current state of affairs demands a through revisit of the policy in this regard and a new build up of strategy to handle this issue by adopting mix of short and long term proposals.

- Islam is a religion of peace. It prohibits any use of force in spreading the message. No one can force others to accept their worldview. Such practices should be dealt strictly which force marginalized groups or minorities to accede to religious beliefs propagated with compulsion to accept.
- Literature taught in religious schools should be reviewed by the relevant State institutions to curb the seeds of hatred towards each other.
- Religious leaders of all sects should be given trainings based on multi faith harmony and peaceful co-existence.
- Any external funding or financial aid should be checked by the government to any religious factions to disinfect the minds of people divided on sectarian fault lines.
- Government should prioritize the well being of its citizens. Economically stable and peaceful people have lesser tendency to attract towards hatred based divisions. Human security approach should be adopted as the substitute to the traditional model of security.
- Culture of respect should be promoted by giving respect to right to differ without resorting to violence.
- Respect to each other's religious dignitaries should be obligatory and hurting religious sentiments of any community should not be allowed, supported or protected by the state.
- Religious leaders of divergent sects should be provided with a platform to discuss areas of common consensus to promote harmony among different sects.
- Curriculum reforms are needed not only for religious schools but also for mainstream educational institutes.
- Role of state society, religious elite and common citizens is required in this regard to quench the flames of sectarianism.

Conclusion

Sectarianism entrapped Pakistan for a long time and increased involvement of the country in War on terrorism provoked further violence. The jeopardy of internal and external factors of sectarian violence diminished the hope of peace and stability in a religiously diverse country divided on sectarian lines. The nature of the threats Pakistan had faced since its creation insists on the adoption of an inclusive security model which is a non-traditional security conception and ensures the safeguards for security of its citizens. Curbing sectarianism is inherently important for Pakistan for protection of its people and territorial integrity. Human security model can be suggested which is based on the non-violent peaceful living, socio-economic development and right to have a dignified life. Instability of political and economic institution is causing damage to the people as gravely as they are exposed to external threats so an alternate approach is needed to tackle the inner and outer challenges to the safety of the state. Human security has the ability to deal with various challenges comprehensively. Peaceful and an economically stable country ensures the safety of its borders automatically by empowering its humans. Other wisely, humans clad in rags cannot assure the unbeatable borders.

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FACTORS AFFECTING HUMAN RIGHTS IN KHYBER PAKHTUNKHWA

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Abstract: *Khyber Pakhtunkhwa is a Northwestern province of Pakistan where situation of human rights is comparatively worse. Human beings are entitled to fundamental human rights, regardless of sex, race, religion or any other status, and the Government must not interfere in exercising these rights. It includes right to life, education, health, freedom of expression and thought and equality of all human beings before the law. Factors that are affecting human rights in Khyber Pakhtunkhwa include failure to ensure good governance, poverty, terrorism, worse law and order situation, unequal rule of law, uneven social injustice, as well as political instability, social disorder and economic turmoil. The violations of human rights create insecurity and instability. This study will examine the present conditions of human rights violations in this province. In order to protect human rights, the implementation of International human rights laws is the need of the hour along with protection of human rights by government. Moreover, the implementation of good governance, the provision of education and to reduce poverty should be government's target. The main objective of this paper is to analyze the factors that are affecting human rights in Khyber Pakhtunkhwa. This paper will also highlight the factors to be helpful in protection of human rights.*

Keywords: Khyber Pakhtunkhwa, human rights, Universal Declaration of Human Rights law, violence.

Introduction

Human Rights are considered as those favorable and desirable conditions for human-being that guarantee equality, fairness, justice and dignity. It is refered to those rights of human beings which are innate, inalienable and universal based on human dignity and awarded to them by the virtue of being a human personality.[1] In other words "Human Rights are most undeniable rights theoretically safeguarded by the constitution of the state concerned and practically protected by the judiciary.[2] Due to the awareness of humans spanned over the centuries, these rights are acknowledged and developed in every part of the world. In order to ensure these human rights, the Universal Declaration of Human Rights was adopted on December 10, 1948 by the member states of the United Nations Organization. All human beings are entitled to human rights regardless of sex, race, nationality, language, ethnicity, religion or any other position. These rights include the right to life, freedom from torture and slavery, liberty, freedom of association and movement, freedom of thought and opinion, right to work, right to get education, cultural freedom, right of entertainment, scientific development, right of fair trial and freedom of conscience and religion.

Being an Islamic republic, human rights in Pakistan are derived from the primary sources of Islam as a will of the Allah Almighty. Allah has created all human beings equal and declared that there is no discrimination on the basis of color, caste and creed. In Pakistan, the concept of human rights was first of all presented by Founder of the Nation, Mr. *Quaid-e-Azam* Muhammad Ali Jinnah in his first presidential address to the first Constitutional Assembly of Pakistan on August 11, 1947. He said that "we are starting in the days where there is no distinction or discrimination among Pakistanis. We all are the equal citizens of one State".[3]

The targeted region Khyber Pakhtunkhwa is the North-Western province of Pakistan composed of 30,523,37 population[4] mostly Pashtuns by ethnicity and having an area of 101741 km.[5] Language of its majority population is Pashto while other languages like Urdu, Hindko, Seraiki and Persian etc are also spoken in few areas.

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Map of Khyber Pakhtunkhwa

State of Human Rights in Khyber Pakhtunkhwa

The constitution of Islamic Republic of Pakistan ensures fundamental human rights including protection of life, honour, property, protection from illegal arrest and detention, forced labour, right to fair trial, freedom of religion, assembly, movement and association, trade and business and profession. But the people of Khyber Pakhtunkhwa are confronted with many serious human rights violations and issues that include terrorism, targeted killings, sectarian violence, gender based discrimination and violence, honour killings, extra-judicial detention and killings, forced disappearance, torture, lack of due legal process, worst law and order situation, poor implementation of laws, lack of education and health facilities, child labour, privacy rights violations, sexual harassment, harassment of journalists and attacks on those writing and speaking against human rights violators and those working for the cause of human rights.

The present conditions prevailing in Khyber Pakhtunkhwa are affecting the human rights of every inhabitant indiscriminately. The violation of human rights are very frequent in this province. Human rights violations are reported in both the print and electronic media on regular basis. The human rights violations of labours are extremely challenging thing particularly in the context of Khyber Pakhtunkhwa province. Capitalists have formed an imbalanced system for the poor class which enabled the upper class to control their fate. Women are also completely failed to get fair, reasonable and even advantage of their labour economically. They face all types of sacrifices, but getting less than the just share even they are used as a scapegoat when revenges and enmities are settled. Most of the people belong to rural areas, except those living in major cities, have no adequate health facilities, a huge number of their children are out of school due to poverty and lack of opportunities, a lot of people lost their lives in terrorist and sectarian attacks, have no fair trial and are facing illegal arrests and detentions and even facing forced disappearance.

Article 2 to 40 of the Constitution of Islamic Republic of Pakistan 1973 deal with the fundamental human rights and principles of human rights. The Directorate of Human Rights Khyber Pakhtunkhwa was founded and has been working similarly and is committed to work for the protection and promotion of human rights and takes all essential actions which are visible indication for the improvement of human rights condition. In this regard the provincial government has also made many laws for the protection of human rights including:

- Khyber Pakhtunkhwa Child's Protection Welfare Act, 2010.
- Khyber Pakhtunkhwa Harassment of Women at Workplace Act, 2010.
- Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012.
- Khyber Pakhtunkhwa Domestic Violence Act, 2012.
- Khyber Pakhtunkhwa Elimination of Custom *Ghag* Act, 2012.
- Khyber Pakhtunkhwa Provincial Watch Committee on Sexual Harassment Act, 2012.
- Khyber Pakhtunkhwa Promotion and Protection of Human Rights Act, 2014.
- Khyber Pakhtunkhwa Protection of Communal Properties of Minorities Act, 2014.
- Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015.

However, overall more troubling thing is the fact that the human rights condition has not been getting better over the years but, it is comparatively getting worse. As poverty grows in this province as well as threats to the lives of its inhabitants are also increasing which are creating much of problems of human rights in this region. Though the Islamic Republic of Pakistan is a signatory of the Universal Declaration of Human Rights, but much of its provisions and laws are yet not implemented and such is the case of other International Covenants of Human Rights signed by Pakistan like Covenant on the Rights of the Child and Covenant against Torture. In fact, much of the provisions of these covenants include the right of education, health, employment, freedom and dignity are obviously denied.

Factors Affecting Human Rights in Khyber Pakhtunkhwa

Human rights violations are observed and reported in Khyber Pakhtunkhwa on regular basis. There are many factors which are affecting the human rights and hampering the way of protection of human rights. The prolonged eras of dictatorship rule in Pakistan have prevented the growth of democratic culture that caused disempowerment of people which eventually deprived people of education, awareness, free thinking and social mobility. The deprivation of people is most severe for those who are also at risk on the basis of their illiteracy, economic status, gender, religious beliefs or age leaves them weak and vulnerable to protect themselves against different atrocities.

Another most important factor affecting the human rights of the people in Khyber Pakhtunkhwa is lack of education. About 30% male and 65% female of this province are illiterate.[6] Education is the main factor which plays an important role in bringing awareness among people about their due rights and its protections through legal means. An illiterate person even doesn't know about his/her due rights and cannot secure it as well. There are insufficient educational institutions as compare to the number of school going children. The total number of children aged between 0 and 17 is 12.08 million; boys 6.358 million (52.63%) and girls 5.722 million (47.37%).[7] Recently the KP Elementary and Secondary Education Department has completed a survey of out-of-school-children at a cost of Rs. 227 million. The findings of the survey showed that 1.8 million children are out of school which is 23% of the total population of the children of 5-17 years of age mainly due to poverty in Khyber Pakhtunkhwa. There are total 28176 public educational institutions (Schools and Colleges) having 4450057 enrolled students and 130662 teaching staff and 19 universities, having 84680 enrolled students (Male 61748 and Female 22932) and 4086 teaching staff.[8] Apart from these there are 6743 Non-Govt. Schools in Khyber Pakhtunkhwa in which total enrolled students are 1510646 (1042260 boys and 468386 girls), total teaching staff is 85325 (40859 Male and 44466 Female).[9]

Another most important factor affecting majority of basic human rights is poverty. It creates many human rights problems. The rate of poverty is 49.2% in Khyber Pakhtunkhwa, Punjab 31%, Sindh and Gilgit-Baltistan 43%, Balochistan 71% and Azad Jammu and Kashmir 25%.[10] A poor person faces numerous multifaceted issues at the same time. For instance, one may have poor malnutrition and health, lack of clean drinking water, poor work conditions and schooling of children. According to research studies and survey reports, poverty is reducing at a very slow rate in Khyber Pakhtunkhwa as compared to other provinces of Islamic Republic of Pakistan. Apart from the common financial crisis affecting this province, there is indication of increasing food shortage, which is related to the rise in food items prices. Capitalists have shaped an unequal system for the poor class of society making enable the upper class to control their fate. The Human Rights of laboring class is very much challenging in this province. The implementation of labour laws remain very poor and ineffective due to negligence and lack of will.

Health is another most important human rights issue, but its condition is not upto the mark and satisfactory. The number of hospitals and doctors are insufficient as compare to the number of population. The provincial government spends only 4.45 percent[11] of its annual budget on health. This is less than the most states in the Asia. At almost all govt. hospitals there are poor facilities available. Basic Health Units and Rural Health Centres are either not fully functional or lack qualified human resource and infrastructure facilities.

Women are highly mistreated in social, cultural, political and economic matters in Khyber Pakhtunkhwa. Many customs and traditions pave way to honor killing of women. According to the data released by the Human Rights Commission of Pakistan, in the last 5 years a total of 390 cases of honour killing were reported in Khyber Pakhtunkhwa, of whom 345 were women whereas 45 men.[12] Many cases may have gone unreported in different areas of Khyber Pakhtunkhwa due to tribal traditions and self-proclaimed implementation of Islamic laws by the power structure of tribes. Women are also ill-treated due to gender.[13] The provincial government and the society can't defend women being weaker to dominant and powerful traditions and customs in an ideal sense and in a reasonable and productive way.[14] The male gives severe punishment and even kill their women in honour cases but leaving male free in majority cases. Violence against female including honour killing, rape, acid attacks, forced marriage and domestic violence are remained as severe problems facing the women of Khyber Pakhtunkhwa. Only in the year 2017 about 180 cases of domestic violence in this province were reported, including 94 women murdered by close family members.[15] Child marriage is also one of the grave problems. According to the United Nations Children's Emergency Fund (UNICEF), twenty one percent (21%) of girls in Pakistan are wed before the age of 18 years.[16] They have been symbolized as commodity for the male in tribal structure.[17] Their participation in political process is also very low, even in some areas they are deprived from the right to vote. To ensure a minimum presence of female in parliament seats are reserved for them in the assembly on which females are appointed by respective political parties.

Like women, children in Khyber Pakhtunkhwa are also victims of human rights violations and abuses. Although Pakistan is a signatory to the ILO's Convention on the Worst Forms of Child Labour, but children are still working in dangerous sectors like coal mining and workshops. Child labour is also subject of regular experience of violence as well as forced labour. The 18th Constitutional Amendment in the Constitution of the Islamic Republic of Pakistan of 1973 that was agreed upon and implemented in 2010, dissolved the "Federal Ministry of Labour and Manpower", resulted in the devolution of this subject to the provinces, but it also did not improve the condition and rights of labours in the province. Still wages of labours are very low. Although the government increased the minimum wage for unskilled workers from14,000 rupees per month to 15,000 rupees, but the implementation is still a dream.

Another very crucial factor that is badly affecting human rights in Khyber Pakhtunkhwa is terrorism. Thousands of civilian have been killed and due to anti-terrorist operations in different areas of Pakistan millions of people are displaced in different parts of the province. Government only settled these people in the migrated areas but did not work for their rehabilitation in a real sense, which are badly affecting human rights. Terrorists' brutality and human rights violations by non-state actors are still continued and are creating a lot of human rights problems. It contributed to the culture of anarchy and disorder in Pakistan particularly in Khyber Pakhtunkhwa. Millions of residents of this province were displaced due to anti-terrorist operation and even some of them displaced multiple times. The Talibans and other extremists' militant groups have been killing those who are against them including journalists who are reporting their activities. The issue of the cases of forced disappearance is also very serious in this province. Unlawful detention and ill-treatment during detention are common.[18] Conditions of some prisons and other custody centers are also harsh which is affecting the human rights of prisoners. Prisoners are also facing overcrowding, poor medical facilities and improper and unhygienic food.[19]

Transgender community is confronting violent attacks. In order to safeguarding their rights a bill was presented and passed in the parliament and a separate category for *Khawaja Siras* was included in the Census 2017 for the first time, but it could not bring any notable change in their position in society.

Access to news and the events taking place around the human being in society is also an essential human right, but it was either completely denied or restricted in disguise of press censorship mostly during military regimes in Pakistan that affected the citizens of Khyber Pakhtunkhwa as well. It is the most acute suppression of fundamental freedom. Even during successive democratic regimes attempts were made on many occasions to control the media.

Conclusion

To conclude, the concept of human rights is as old as the human being itself as it satisfies their basic needs, but till adoption of Universal Declaration of Human Rights in 1948 there was no proper mechanism to protect these rights. At present many human rights are violated on regular basis. There are many factors which are affecting these rights in Khyber Pakhtunkhwa like poverty, illiteracy and terrorism etc. Though Pakistan is the signatory of many conventions on the human rights but, the provisions are not yet implemented. If only the ratio of education is increased and poverty is controlled then the situation of human rights can be improved significantly in Khyber Pakhtunkhwa.

Recommendations

1. A special task force should be formulated to protect the violation of all kinds of human rights throughout the province.
2. Poverty is one of the major cause of human rights violations in Khyber Pakhtunkhwa province. Government should take all necessary actions to decrease poverty by creating durable opportunities of economic well-being in the province.
3. Democracy brings accountability which is key to the protection of human rights of citizens of a state. Therefore, democracy and democratic institution should be strengthened as experience proves that democratic governments work more seriously for the protection and promotion of human rights as compare to others forms of government.
4. Awareness about one's rights is too much necessary to protect them and enjoy them in a proper way. While it is education which brings awareness, therefore educating the people of Khyber Pakhtunkhwa province is essential. Street children should be off streets and should prevent those parents who are forcing their children to work through legislation and creating economic opportunities.
5. To ensure the rights of women it is also the need of the hour to stop blind compliance to those centuries old customs and traditions which lead to the violations of women human rights and are hurdle in way of empowerment of women. A unified judicial scheme, eradication of all other parallel judicial systems and informal dispute resolution mechanism is also necessary.
6. Elimination of all kinds of terrorism, forced disappearance and sectarian violence are also required to be stopped. For this purpose along other anti-terrorist measures the elimination of sleeper cells in different settled and tribal areas are too much necessary.
7. To ensure the religious freedom of minorities it is necessary to bring awareness in common people. They should be taught and convinced that respect of other religion is necessary in Islam.
8. To bring peace and stability it is the duty of every citizen to stand-up and stop breaking and violating of the laws.

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HONOUR KILLING AND THE LAW IN PAKISTAN: ROOTS AND WAY FORWARD

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Abstract: *Honour Killing is a crime in Pakistan, which is considered an 'honour' by its perpetrators as they do not feel any shame in committing this crime. According to the report of Honour Based Violence Network (HBVN), 5000 honour killing occur per year internationally out of which 1000 occur in Pakistan only. Despite this data, there are many cases of honour killing, which go unreported and unrecorded, so the actual statistics are much higher. Most of the researcher describes the role of Qisas and Diyat Ordinance in letting the perpetrators remain free as under the law family member can pardon the killer. The objective of this study is to focus on the challenges in punishing the criminals of honour killings in Pakistan by studying the law in Pakistan. According to recent amendments in the law of Pakistan, the family cannot forgive the criminal. For theoretical analysis, case laws up till 1999 and afterward will be discussed to find the reason behind the change in decisions of the courts regarding honour killing. For this purpose, the primary data collection method in the form of interviews will be used. A Purposive sampling method, the technique will be adopted. For practical analysis, the major loopholes in the law of Pakistan are discussed with the session judges dealing with criminal cases. In the light of collected information, the main challenges and reasons will be identified and suggestions will be given to curb this evil from Pakistan..*

Keywords: honour, patriarchy, violence, rights, compoundable, offence

Introduction

Muqaddas Bibi, who was just 22 years old, her throat was slit by her family members, including her father, brother, and mother after three years of her marriage with a person of her own choice. On 31st May 2016, Maria Sadaqat, 19 years old, was burnt alive by her family members for refusing a proposal of marriage. On 29th April, the body of Ambreen Riyasat was found burnt on the order of a 'jirga' for helping her friend in getting married to a person of her choice. Honour killing is a crime in which mostly female family members are killed for committing acts not in accordance with their social and cultural norms such as marrying a person of her choice, relationship with a person of a different caste, creed or class.[2] This act is usually committed by the father, brother or husband of the victim to restore the honour of their family. The major problem is the killing of girls merely on suspicion of any kind of act, not acceptable by social norms. According to a report by the BBC, 90 percent of the women killed for honour were virgins at the time of their deaths. In Pakistan, the crimes of honour killing are common throughout the country, but the rate of killing is alarming in some small cities.

The major reasons for honour killing are inequalities, tribal ethos, lack of education and a passive role of religious institutions.[3] When the Act of 2004 was implemented for the protection of women it was unable to prove its worth in controlling honour killing because local communities were not aware of the law or maybe they were not ready to speak against it or report cases related to honour killing. The primary responsibility was on the police for the implementation, but they had to face the problems because of the social acceptance of this crime. That is why this law proved futile in protecting women against honour killing.[4] According to Aurat Foundation Statistics, 475 women were killed in the year 2008, 604 were killed in 2009 and 557 were killed in 2010.[5] These killings cannot be justified by any individual merely on cultural grounds. Punishing the criminal is the duty of the State, not of any individual. The perpetrators of this crime go unpunished due to some loopholes in the law. This scenario makes the life of a female less important than that of a man and challenges the law and constitution of Pakistan, which clearly states in article 9 that no person shall be deprived of life or liberty but in accordance with law. Women have tolerated this pain since centuries, this new era of reason has brought a lot of new advancement for humanity, but women in Pakistan are still struggling to have their fundamental right to live. Dr. Tahira Khan, a professor of Women's Studies in Karachi said: "Whenever women assert their rights to choose, or abused wives attempt to get out of abusive relationships, all the patriarchal coercive forces join hands to suppress the forces."[6]

Research Question

What are the major loopholes in the law and how the reported cases of honour killing are resolved by the law in Pakistan?

Literature Review

- A Charade of Change: Qisas and Diyat Ordinance allows honour killing to go unpunished in Pakistan. This article shares the story of Samia Sarwar. At the age of 17, she got married to her cousin. Due to family problems, when she tried to obtain the divorce, her family members killed her. Under Qisas and Diyat Ordinance, Samia's murderer remained free because her parents forgave the murderer, they hired to kill her. That's how murderers of

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honour killing go unpunished. Since 1999, several amendments to Pakistan Penal Code (PPC) introduced, especially, the amendment of 2004 and Act of 2006 to end honour killing and discriminating laws against women. This article examines how perpetrators of honour killing remain free due to Qisas and Diyat Ordinance. Article 2013 C (I) of the constitution created the Federal Sharia Court in 1997. Since 1991, Act X of Shariah courts possesses constitutional powers to strike down any law found against Islam. The amendment in 2004 and Act of 2006 does little to punish honour crimes in Pakistan and to combat honour killings. Pakistani judges through their decisions reinforce discrimination against women rather than giving equal protection of the law to women.

- Introduction 'Honour', Rights and Wrongs: The purpose of this research paper is to exchange information about honour crimes among different policy makers, scholars, lawyers, and community workers. It focuses on the point that violence against women is socially constructed and is a part of the historical process. This paper focuses on a law-based approach to end honour crimes. Jane Conners explains that international human rights, law, and domestic legislation do not go hand in hand because these international human rights laws focus on the role of the state to save women from honour-related crimes but national courts vary greatly in the level of protection for women. In the context of honour, women are forced to remain in an unwanted relationship or punished for leaving their husbands. The claim of honour might be a reason, but most of the time there are other vested interests which use 'honour' as a blanket to cover the shameful acts. In May 2001, the leading figures of Muslims and Christians gathered in Beirut to discuss religious roots of honour crimes. Bettiga notes that the Church promotes patriarchal values and instructs to control women's sexual behavior.

- License to Kill: Honour Killing in Pakistan explains that honour killing is extra-judicial punishment given by private actors according to their customs and traditions. There are no official statistics of honour killing data in Pakistan, but according to an estimate, there are 1000 victims of honour killing in Pakistan. In 1999, Amnesty International highlighted a range of acts responsible for honour killing such as defying arranged marriages, being raped, seeking the divorce, marrying a man of their own choice and fake honour killings. In most of the cases, there was no conviction of the perpetrators. In many countries in the Middle East, adultery is a criminal offence that carries the death penalty, in which homicide is excused because either they have inscribed Quranic punishments in the civil penal code or follow Islamic law (Shariah). In a patriarchal society, men are considered victims of circumstances and thus forgiven because the murder is passionate. In modern times, honour killings have also found their place and challenged the law and the judiciary. In Pakistan, the process of Islamization under late General Zia's rule (1979-88) promoted religious orthodoxy and turned sections of Islamic Forms of Discrimination Against Women. As a part of Islamization, the sections related to physical injury were revised in 1990 with the promulgation of Qisas and Diyat ordinance, subsequently passed by parliament in 1997 as Retribution and Compensation Act. The law privatizes justice by treating homicide as a private offence against the victim, which allows the victim's legal heirs either to close the investigation or to accept monetary compensation. The people who do not trust our legal system, thus depend on traditional justice. The lenient sentences do not scare future perpetrators. In short, traditional law rules over judicial law.

- Patriarchal Violence in the Name of 'Honour' explains how honour crimes are regarded in a progressive multi-cultural society. For promoting human rights, we need to bridge the gap between cultural norms and morality. In fact, many judicial systems in the world give lenient punishment to its perpetrators. Killings of women should not be acceptable regardless of cultural and social context. For protecting human rights, cultural practices which take the basic right to live should not be facilitated.

- Legacies of Common Law: 'Crimes of honour in India and Pakistan' give a comparative view of crimes honour in India and Pakistan and their judicial systems. The state functions under modernity and communities represent a traditional approach in dealing with these matters. In Pakistan and India, legal reforms have been introduced with the intervention by feminist groups. Article 25, 26, 27, 32, 34, 37 of the constitution of Pakistan discuss the importance of equality of women with men in all the walks of life. However, the offenses of Zina under the Hadood Ordinance have a negative impact on women. The state statutory governance bodies in India are forced by a recent campaign, to exercise full control over the use of force rather than panchayats (*Communities*). In South Asia, the caste panchayat system has been used as a community based adjudicatory system since medieval times. This is a non-state parallel system of adjudication. In *Muhammad Siddique Vs. The State* court upheld the conviction of a father who killed his daughter, her husband, and their infant child. While passing judgment Justice Jilani said:

- "These killings are carried out in an evangelistic spirit. Little do these zealots know that there is nothing religious about it and nothing honorable either. It is male chauvinism and gender bias at their worst. These prejudices are not country-specific, region specific or people specific."

Conceptual Framework

To see the situation of honour killings in Pakistan, this problem will be analyzed through the lenses of law. The evolution of laws and their impact will be considered. Some of the case laws will be discussed. Since Pakistan has ratified CEDAW in 1996 so it becomes crucial to curbing this evil. Although, there have been numerous laws regarding the protection of women, but this article will focus only on one fundamental right under our constitution of 1973 and various international treaties; the right to life.

Methodology

The purpose of this analytical study is to determine the effectiveness of the role of law in providing security of life for women in Pakistan. To achieve this, various research articles, reports, national and international laws are studied and for primary data interviews with session, judges were conducted. The average time of each interview was 30 minutes. Semi-structured interviews were conducted so that session judges could share their opinions regarding the problem and their insights to solve this conundrum. The respondents were not comfortable in sharing their identity that's why fictitious names have been used.

Discussion and Analysis

There are 19 international instruments, 18 national laws and 10 provincial laws regarding the protection of women from all kind of discrimination.

The Role of Judicial System: The judicial system of Pakistan has three vigorous parts including police, prosecutors and judges. Judges are helpless in delivering the justice because the prime responsibility goes to the police for collecting evidence. This is a vicious circle because we all are interdepended.[7] Judges are bound to give judgment based on available evidence and witnesses. Sometimes unprofessional attitude of prosecutors causes unnecessary delay in court cases. For effectiveness of Judicial system, police need to perform efficiently.[8] Police, FIRs and investigations are the main factors in punishing honour crimes.[9] All these powers need to go hand in hand.

Compoundable and Non-compoundable laws: she amendment in the constitution has been made in the late 1990s, but there was not even a single case, after getting into the details we came to know that police was not collecting evidence in the case of honour killing. A new amendment has been introduced in 2016 in which honour killing is treated as a non-compoundable offence because honour killing is prohibited in Islam.[10] Compoundable offences are against a person and are dealt under civil courts, but non-compoundable offences are against society and the state and are dealt under terrorism courts. In 2016, honour killing was made a non-compoundable offence. [11]

Implementation of laws: Laws have been made for the protection of women in Pakistan and across the world. Now we have enough laws for women but the implementation of these laws is quite challenging.[12] The laws of a country need to be progressive to keep pace with globalization and working towards the economic well-being of its citizens. We have suitable written laws, but they cannot be implemented the way they should be, due to cultural and social constraints and mindset of people.[13] If there will be no witnesses or people who believe that honour killing is a crime, no matter how effective law is, it will not be able to serve its purpose.

Mitigating circumstances (Grave and Sudden Provocation): Mitigating circumstances helped the perpetrators to receive less quantum of punishment.[14] Until 2000, honour killing was treated under mitigating circumstances and after 2000 as aggravated circumstances.[15] In mitigating circumstances, the accused gets a lesser punishment than what he deserves and in aggravated circumstances, he receives punishment equal to his crime.

Procedural Problems in the law: The law should deliver prompt justice, but under this system, the procedures of courts are too long and complex due to which the victim does not get relief. There are a lot of pending cases in the courts and it might take years to get a matter resolved due to the complexities of law and procedures.[16]

Sudden Provocation and Qisas and Diyat Ordinance Under British rule in the Subcontinent, some murders were treated as a grave and sudden provocation which means giving less punishment to its perpetrators.[17] In Fazal Dad Khan v. the King-Emperor (1904), the accused had killed the deceased with a stick striking hardly on his head while he was committing adultery with his married sister. The court sentenced one-year imprisonment to the accused because he acted under grave and sudden provocation. [18] Under Qisas and Diyat Ordinance, honour killing was treated as a compound offence (punishable by law) but at a family's discretion.[19] Lawyer Asad Jamal said:

"Provisions related to Qisas and Diyat were introduced to Islamise the substantive criminal law regarding offences related to human body and life. These laws assign a secondary role to the state and society and the victim or her close relatives/legal heirs (walis) get the primary role as they are given the power to forgive, or compound and compromise with, the offender." [20] In case of Khan Muhammad v. The State (1999), the accused was only sentenced to 7 years rigorous imprisonment for killing his wife and her paramour on finding them together in a room. [21]

Professor Rafi Ullah Shahab, a famous Islamic scholar of Pakistan in an article (The Daily Nation, 1990, August 20) stated that there is no concept of honour killing in Islam. He further stated:

"Killing accused woman is not Islamic by any standard; the believers are not even allowed to divorce them without establishing their accusation. We profess our love for Islam and demand its enforcement in the country, but ignore clear Quranic injunction about the rights of women. Dozens of innocent Muslim women are slaughtered in the name of honour in our society." [22]

Although there are different sects in Islam, none of these sects present an interpretation of Islam in which honour killing is excused.[23] Pehlwan v. the State (2001), on the issue of honour killings. Pehlwan was booked for murdering his wife Mst Gul Hira and Kandera, the brother of his son in law. The accused admitted the killing but alleged that he killed them under grave and sudden provocation since he had found them committing Zina. The trial court did not accept the plea and sentenced Pehlwan with the death sentence under section 302 (a) PPC.[24] The perspective of judges had become progressive in the year 2000 but still in some cases the traditional role of the courts could be seen as in Fazalay Muhammad v. The State (2003), his wife and Muhammad Akbar Khan both were found, according to accused, having sexual intercourse. The Peshawar High Court sentenced the accused Fazalay Muhammad for only 10 years of rigorous imprisonment. The court held that the provocation was grave as such, the accused deserved a lesser punishment under section 302 (c) PPC. [25]

Recent Amendment in the Law

Criminal Law (Amendment) (offences in the name or pretext of Honour) Act, 2016: "This law amended the sections of the Pakistan Penal Code, 1860 and the code of Criminal Procedures, 1898. Relatives of the victim are allowed to pardon the killer only if he is sentenced to death, in which case the killer is to serve a mandatory life prison sentence."[26]

"The 2016 law, which brought the penalties for so-called "honour" crimes in line with murder, proved ineffective. The law, which provides for the death penalty, allows the judge to decide whether the crime was "honour-based". In some cases, in 2017, the accused successfully claimed another motive and was pardoned by the victim's family under *qisas* and *diyat* laws, which allow for "blood money" and forgiveness instead of punishment."[27]

Table: 1.1 Honour Killing Reported Cases in Punjab (2011-2017)[28]

Year	No. of Reported Cases
2011	364
2012	366
2013	388
2014	404
2015	328
2016	248
2017	181

Conclusion

Pakistan and India both have the highest rate of honour killing in the world, 1000 each year. The reason could be the punishment under grave and sudden provocation by the British law in the Subcontinent. After partition, both of these countries adopted the same laws. That did not prove threatening for the criminals. In Pakistan, criminals used to get lesser punishment under mitigating circumstances, but after the process of Islamisation in 1979 under late General Zia's rule, Qisas and Diyat ordinance was introduced to bring all the laws in conformity with the injunctions of Islam. In the case of compoundable offences, it is at the heir's

discretion of the victim to punish or forgive. The murderer is a close family member, that is why heirs forgive the perpetrator. This is how honour killing remains unpunished. The new criminal amendment 2016 is a ray of hope, but recent statistics show that this law has not proved effective in Pakistan, but the statistics of Punjab show a reduced number of honour killings. To eliminate honour killing all the sections of society, including people, police, prosecutors, and judges need to work together.

Recommendations

- The judicial system in Pakistan works for increasing the quantum of punishment, in fact, it needs to work towards the certainty of punishment. Quantum of punishment does not matter, certainly does.[29] Most of the cases are not reported or use parallel systems of justice in which punishment of the criminal is not guaranteed. The state can define a proper mechanism for this purpose.

- According to Norbat Elias, a German sociologist argued in 'Civilizing Process' that the homicide rate in Europe reduced in the late medieval times due to the following reasons:

- Emotional control

- The state monopoly on the use of force

- These two factors can be applied in Pakistan. The state can educate about emotional control and restrict the use of non-state actors for justice.

- The government can offer social incentives to people by letting their girls get married according to their choice.[30]

- Economic empowerment of girls can play an integral part in this regard as they will be able to have decision making powers.[31]

- The government of Pakistan needs to bridge the gap between its social structures and legal approach [32]so that the people could act in accordance with law and play their role in the struggle towards the basic right to life of every human being.

Appendix:

Coding Scheme

Themes	Verbatim Statement
Police, Prosecutors, and Judges	a)　　Judges are helpless in delivering the Justice because the prime responsibility goes to the police for collecting evidence. (Ms. Jazba Aslam) b)　　This is a vicious circle because we all are interdepended. (Ms. Jazba Aslam) c)　　For effectiveness of Judicial system all the three; police, prosecutors, judges need to perform efficiently. (Mr. Raheel Khan) d)　　Police, FIRs and investigations are the main factors in punishing honour crimes. (Mr. Waqar Anwar)
Compoundable and uncompoundable laws	a)　　The amendment has been made in the year 2000 but there was not even a single case, after getting into the details we came to know that the police was not collecting evidence in case of honour killing. (Ms. Jazba Aslam) b)　　A new amendment has been made in law in the year 2016 now honour killing is treated as uncompoundable law because honour killing is prohibited in Islam. (Ms. Jazba Aslam) c)　　In 2016, honour killing made uncompoundable. (Mr. Raheel Khan)

Adultery spoils the family system	a) Adultery spoils the family systems. (Mr. Waqar Anwar)
Implementation of laws	a) In Pakistan, laws have never been the problem but the implementation of these laws. (Mr. Nadir Ali) b) We have proper laws, the problem is in implementation. (Mr. Raheel Khan) c) There is nothing wrong with our written laws, the main problem is of implementation. (Mr. Waqar Anwar)
Mitigating circumstances	a) Until 2000, honour killing was treated under mitigating circumstances and after 2000 as aggravated circumstances. (Mr. Qamar Hassan) b) Mitigating circumstances helped the perpetrators to receive less quantum of punishment. (Mr. Waqar Anwar)
Quantum Vs. Certainty	a) Quantum of punishment does not matter, certainly does. (Mr. Raheel Khan) b) This is the certainty of the punishment not the quantum of punishment which matters. (Mr. Qamar Hassan)
Procedural Problems in the law	a) There are some procedural problems. It is way too long. (Mr. Raheel Khan)
Sudden Provocation and Qisas and Diyat Ordinance	a) Under British rule in the Subcontinent, some murders were treated as grave and sudden provocation which means giving less punishment to its perpetrators. (Ms. Jazba Aslam) b) Under Qisas and Diyat Ordinance, honour killing was treated as a compound offence (punishable by law) but at a family's discretion. (Ms. Jazba Aslam)
Inquisitive or Adversarial System	a) The inquisitive system eliminates all the procedural difficulties in the system. (Mr. Nadir Ali) b) Justice is easy to deliver in inquisitive on the spot according to the wisdom and knowledge of the judges. (Mr. Nadir Ali) c) Adversarial system of justice followed by the United States, the United Kingdom, and Pakistan. (Mr. Nadir Ali) d) The adversarial system makes the delivery of justice complex due to long processes. (Mr. Nadir Ali)
Social Incentives and Economic Empowerment	a) For honour killing, we need to use a social approach rather a legal approach because all the laws are derived from the social norms. (Mr. Qamar Hassan) b) The government can offer social incentives to people by letting their girls get married according to their choice. (Mr. Qamar Hassan) c) Economic empower of girls can play an integral and crucial role in this regard they will be able to have decision making powers. (Mr. Qamar Hassan) d) Social Norms transfers into the law of the state. (Mr. Raheel Khan) e) we need to bridge the gap between our social structures and legal approach. (Mr. Raheel Khan)

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Academic Session: 9

Human Rights and The World Challenges

Session Chair: Justice (R) Nasira Iqbal

POPULISM AND ITS EFFECTS ON PROTECTION OF HUMAN RIGHTS, ESPECIALLY JUDGMENTS OF INTERNATIONAL HUMAN RIGHTS TRIBUNALS: USING THE EXAMPLE OF THE RED STAR CASES IN HUNGARY

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Abstract: *Human rights cases in front of international fora are not only legally complex, but can also be politically delicate – not only becoming base of informed professional debate, but also ground for populist quarrels. One of these for a, the European human rights protection system has created a very delicate and sophisticated structure, with the Strasbourg-based European Court of Human Rights (and earlier the Commission) handling human rights-related questions with a highly professional manner, while in some cases this leads to tensions with governments or certain political circles. These tensions for a long time have been somewhat overlooked by the European political community, and experts as well, but with rise of populism and in the era of "alternative facts" or "post-truth" this has started to produce its painful results now. While the earlier resistance has been based on individual cases (like the UK and Turkey related to Iraq and counterterrorism), the new resistance seems to be systematic and strengthened by institutional/constitutional tools by governments (like Russia with the constitutional court, and similar ideas raised in Hungary recently), and also the legitimacy of the Strasbourg decisions are often challenged by public opinion. The paper seeks to answer the following questions: How does political populism effect the acceptance of ECHR judgments, especially in post-communist countries, e.g. Hungary or Poland? Will the reform of the ECHR help to bring more elaborated and transparent judgments or will these requirements be sacrificed on the altar of speeding up procedures? How can other regional systems learn the lessons from our structure and use them for perfecting or even creating their own regional international human rights regime? How is universality of human rights challenged not only by cultural relativism, but also by simple populism?.*

Keywords: : Human Rights, Research, International Law, Tribunals & ECHR..

Development of international protection of human rights:

While the development of international human rights law has been more or less frequent during the past decades, this process has not been free of political hardships. During history, we can identify more or less serious debates related to some questions. First, even the adoption of Universal Declaration of Human Rights has not gone without an itch. Later there have been some serious debates about the inclusion of some human rights into the text of the International Covenant of Civil and Political Rights, the result of which is still to be seen today. Additionally, we can also remind ourselves to the constant disputes about the exact state obligations under the Convention on the Elimination of Discrimination against Women, in forms of reservations and declarations, which indicate some very serious disagreements between states under the surface.

Still, regardless of all these difficulties, norms of international human rights law have slowly developed to the status of common values, which are shared by majority of states. Additionally, regional level human rights systems (in Europe, the American continent and Africa) have made it possible to develop better institutional guarantees and possibly different interpretations of some human rights, which have been more compatible with local traditions and customs, of course only as long, as those do not contradict the core content of a recognised human right.

This historical development has had a serious impact on the political-legal changes of ex-communist states of Central and Eastern Europe, and on other countries as well. Many constitutional changes have been motivated, or even explicitly triggered by this development. For example, at the time of the political changes of 1989-1990, the newly created Hungarian Constitutional Court has intensively used international human rights law and practice of international bodies as a source for its judgments forming the new constitutional system of the country and deciding about the constitutionality of specific pieces of legislation. This famous concept of an "invisible constitution", meaning an activist interpretation of the text of the Constitution completely-rewritten in 1989 has always drawn a fair amount of criticism, but altogether has been accepted as a good example. Another example is the case of Turkey, where the process of abolishment of the death penalty was politically

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motivated by the will to join the EU, while its legal base was the ratification of the relevant protocols of the European Convention on Human Rights, thus having a direct effect over domestic legislation.

The European system and some of its problems today – populism ahead?

The European human rights protection system – especially if compared to others existing today – is a very delicate and sophisticated structure, with the Strasbourg-based European Court of Human Rights positioned on the top, with the power to entertain direct individual complaints against any of the 47 member states of the Council of Europe, all party to the European Convention on Human Rights, originally adopted in 1950. The result is the possibility to handle human rights-related questions with a highly professional manner, and what is even more important, with the power to bring legally binding judgments against the state in the case of a violation of a human right recognised by the Convention.

While in theory this seems to work well, practice has for long time shown some problems. The Court's heavy workload, backlog of the cases are some of those which have properly been addressed by professional literature and practical analysis as well. Concerning our subject, there is another, probably more relevant issue: in some individual cases with more serious political relevance, the judgments of the Court have led to tensions with governments, sometimes governments even denying compliance with the judgment. These tensions have usually been overlooked by the European political community: the Committee of Ministers, the head organ of the Council of Europe responsible for enforcing state compliance, have not been to active in handling these situations, and basically these cases may have lost being interesting after some time, mostly because of being politically delicate or member state governments themselves not being sure about how to react to the given case.

For example, while the Russian government's actions against the church of scientology has been found being in violation of certain articles of the European Convention, non-compliance by the Russian government has not drawn strong criticism or serious political action, as other governments have also been concerned about the organisation. As European politics have somewhat disregarded this problem, it has slowly developed and today even a new tendency can be identified. Earlier, state governments may have resisted against some decisions of the Court, resulting in non-compliance in individual cases. But the new resistance tendency seems to be more systematic and is strengthened by institutional and legal-constitutional tools created by the government itself to gain more power in these situations. Governments tend to develop systematic arguments supporting their resistance, and use them to justify non-compliance, additionally, often using it to gain political support in domestic political competition, fuelled by populist thoughts and using emotional sentiments, deriving from the given country's historical, political past or religious values.

The "red star cases" in Hungary

Some examples from the current Hungarian practice are easy to be identified – in relation with the so-called "red star cases" to make the problem well visible. These cases have all been entertained by the Strasbourg-based European Court of Human Rights, and they have all been about public wear of the communist red star symbol, which has been a crime under Hungarian law. Some individuals were arguing that this constitutes a violation of right to free speech and freedom of expression, thus this piece of legislation shall be abolished.

The first judgment rendered by the Court in a case related to this problem was in 2008 in the case of Vajnai v. Hungary,[1] then the second was in the case of Fratanolo v. Hungary[2] in 2011. Both cases were about individuals found guilty and punished with a fine by Hungarian courts, and both of the Strasbourg judgments have nearly been identical in their arguments, having found a violation of the Convention, obliging Hungary to pay compensation and delete the punishment – also meaning an indirect obligation to consider this piece of legislation for revision, possibly for abolishment. I do not want to get into details of the judgments in the merits, my opinion is that there are more possible arguments for the case, and it is impossible to reach an absolutely perfect decision.[3] The argumentation approach applied by the Court, which is based on „threat to society" posed by the alleged human rights violation (meaning the very low level of actual danger posed by the use of the communist symbol) could have been different, as has been used by the same Court earlier in the Rekvényi v. Hungary[4] case in 1994, applying a "historical circumstances" argument, and while I personally had not have found a violation, I do not think that the Court's argument and conclusion was erroneous. But this is not relevant with the subject of the paper. What is highly relevant, is the difference in the reactions by the government.

The first judgment in 2008 has stirred some tensions with public opinion, obviously on the right-winged, anti-communist parts of the society, the left-winged/liberal government has tried not to engage in these debates,

it was more interested in a quick settlement of the case. Accordingly, they have accepted the judgment, not interfered at all with its execution, the Supreme Court amended the Hungarian judgment, with compensation being paid immediately. What is especially important, that the government has not even asked for a revision of the Strasbourg judgment, while it would have been possible, although not granted automatically – it could have tried it though, but obviously there was no interest in keeping this subject in the focus of political attention.

But the new, right-winged populist government entering into office in 2010 has had completely different reactions after the 2011 judgment in the Fratanolo v. Hungary case. They have loudly been arguing against it, government figures and politicians echoing all kind of nonsense already heard from the public in 2008, blaming the judges with "having no idea about communism", being "idiots from Strasbourg", completely ignoring the fact, that the 7-members chamber rendering the judgment has had a Hungarian member and also members from other ex-communist countries. The government has loudly articulated that no compensation will be paid, and no changes will be made to the relevant Hungarian legal provisions. The government has gone so far as to have a parliamentary resolution proposal drafted,[5] in which these points have been expressly mentioned as the will of the parliamentary majority, giving the extra opportunity to the government and its circles to talk about this issue for a long time. The idea has raised serious criticism among experts, academia and human rights NGOs as well.[6] It may be worthy to mention that already in 2010, a Strasbourg judgment has become the very first thing that the new Hungarian government felt the need to comment on: after the widely debated Lautsi v. Italy judgment[7] (in which the Court has found that placing crucifixes in public schools' classrooms is a violation of the Convention), the government has published its opinion about the judgment being wrong and the need for a "better protection of Christian values".[8] Here I will not analyse the Lautsi judgments, I just want to emphasise the case, as one related to another favourite subject of populism, religion.

While the government was having their communication invasion against the Court related to the Fratanolo judgment, the absurd part is, that in the meantime the compensation was paid by the relevant authority (the Parliament has nothing to do with this), and some time later even the relevant criminal legal provision has been amended. Not substantially, but according to the drafters, it will be compatible with the case law of the Court – it has not been tested yet. The question may be asked, what was the point of the whole tension then? In my opinion, the answer is simple: populism requires easily understandable and delicate subjects (later referred to as: paralyzing subjects), which get the attention and emotions of people. In ex-communist countries, the shadows of the political past are among these subjects, similarly like religion and religious values may be used very similarly in religious societies.

It may be worthy to mention that the story has later developed in Hungary, and somewhat still goes on, not necessarily with the same subjects. Pro-government circles have ever since raised the possibility of Hungary leaving the European Convention on Human Rights, which is of course a total nonsense, but may sound well with those people who at that time have already felt offended by earlier alleged actions of the Strasbourg Court – which is not only a typical Hungarian issue, see later the reference to the British example. During the past years, especially in migration-related debates with the European Union, the Hungarian government has always been raising the issue of "constitutional identity", being not clear about it being a real concept or just a PR-shield to protect its violations of European Union law. In my opinion it is the latter, especially that it can be nicely fitted into the government's communication strategy.

The relationship between individual human rights violations and rule of law

Rule of law is built on the existence of more basic principles, one of them being legal certainty, which requires unconditional correction of legal mistakes, including human rights violations. International human rights judgments have a very important guarantee role in this – so non-compliance, especially intentional and "reasoned" non-compliance with those is a sign of a serious crisis being formed in the given legal system.

We can imagine rule of law as a fortress: it cannot exist without the basic principles, which can be imagined being the fundaments of the building. Recognised individual human rights are the stones walls are built of. The height and the strength of the walls are determined by the amount of stones and the quality of their build. It is possible from time to, that a few of those can fall off, but this mere fact does not result in the fortress losing its overall strength. Only if those are not re-built, the fortress disappears, which can be a long process, not necessarily well-visible for a long time.

Additionally, stones and walls can be built on weak or practically non-existing fundaments as well. It may even look nice, but it is obvious, that the structure will not hold. A constitutional system without a genuine respect and guarantees to protect those basic principles will not meet any expectations towards rule of law, even if it may get very vocal on one or two human rights, especially if those are cherry-picked out of the human rights catalogue based on political or ideological considerations.

Growth in the number of human rights violations and lack of their reparations indicate a problem with rule of law and constitutionality within the state. As human rights violations are not only possible by state actions – what's more, our modern days mean more and more opportunity for non-state actors – for which the states do not have to take responsibility, we need to make a difference between states' intentional and unintentional actions (e.g. lack of legislation, or official action) leading to human rights violations. The latter ones are also taken care of by international human rights institutions, finding the responsibility of states for those, if needed. But if a state is intentionally directing its efforts to violate human rights, that is a sign of serious trouble, especially if it means explicit legislation. At this point it needs to be clarified, that I do not consider all violations having the same gravity, and not necessarily the same effect on rule of law. Based on the margin of appreciation concept and on – arguably – constitutional identity (in case of *bona fide* application), I would argue that in some cases even a direct human rights violation would not necessarily mean a grave danger to rule of law on the state level.

A case like the ones demonstrated above, where freedom of speech and of expression of political views is limited based on recent historical experience and human sensitivity, leading to the prohibition of a symbol, under which thousands of people have suffered in those countries may serve as a basis of a completely legitimate professional legal-political debate. As I have mentioned above, personally, I accept the arguments of the Strasbourg Court delivered in the Vajnai and the Fratanolo cases, but I could have accepted a different outcome as well, as there are legitimate arguments available to back up that position. Similarly, merely the growth of number of specific cases does not necessarily mean a serious imminent trouble, but may indicate that there is a problem, which may have an indirect effect on rule of law. For example, the high number of cases won against a state for the length of judicial procedures is a sign of problem with the judicial system of the state, which may have an indirect effect on rule of law in the country.

Ongoing debates within Europe, fuelled by Populism

The signs of a growing crisis are clear. The numbers of cases in front of the European Court of Human Rights grow and what is more important, the number of cases lost by the Council of Europe member states grow constantly, especially related to some problematic human rights – meaning that some of the wall bricks are very problematic in the different countries "fortresses". As we have indicated above, problematic situations may occur from time to time, but if those do not meet a governmental intent to be corrected, then we have to sense trouble. Now in more and more cases we seemingly have to face the lack of genuine will to do so, instead of that we rather see some political PR technique being applied in many governments' reactions. This raises doubts about the real intent to stop further violations, as these lost cases are often strike a painful PR-blow to some delicate political agenda items of the respective governments.

Losing these cases, either in the form of Strasbourg Court judgments or in case of violation of EU law, infringement procedures (often not reaching the European Court of Justice at all) end up merely in financial consequences, being compensation or fines to be paid by the relevant state. Looking at the growing number of lost cases, but especially the growing political significance of the subject-matter of these cases, there is a valid question, if this legal consequence can be considered being serious enough. By understanding the practice of these (or any other) bodies, states may pre-plan the "costs of violation", which may be then considered by them, when evaluating the cost-efficiency of a possible policy, based on future violations. This is very dangerous for rule of law within the given state, but also it is a serious danger to the Strasbourg Court, as in the eyes of many, it may become an institution which can be handled with budgetary steps.

International politics strongly depends not only on the given state, but also on the community of surrounding states, as their foreign policy behaviour determines any possible foreign policy behaviour by the individual state. Lack of genuine will on behalf of these states to step up against the violations of the individual one makes the whole system shaky, as the latter one may find an opportunity to push for more, or more serious violations, seeing that its actions go without serious consequences. When analysing, if there is real political will on behalf of other member states, we cannot avoid the problem of paralyzing subjects, already mentioned earlier.

What are these and why are those paralyzing? With this term, when examining rule of law, I refer to the phenomena, which may lead to false interpretation of human rights, rule of law or other important issues in the eyes of the public, and may lead to fear or xenophobia, which are very often outplayed by extremist or populist political actors. These are often connected to "weakness" of state and law enforcement, and causes the de-valuation and false interpretation of basic principles like presumption of innocence, or the principle of *in dubio pro reo*.

This effect is further deepened by an additional modern factor. Loss of confidence in rule of law, which is further strengthened by political populism, can be even quicker by the use of modern media with an extreme fast reach to always wider and wider audience, at the same time with less possibility to correct false news, or „alternative facts" as they are referred to lately. Modern media often does not provide necessary time to clarify issues related to human rights, which are usually more complex than the ordinary 3-4 minutes timeframe for a television interview, while on the other hand, general audience is often not really interested in long a well-founded explanations of current issues or questions that are reported by the media.

Take the question of migration, for example, which is not an easy one: explaining its applicable rules is not a simple one, especially not if someone wants to demonstrate the development and the interplay between international law (based on the Geneva Convention) and European Union legislative products after the Amsterdam Treaty. For a full understanding of the current European legal issues, the general public needs an understanding of this whole field of law, but in many cases political actors and their communication point out only provisions from the Geneva Convention, arguing why some asylum seekers shall definitely not be entitled for the refugee status, completely ignoring later EU legislation, which is also applicable. If it is intentional or not, is not really relevant (in the most cases unfortunately it is), the point is, that there is a false message made public, which is very hard to correct by non-political actors, trying to deal with the damage. Often this is nothing else, than the work of Sisyphus. Add religious fear into this equation, incite fear into Europeans from Muslim people, and You get the results, which actually nobody wants, but populists can use it very well.

Any role for international human rights judgments?

The important question to ask is if international human rights law is capable of identifying and correcting actual problems arising out of possible state misconduct?

First we need to conclude, that the current system of international human rights law is working, it is capable to handle some of the problems, but it has its limits. These limits are the result of the nature of the current structure of international human rights law, which is built on the very simple scheme of state v. individual, the state being responsible for human rights violations, and international human rights law having only a supplementary nature. Exhaustion of possible domestic remedies serving as a fundamental condition to set the machinery of the international protective system is an understandable and logical requirement if we accept the relevance of two factors:

1. State sovereignty has to be respected.
2. States have the genuine will to correct their human rights-related mistakes, and they are determined not to violate their human rights obligations.

Concerning the first one, I argue that the time of ignoring state sovereignty has not arrived yet. It may at one point, but as the current system of international law is strongly built on this concept, it is not realistic to expect states to forfeit sovereignty. However, we have to mention, that sovereignty is more and more often being quoted falsely to give justification for states' misconduct, in various form. For example, recently the Hungarian government has started to refer to "constitutional identity" (as appears in the European Union founding treaties) as a possible argument to justify its migration policies, contradicting EU legislation and also European human rights norms. And once again, this also becomes a paralysing subject at one point, as the public opinion gets a simplified image about sovereignty, constitutional identity, while the political-professional communication from the opposition does not have the time or the space to clarify it – so at the end, it does not even deal with that, leaving the false image alive with the people.

I do not think that anybody needs much convincing about the falsehood of the second statement. Human rights violations occur frequently, and even the European practice produces cases and situations, where this violations are intentional, often pre-planned and pre-calculated in their possible costs, both politically and financially. With paralysing subjects, governments and political actors often take an aggressive communication

position, sometimes well before the violation actually occurs – see for example the communications of prime minister Theresa May regarding investigations and cases in front of the European Court of Human Rights, related to possible violations of UK military personnel during the Iraq conflict, or of president Erdogan of Turkey after the attempted coup d'état related to individual criminal responsibility for participation in or support of the coup.

As we can see, this system is far from being perfect. Is it possible to change it? A revolutionary change is of course not to be expected, but we can see some attempt, which may seem to be trying to build a bridge between the sphere of international law and the domestic constitutional-judicial systems.

The reform of the European Court of Human Rights – good or bad?

The new advisory proceeding by the European Court of Human Rights under Protocol 16 of the European Convention on Human Rights is an interesting attempt, but I am not optimist about it. As indicated above, without genuine will of the states, the situation will not get better, and it is not easy to find in this case, the new tool rather works as a possible way to ease the Court of its workload, and not to make it stronger. As I had pointed out in an earlier analysis on this matter, if Council of Europe member states really had the intention to give a strong tool into the hands of the Court, than they could have created a procedure which is more similar to the preliminary judgment procedure of the European Court of Justice, leading to a legally binding judgment concerning the Union-law related questions of the case entertained by the domestic court,[9] instead of this procedure, which results in a weak and uncertain result, a non-binding advisory opinion.

I am even more pessimistic about the other element of reform to the Strasbourg Court: according to Protocol 15, it will be easier to put cases straight to the Grand Chamber of the Court. This may help quicker conclusion of the cases, but takes away the possibility for a revision at the same time. And I believe that both the abovementioned Lautsi and Vajnai cases have taught us important lessons on this matter: After a long debate, the Strasbourg Court has changed its decision in the Lautsi case, leading to a settlement – while because of the lack of request from the Hungarian government in 2008, the Court has not had the chance to do the same in Vajnai, leaving the question pending to politicians. My personal opinion is, that questions not concluded by the courts will live on in the field of political communication, subject to populist abuse. For that reason I believe that any attempt taking the chance away from courts to analyse and argue delicate, especially paralyzing subjects, is helping populism and its destructive effects.

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CROSS BORDER HUMAN TRAFFICKING CRIME IN SOUTHWEST OF CHINA

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Abstract: In China, human trafficking has existed for hundreds of years and cross border human trafficking in China in recent years has become a serious social issue. Due to the geographical reason and economic exchanges, China and ASEAN countries are closely related and the growing trend of cross border human trafficking crime plays a negative role among the countries. Cross Border Human trafficking is recognized to be one of the most serious crimes that threaten the peace and security of the international community despite the numerous preventive measures and protocols taken. It is important for China to handle the issue carefully to pave ways for the communication between China and neighbor countries while maintaining the stability in the border area. This paper aims to study the cross border human trafficking crime in southwest of China. By introducing the features and effects of human trafficking in southwest of China at the beginning, the author analyses the background of the human trafficking crime in southwest of China, that is, social factors, geographical factors, historical factors and psychological factors. Then the author discuses the challenges on fighting the crime. Faced with difficulties and challenges, China should learn experiences and protocols form international community form in terms of legal framework, cooperation mechanism and preventive system. Cooperation and coordination among countries and non government organizations should be encouraged. People all over the world should increase the knowledge and awareness while taking responsibilities for this fight.

Keywords: : human trafficking, crime, southwest of China, challenges .

Introduction

"Human trafficking" is the trade of humans for the purpose of forced labour, sexual slavery, or commercial sexual exploitation for the trafficker or others.[1] This may encompass providing a spouse in the context of forced marriage, or the extraction of organs or tissues, including for surrogacy and ova removal.[2] Human trafficking is a serious crime and is condemned as a violation of human rights by international community. In China, human trafficking has existed for hundreds of years. The earliest written record of human trafficking was founded on bamboo slips of Qing Dynasty(the first dynasty of ancient China, lasting from 221 to 206 BC): How do you explain "Cong Mu Wei Shou?"---It means people can be sold, but considering the young children, the mother can't be sold alone."(何谓从母为收？人固卖，子小不可别，弗卖子母谓也)[3]. (Figure 1)It can be proved that trade of people is a common fact in Qing Dynasty and it is protected by law. Human trafficking used to be common in the long history of China and it didn't stop until People's Republic of China was founded in 1947, when the government enacted the marriage law and prohibited trade of people.

However, human trafficking and trade of people emerged again in some parts of southwest, south-east, and north of China after 1970s. The problem became less serious in 1980s because the government took several severe measures against such criminal activities. In 1990s, human trafficking and trade of people, especially women and children, began to rise with some new features, that is, cross-border human trafficking crime, which has developed into an organized and transnational international crime in China. [4]

With the reform and opening up police since late of 1970s and One Belt, One Road Initiative in 21st century, China's economy developed rapidly and the exchanges among different countries became more and more frequent. In the process, the number of cross-border human trafficking crimes began to grow. In some south parts of China, like Yun Nan and Guang Xi,(Figure 2) due to its special geographical and environmental location, cross border human trafficking has become a serious problem affecting the development of local economy and social stability of the area. The number of reports on trafficking "Vietnamese brides" and " Run-away Vietnamese brides" kept increasing in the past few years. According to the statistics of The Ministry of Public Security of The People's Republic of China, the number of women and children trafficking in 2014 reached about 13,519, 1,260 of women and children were rescued by the police, and the number of trafficking gangs reached 2,398. The Supreme People's Court (SPC) reported 1,097 convictions for the trafficking of women and children, 420 convictions for forced prostitution, and 39 convictions for forced labor in year 2017.

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Figure 1: The earliest written record of human trafficking on bamboo slips of Qing Dynasty

Figure 2: Map of Yun Nan and Guang Xi, China

The southwest of China is bordered by many countries. Human trafficking crimes became increasingly serious due to the geographical location, making the area the main "battlefield" for China to fight against human trafficking crime. With the help of Ministry of Public Security, Guang Xi police conducts a series of challenging measures against human trafficking crimes every year, but the result was not satisfactory, and the crimes keeps surging with many new features and trends[5]. Human trafficking not only brings disasters to the victims and their families but also damaging the image of China in the international community. Therefore, effective measures should be taken to solve the problem of human trafficking so that the human rights can be protected and a harmonious and stable society can be established.

Features and Affects

In the Trafficking in Persons Report 2018, released by U.S. Department of State, China was put to Tier 3 (Countries whose governments do not fully meet the minimum standards of Trafficking Victims Protection Act's (TVPA) and are not making significant efforts to do so.) Every year, the work reports of China's National People's Congress and Supreme People's Court indicate that human trafficking in southwest of China continues to rise. Some features of the human trafficking can be found as follows. [6]

Figure 3: China Tier Ranking by Year (source: U.S. Department of State, Trafficking in Persons Report 2018)
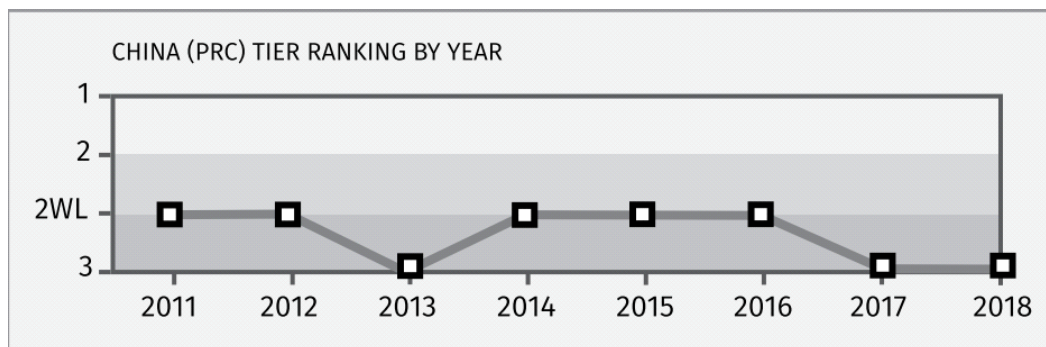
Geographical feature: Geographically, the southwest of China refers to southern area of China (excluding the Qinghai-Tibet Plateau), which mainly includes the Sichuan Basin, the Yunnan-Guizhou Plateau, and the Qinba Mountain Area. (Figure 4)Regarding administration division, it mainly includes the eastern part of Sichuan, southern Chongqing, Guizhou, Guangxi, and Yunnan.

Figure 4: Geographical location of south west of China

       This paper will discuss the human trafficking crimes mainly in Yun Nan and Guang Xi from the perspective of administration and geographical division. In Guang Xi, there are eight border villages and towns in Vietnam and the border line is 637 kilometers long, with five national first-class ports, seven national second-class ports, four border trade terminals, and 25 people–to–people market areas. In Yun Nan, the border line with Myanmar is 1,997 kilometers, 1,353 kilometers with Vietnam, and 710 kilometers with Laos. The two provinces are located near the Greater Mekong Sub region, where the human trafficking crimes have been one of the most serious places in the world since 1980s.

       Victims' feature: Generally, adults with low education or intelligence and children are more likely to be trafficked because of their low cognitive ability and awareness. However, the study shows that most victims in south west of China are adult laborers. Regarding cross borders human trafficking, buyers are more like to purchase victims out of marriage or labour purpose. One of main thought is the traditional Chinese idea like "to raise children to support the old," "There are three forms of unfilially conduct, of which the worst is to have no descendants." Therefore, many people, especially those in the remote areas, are desperately to have a child. Victims are easily trafficked through the mountainous border areas, which is hard to be tracked by the police. Among the victims, the infants are not able to escape from criminals and the trafficked women, even if escaped

temperately, they cannot get proper legal assistance because of the language barrier. Many of the women are trafficked to the southeast coastal areas for sexual services and men are sold to mines, coal kilns to engage hard labor work. In some cases, the victims are well kept for organ transplant trading.

Crime mode feature: By studying the cases of trafficking of Vietnamese and the cases and reports released by the public security bureaus of China, the author found the following features of the crime mode in south west of China. First, the criminals in Vietnam will search the targets before trafficking the victims, usually women and children,   to transfer places using deception, abducting or kidnapping. After this, the criminals, usually a different group, will smuggle the victims by crossing border legally or illegally, to the criminals who know the market and sell them to different places in China. The women who are sold to remote areas for forced marriage, while some others are sold to the developed areas for commercial sexual exploitation. Most criminals choose to conduct the trade among border areas so that they won't be trailed by Chinese law, such as Bei Lun River, Dong Xin town, Guangxi. Some victims are trafficked for organ extraction, which creates huge amount of profit because of the limited matching sources.

Affects: Human trafficking is a serious crime and a grave violation of human rights. The victims often experience complex trauma as a result of sexual abuse, domestic violence, forced prostitution, or gang rape. The victims tend to suffer many psychological impacts as dissociation, depression, anxiety, self-hatred, despair and substance abuse, which, often lead to compromised health, self-destructive behavior, and long-term physical harm. Due to the young age, children are easily suffer more as traffickers often destroy their physical and mental health through physical and emotional abuse. Trafficking increases the risk of contracting HIV/AIDS since the victims are not able to protect themselves properly. Mostly importantly, human trafficking breeds corruption, undermines rule of law and erodes the social values of a civil society.

Background and the Challenges

The geographical location plays an important role in the human trafficking in south west of China. But from a comprehensive perspective, there are some other reasons behind the scene.

Geographical factor: According to the *Tabulation on the 2010 Population Census of the People's Republic of China*, released by Population Census Office of National Bureau of Statistics China, in 2011, the number of foreigners living in China was 593,832 and some data is listed below.

Table 1: Tabulation on the 2010 Population Census of the People's Republic of China(Source: Population Census Office of National Bureau of Statistics China)

	Country	Number of the Foreigners		City & Provence	Number of the Foreigners
1	Korea	120750	1	Shanghai	143496
2	US	71493	2	Beijing	91102
3	Japan	66159	3	Guangdong	74011
4	Myanmar	39776	4	Yunnan	45801
5	Vietnam	36205	5	Jiang Su	30928
6	Canada	19990	6	Shandong	30172
7	France	15087	7	Fujian	27386
8	India	15051	8	Zhejiang	26765
9	Germany	14446	9	Liaoning	22723
10	Australia	13286	10	Guangxi	21465

11	UK	12613	11	Tianjin	21041
12	Singapore	12191	12	Hubei	8065
13	Malaysia	10954	13	Heilongjiang	6714
14	Russia	9714	14	Sichuan	6655
15	Philippines	7818	15	Jilin	5918

It can be seen that most foreigners are in developed cities like shang hai, Beijing and Guang dong, but Guang Xi and Yunnan, though much less developed, ranked in top 10. The geographical location is the main reason that the foreigners from Myanmar and Vietnam choose Guang Xi and Yunnan. It plays both positive role regarding business and trade, but the crimes among the borders also keep increasing, including cross border human trafficking.

Social factor: With the establishment of China-ASEAN Free Trade Area and the continuous expansion of bilateral trade and investment, the economic relations and exchanges between China and ASEAN member countries have become closer, which indirectly provides convenience for traffickers. There is a big economic gap between China and Vietnam. Some Vietnamese who are suffering poor lives are eagerly to migrate to China through cross country marriage to improve their living condition. Human traffickers easily exploit these people. In 1991, Sino-Vietnamese relations were normalized, and the Vietnamese government opened a series of trade ports along the border as well as dozens of village-to-village trading route. The Vietnamese authorities, to attract investment from China, made many preferential policies to Chinese businessman and tourists. [7]The police played positive roles in encouraging the economic development between two couriers, but the risks of crimes began to grow. With the fast growth of the Chinese economy, many oversea labors flood to China for job opportunities. The average day wage in China is 9.51$, while it is 5.81$ in Indonesia, 5.75 in Vietnam and 4.84 in Cambodia. The better payment attracts many oversea labors from less paid border countries and to save the cost; they cross border illegally to China. Most of them cannot speak Chinese, and they are smuggled to China by traffickers, who exploit them by forced labor and services. It can suggested that the economic reason is one of the fundamental reasons behind cross border human trafficking.

Historical factor: China has been a centralized country with multi nationalities for centuries. As early as 1287 in Yuan Dynasty, the central government established "Center of Myanmar and China," allowing the people in two countries to have cross border marriage and business. The people along the border shared the same culture and tradition. In 1950s, Chinese government gave privilege to the foreigners along the border for intermarriage. Thousands of Vietnamese women have married to Chinese by the beginning of 1980s. The intermarriage was banned due to the border dispute between China and Vietnam. National Bureau of Statistic of China shows that the male population in 2013 is 690 million while the female is 660 million, a gap of 30 million between male and female[8]. The gender imbalance is higher among rural areas, where most people are into the traditional thoughts that having a son is much more important than a daughter. In the past few decades, an increasing number of rural youth flooded into cities for job opportunities and many young women preferred to stay in the cities, leading to a more serious gender imbalance. Besides, with the rising cost of getting married, rural youth who can not afford the huge amount of cost of getting married, prefer to spend tens of thousands of RMB to "buy" a Vietnamese bride rather than spending hundreds of thousands RMB to marry a local girl. Currently, it has become very common in south west of China for the local people to buy a Vietnamese bride. The unmarried males think the Vietnamese brides are more hardworking and docile compared with local girls. Considering the intermarriage that has existed hundreds years, many people dont think it's illegal to buy a Vietnamese bride from a trafficker.

Psychological factor: Profit is the fundamental reason that human trafficking was common in south west of China. For traffickers, it is easy money to make once they find the targets and buyers since the cost is low. In recent years, the number of women traffickers increased because some women victims gradually turned to join the trafficking crimes. For the buyers, buying a bride is much cheaper, and they don't have to pay the "Grand Gifts", a set of elaborate gifts to be presented to the bride's family by the groom's family. The wedding

can be arranged immediately after the negotiation is done and the buyers usually consider the brides a personal possession for granted.

Challenges

In June 2006, China Office and the Peking University established "United Nations Inter-Agency Project on Human Trafficking"(UNIAP) in the library of Peking University, the first anti-trafficking data center in China. At the end of 2007, the State Council issued the Action Plan against Trafficking in Women and Children (2008-2012) and established the Office of Crashing Trafficking in Women and Children in the Ministry of Public Security. On March 8, 2013, General Office of the State Council of the People's Republic of China issued the "Action Plan against Human Trafficking (2013-2020)". It can be clear that in the past few years China attached great emphasis on the fight against human trafficking. However, despite the effort, many challenges still exist in this battle against human trafficking.

Legal system: There is great difference on the legal system between China and neighbor countries. On the one hand, the understanding of the concepts of rule of law is different; on the other hand, the national systems, cultural backgrounds, social values, and historical traditions differ from each other. Criminals make use of the differences on legal system to commit human trafficking without being punished. Some countries that emphasize the control the crime and prevent crimes by draconian laws tend to sacrifice the individual rights to fight against crimes, while some others who advocate individual rights and citizen freedom will not allow the excessive interference to the individual rights when combating human trafficking crimes[9]. The understanding on concepts of laws also differs among countries. In China, it is clearly specified in the law that males over 14 years are not the objects of abducting, but Vietnam law defines them to be the objects of abducting.

Legal cooperation: Because of the differences and defects on legislation, the border countries failed to cooperate effectively on fighting cross border crimes. The domestic laws cannot be appropriately linked with international laws. China is in the early stage to work with ASEAN countries with many difficulties on cooperation mechanism, information collecting, delivery of criminals, and trials. Some countries sited insufficient attention to anti human trafficking crimes and lack of resources, which in turn, can't not form enough deterrent to the criminals. Some traffickers are very familiar with the differences of the laws, and they know how to commit trafficking by making use of the loop holes on its differences. Therefore, a comprehensive legal cooperation among countries is needed badly.

Newly developed criminal acts: As the public security department attaches more and more emphasis to crack down the human trafficking in the past few years, the traffickers have gradually adopted a more subtle way of committing crimes. For example, by offering "free border tour" or "a better job", the traffickers organize the victims to enter the country illegally before engaging in trading of organs. Some traffickers will contact the pregnant women who are not willing to raise children and take them secretly into China. When the children were born, the buyers will keep the infants, and the mother will return to the homeland with the payment after recovering from giving birth. This low-cost and high-return act is difficult to detect, but it became a serious social issue as in the case of June 8th, 2011, in which a group of 22 criminals suspects were accused of trafficking Vietnamese pregnant woman to China for infants trade. Besides, with the development of science and technology, criminals began to use Internet to commit sex trafficking on women and children. Some even offer "group foreign brides' purchase" service over internet, which is very different from the traditional human trafficking crimes.

Information collection: Cross border human trafficking differs from domestic human trafficking in the following aspects: relatives report to the police, neighbors report to the police, victims escape by themselves, and the police discover the clue and the victims. Regarding cross border human trafficking, most victims are from Southeast Asian countries and they are trafficked to remote areas. In this case, children cannot escape alone, and women are often deceived before they are being trafficked. Even the relatives of the victims cannot provide useful clues to the police while victims themselves if escaped temperately, they cannot get legal assistance because of the language barrier. In most cases, the cross border human trafficking victims cannot get help from local people or escape by themselves. Some victims are not willing to report to the police because they are afraid of revenge from the buyers or the traffickers. The police had to rely on its power and resources to collect information and clues, locally or internationally, to crack down the crimes.

Assistance to the victims: In some countries, traffickers cannot be put into justice because the victims refuse to testify. In worst case scenario, some cases victims are regarded to be criminals rather than victims and they are accused, detained or put in prison by the police. It is government's duty and responsibility to give the victims the support and the rights they deserve. Despite the effort Chinese government has made, there is a still long way for the government to go on the protection and assistance to the victims rather than women and children. The current law mainly focuses on the resettlement of the abducted women and children while the protection and assistance to them are short. Some border cities and towns do not have protection or assistance shelters due to financial difficulties, and it is almost impossible for the victims to gain their rights.

Suggestions

Cross border legal system: In the 1980s, women and children trafficking in China was very serious the number of the crimes didn't stop increasing until the government promulgated and updated a series of laws, including the Criminal Law. In 1980, China joined The Convention on the Elimination of All Forms of Discrimination against Women in UN. In 1999, the Supreme People's Court of China promulgated *The Interpretation on the Relevant Issues Concerning the Application of Law in the Trial of Women*, in which "women" was defined as Chinese women, foreign women, and stateless women. In August 2003, China joined U.N. Convention against Transnational Organized Crime, showing its determination to fight against human trafficking. The government kept increasing its effort and improving the legal system. However, the objects of the victims need to be reconsidered so that more trafficked victims can be protected rather than just women and children. The concept and understanding of trafficking for organ trade need better clarification since the law does not mention the misled victims who volunteered to offer organ trade.

International justice cooperation: Addressing cross border human trafficking requires a dynamic policy framework based on the mutually reinforcing pillars of prosecution, protection, prevention, and partnership[10]. It will help the government to create a more comprehensive strategy to combine international and national resources. China has attached importance to cooperation with other countries and has been involved in international justice cooperation on anti-trafficking for years. China has signed criminal justice assistance treaties with more than 20 countries, and extradition treaties with more than ten countries. Over 40 police cooperation agreements were employed between China and other countries. Cooperation on anti-human trafficking is considered to be one of the most important fields. In the case of the cooperation between the Public Security Bureau of Guangxi Dongxing City and the Public Security Bureau of the Mang Street in Vietnam, a comprehensive mechanism was established and it proved workable. Both parties built a unified information sharing system to share the latest data with each other through internet. They established a law enforcement cooperation station to conduct joint inspection and to establish a green channel for police cooperation, in which the police of both sides can enter the border inspection department within 24 hour; and to establish joint investigation on arresting and prosecution.

Support to the victims: In Taiwan, the government established the assistance shelters for the victims, who were entitled to shelter, medical care, counseling, social services, and—in some cases—rehabilitation services. The efficiency of the Chinese local government's previously reported victim assistance—including its eight border liaison offices with Burma, Vietnam, and Laos, victim funds, hotlines, and government-to-government agreements to assist victims—remained unclear. Foreign embassies in China reportedly provided shelter or other protective services to victims. Ministry of Civil Affairs of China, a nationwide women's organization, has done much work on the trafficked women and children. But the number of the victims kept increasing, and the government can't solve the problem alone. China should learn experiences and protocols form international community form regarding legal framework, cooperation mechanism and preventive system on the protection of the victims. Cooperation and coordination among countries and non government organizations should be encouraged. People all over the world should increase the knowledge and awareness while taking responsibilities for this fight.

Conclusion

The fundamental reason of human trafficking is the imbalance of economic development among regions and countries. Human trafficking deprives millions people of their dignity and freedom, and it undermines national security, distorts markets, and enriches transnational criminals and terrorists. Combating human trafficking is not merely a moral issue that affects the interests of people; it is also an issue that threatens

international peace and security. The south west of China, because of its unique geographical environment and old tradition of cross marriage as well as the increasing business exchanges along the borders, is suffering more and more human trafficking crimes. With the fast growth of globalization and information technology, human trafficking crimes have developed many new forms, which brought more challenges and damages to the public and government. The current legal system on the scope of the victims needs to be updated, and a comprehensive international justice cooperation mechanism in many cities and towns of the border areas is needed. It is important for cross border countries to form a dynamic policy framework based on the mutually reinforcing pillars of prosecution, protection, prevention, and partnership. China should learn experiences and protocols form international community form regarding legal framework, cooperation mechanism, and preventive system. Cooperation and coordination among countries and non-government organizations should be encouraged. People should increase the knowledge and awareness while taking responsibilities for this fight.

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ROHINGYA CRISIS IN MYANMAR (2017): REACTION OF UNITED NATIONS SECURITY COUNCIL'S PERMANENT MEMBERS

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Abstract: In late August 2017, humanitarian crisis in Myanmar gains the attention of whole world community. The crisis emerged when defence forces of Myanmar started the genocide of the Rohingya of the state of Rakhine (Myanmar). The world major players, human right organizations and activities have reacted to this massacre carried out by Myanmar. This paper is an attempt to highlight the reaction of United Nations and permanent members of Security Council. This study would also highlight the steps taken by UN and UNSC to tackle this humanitarian crisis.

Introduction

The state of Myanmar (Burma) was once the part of British colony but In January 1948 it broke the shackles of slavery and became an independent state.[1] Since that various ethnic groups are residing in the state.[2] Buddhist is the dominant ethnic group of the Maynmar. Almost 80 to 90 percent population of the state practice Buddhism and on this ground Buddhism is declared as the state religion.[3] Various ethnic groups like Christians, Muslims, and Hindus etc. cover the other 10 percent of population. 135 ethnic groups are legitimately accepted by Government of Myanmar but 'Rohingya Muslims' a minority group living since centauries in Myanmar are not recognized by their own state.[4] The main concentration of 'Rohingya Muslims' are found in Rakhine state of the Myanmar. 'Rohingya' covers one third population of the 'Rakhine state'.[5] Till 1962 'Rohingya' can take part in the mainstream of Maynmar but after that they were sidelined by the government of their own state.[6] In 1962, when General Ne Win took the responsibility of government, he asserted a number of strides to crush and reject the individuality of 'Rohingya'. One of such stride was the 'Operation Nagamin' in late 1977. Operation was propelled with an objective to exclude the immigrants from the state.

The communities and settlements of 'Rohingya' were scalded, women were mob raped, their shops and other assets were demolished and enforced them to leave the state as they were considered immigrants. This 'operation' became a cause to deport 200,000 'Rohingya' from Maynmar. Another substantial stride taken by government of Myanmar to extinguish the race of 'Rohingya' was the policy of 'Citizenship Law' in 1982. According to this law 'Rohingyas' were immigrants that derived from Bangladesh although there is empirical evidence that demonstrate the 'Rohingya' are living in Myanmar since centuries and few of them travelled from Bagladesh since British time period. 'Citizen Law' contradict with the 'Universal Declaration of Human Rights'.[7] According to this law limitations were enforced on 'Rohingya' to move freely, intolerant marriage policy, two child policy, employments, to get secondary education, practice religion freely and force dislodgment.[8] Restriction on liberty of religion is against the 'International Covenant on Civil and Political Rights'.[9] Unfortunately this 'Citizenship Law' was not amended or removes by the subsequent democratic governments. Even neither the Nobel Peace Prize holder Aung San Suu Kyi nor the human right activists of the state spoke for the rights of 'Rohingya' minority. They faced acute international criticism on their silence but up-till now no tangible step is taken to abolish this law.[10]

After '1982 Citizen Law' 'Rohingya' became the target of military crackdown number of times. The ethnic violence arose between April 1991 and May 1992 compelled 250,000 Rohingya to take refuge to some safer places especially in Bangladesh.[11] Again violence vented between the 'Rohingya' and Buddhists community in June and October 2012.[12] This time violence has affected almost 320,000 'Rohinya' in total. Out of 320,000, 200,000 left the Myanmar and 120,000 were internally displaced.[13] For the first time in the history the world community had taken the exodus issue of 'Rohingya' Muslim seriously.[14] On the pressure of world community the President of Myanmar Thein Sein constituted sixteen members committee after the June 2012 genocide and then in August formed a twenty-seven member commission. The commission consists of religious Muslim members, intellectuals, politicians, representative of international organization. International agents

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were incorporated for the transparency of the commission. The materialization of this commission was valued by the international community even the Secretary General of U.N., Ban Ki-Moon sent a testimonial to support this commission.[15] The materialization of the commission did not work and violence resurfaced in October (2012). The chain of violence against 'Rohingya' did not stop here it continue and resurfaced with full momentum in August 2017. This time 288 settlements were scalded by the forces of Myanmar, thousands were killed, raped and almost 700,000 took asylum in Bangladesh.[16] Myanmar is under acute criticism on this humanitarian catastrophe that is called by U.N as 'Ethnic Cleansings'.[17]

Response of United Nations on Humanitarian Crisis in Myanmar

The humanitarian catastrophe arose in August 2017 as a result of ruthless military action taken by Myanmar against 'Rohingya' gets numerous reactions from world community. Mostly come up by denouncing and condemning the violence act of Myanmar military.[18] International, regional and local executives, media (print, electronic and social) and human right societies have alleged Myanmar forces of human right exploitations and annihilation against 'Rohingya'.[19]

United Nations: U. N. the esteemed body of the world having 193 member states, quickly responded on the humanitarian catastrophe arose after August 25, 2017 in Myanmar. UN avowed the attack of Myanmar military troops and Buddhist group of the 'Rakhine' state on 'Rohingya' as an 'ethnic cleansings'.[20] The 'Human Right Commissioner of UN, Filippo Grandi', designated the 'Rohingya' catastrophe as 'A Test Book Example of Ethnic Cleasing'.[21] 'Secretary-General Antonio Guterres' of UN stated the 'Rohinya' calamity as "One of the world's worst humanitarian crisis".[22] 'Yanghee Lee, a special rapporteur of UN' to Myanmar commented on 'Rohingya crisis as 'the hallmarks of genocide against Rohingya'.[23] On November 16, 2017, Human Right Committee, U.N. General Assembly sanctioned a resolution calling the Myanmar military to stop its annihilation against 'Rohingya'. The resolution was stimulated by Sudia Arabia to stop the worsening human right condition in Myanmar.[24] A goodwill diplomat of UNHCR, Cate Blanchett, visited campgrounds of Refugees in Bangladesh in March 2018. She articulated her sentiment that what I saw and perceived was dreadful.[25] Adama Dieng, 'the U. N. Special Counselor on the Prevention of Genocide', after her official visit to sites in Bagladesh said the objective of government of Myanmar is to eliminate the presence of 'Rohinya' from Rakhine state. She voiced her thought by saying that Myanmar government had made no serious strength to guarantee the safety of 'Rohinya' uptill now.[26] In April 2018, Christine Schraner Burgener as Special Diplomat of UN is selected for Myanmar. She started a process of broad discussions, including with the establishment and with civil society and women's groups of Myanmar. In June 2017, UNHCR, UNDP and the Myanmar establishment did a Memorandum of Understanding that present a schema of teamwork to generate conditions for the deliberate, nonviolent, proper and feasible extradition of immigrants from Bangladesh. Human Rights Council selected a 'UN Independent Fact Finding Mission on Myanmar'. A report is prepared by this Mission. The report states that harms and exploitations against humankind by security forces of Myanmar are "undoubtedly amount to the gravest crimes under international law." [27]

Myanmar has rejected all the charges upraised by UN. The UN statements are rejected by the government of Myanmar by protecting itself against 'Rohingya' as an rebellious.[28] Zaw Htay, spokesperson of Myanmar government believed if there would be 'strong and primary evidence' of human right exploitation then government would consider it.

United Nations Security Council (UNSC): Over the intelligences reports of human right abuses and exploitations carried out by the troops of Myanmar forces the UNSC delivered a robust criticism. UNSC issued a declaration by communicating its 'grave concerns' over the human right condition arose after the ruthless military crackdown by Myanmar. The government of Suu Kyi reacted that "the issues facing Myanmar and Bangladesh can only be resolved bilaterally" and the UNSC would not overlook this fact.[29] SC diplomatic declaration of November 6, 2017 intensely condemned the violence that has taken place against 'Rohingya'.[30] An envoy of UNSC visited the camps where the 'Rohingya' took refuge in Bangladesh. The envoy comprised of officials of five permanent and ten non-permanent members of UNSC. During their three days appointment they debate about the catastrophe with refugees and local official.[31] At the end envoy demanded from the government of Myanmar to nonviolent return of the 'Rohingya' and ending of discrimination against them.[32]

The five permanent member of UNSC reaction to Myanmar crisis different keeps their national interest prime and their strategic relations with the establishment of Myanmar.

The United States of America: At international, national, regional and multilateral meetings U.S upraised awareness regarding the 'Roingya' catastrophe.[33] U.S. denoted 87$ million for humanitarian support for affected people of Myanmar.[34] U.S. President Trump called the UNSC to take immediate action to end the 'Rohingya' catastrophe. 'Vice President Mike Pence of America' defined the catastrophe as danger to world harmony.[35] State Department conveyed its apprehensions in a way that Myanmar catastrophe threatened the peace of region and may get the consideration of international terrorists.[36] It also proclaimed on October 23, 2017 that it is evaluating to enforce sanctions on the responsible authorities for human right abuse.[37] 'U.S. State Department spokeswoman Heather Nauert', believed there is crucial need for the independent investigation of the massacres and carnage done by Maynamar establishment and put pressure on Myanmar administration for collaboration in this regard.[38] 'U.S. diplomat to the U.N. Nikki Haley and Former Secretary of State, Rex Tillerson', explained the catastrophe in Myanmar as 'ethnic cleansing'.[39] Nikki demanded for a global embargo on arms deal with Myanmar military forces.[40] Tillerson visited the Maynmar in November 2017 to report about the 'Rohingya' catastrophe.[41] He believed Myanmar military is guilty for suppression of 'Rohingya'.[42] He assumed that the only economic embargo would not helpful to resolve this humanitarian catastrophe.[43] Although in 2012 crisis in Myanmar U.S with E.U enforced arm embargo and economic sanction on Myanmar.[44] 'U.S. Holocaust Memorial Museum' has stripped of the prominent human right award they granted to Suu Kyi, which suspect her of little doing against the ethnic cleansing of 'Rohingya'.[45] Myanmar rejected the U.S. claims of ethnic cleansing of 'Rohingya'.[46]

People's Republic of China: China has deep strategic, economic, political and friendly relations with Myanmar. These relations further strengthen under Suu Kyi's government.[47] Myanmar is part of Chinese goals of Belt and Road Initiative (BRI) and it is also spending in oil and gas pipelines there. China is establishing a deep water port and special economic zone in Rakhine state to decrease its dependency on Malacca strait. Keeping its strategic and economic concerns prime, humanitarian catastrophe has secondary significance for China in Rakhine state.[48] This is evident from the Chinese stance to oppose the November 2017, UNGA resolution. China opposed the resolution on the ground that Myanmar military crackdown is domestic in nature and it is not a threat to global harmony.[49] 'Deputy Head of International Department of Chinese Communist Party, Guo Yezhou, Geng Shuang, Chinese Foreign Ministry Spokesman and Liu Weinmin, spokesperson of External Ministry' periodically stated that China support the Myanmar struggles to bring peace and stability in Rakhine state.[50] China supposed that Myanmar establishment can manage its domestic problem and foreign participation would not work appropriately.[51] In a joint press conference with Suu Kyi, Wang Yi, Chinese Foreign Minister, offered three-point solution to the establishment of Myanmar and Bangladesh to manage the current condition that arose after military crackdown in Rakhine state.[52] These points are also offered by China in 13th Asia Europe Foreign Minister meeting held on November 20, 2017.[53] These points include the

- "Cease-fire between the military forces of Myanmar and Rohingya,
- Repatriation of refugees by granting them citizenship
- Talks on returning of refuges back between Myanmar and Bangladesh"[54]

Before this press conference, Wang met with Sheikh Hasina, the Prime Minister of Bangladesh, in Dhaka and guaranteed her that China would play a productive role to resolve the problem.[55] 'Chinese Deputy Permanent Representative of UN, Wu Haitao', valued the struggles of Bangladesh to expand the humanitarian condition and he argued the world community to provide help and support to Myanmar establishment that is confronting the tension aroused in Rakhine. He valued the way the establishment of Myanmar is cooperating with International Organization and International Committee of the Red Cross to conduct the humanitarian tasks.[56] Lee, (U.N. special rapporteur) demanded from China to stand by human right organizations on Myanmar catastrophe. Chinese Foreign Ministry Spokeswoman reacted that 'external actors' would not be helpful to resolve the catastrophe it may add more problems.[57] Although Myanmar military is under severe criticism from international community but military Chief, General Min Aung Hlaing, of Myanmar visited China and not only met with President Xi Jinping but also top military leaders. Both sides assured the military collaboration between the two states.[58]

The International Criminal Court has been stimulating the investigation and tribunal against the individuals guilty for genocide, war crimes and crimes against humanity. The only way the leaders of Myanmar could face a judicial reckoning of ICC if the UNSC discussed them to the ICC. This is not going to materialize because China, a permanent member and Myanmar's close political partner, would veto any such step.[59]

Russia Federation: Russia and Myanmar has solid defence and strategic relations. Between 1996 and 2016 Russia has shifted almost 3000 missiles, 100 artillery pieces and 64 aircrafts to the state of Myanmar.[60] Ramzan Kadyroy, a Chechnya's leaders held a demonstration on September 4, 2017. The demonstration was launched to show unity with 'Rohingya'. Kadyroy labeled the military crackdown against 'Rohingya' as "a Holocaust against Myanmar's Muslim Community". Kadyroy criticized the Russian establishment for delivering weapons to security forces of Myanmar. He argued to the Russian establishment that if they would not oppose the military crackdown against the 'Rohingya' than their relations with Chechnya would not be remain normal.[61]

Russia had also opposed the November 2017 resolution of UNGA that was moved by Sudai Arabia with an ambition to stop humanitarian catastrophe in Myanmar. Russian diplomat to Myanmar, Nikolay Listopadov indicated that Russian is against the intrusion of internal affairs of Myanmar. Russian Foreign Ministry even did not reply to the request of UN special rapporteur to Myanmar that wanted from Russia to condemn the military crack-down against Rohingya.[62] Polyanshiy Dmitry, Deputy Russian U.N. diplomat over the Rohingya catastrophe believed that "Issue is still for us to promote bilateral ways to reduce this issue."[63]

Russian top military official visited Myanmar in January 2018. During their visit they have declared to sell six Sukhoi Su-30 jet fighters to Myanmar. State Department spokeswoman, Nassert, condemned the Russian defence ministry to broadcast such military sale at the time when whole world community wants to stop the 'Rohingya'' catastrophe and the sale of arms to security forces of Myanmar would add fuel on fire rather than helpful to solve the existing problem.[64]

French Republic: French establishment criticized the military crackdown on 'Rohingya' Muslim. The French President Emmanuel Macron defined the attack as 'genocide' and 'ethnic cleansing'.[65] French establishment valued the determinations of establishment of Bangladesh to accommodate largest refugees of current history and requested the Bangladesh to accept the coming refugees that want to take refuge on its land. French establishment also demanded from Myanmar to stop the violence against 'Rohingya' and tried to find out a political solution of the catastrophe. French reiterated its support to the humanitarian organization working for current 'Rohingya' catastrophe.[66]

French establishment supported the November 2017 resolution of UNGA that was moved by Sudai Arabia with determination to stop humanitarian catastrophe in Myanmar. French Foreign Minister applauded the agreement that is done between Myanmar and Bangladesh to repatriate the Rohingya refugees.[67] On September 24, 2018 French Minister for Europe and Foreign Affairs Jean-Yves Le Drian and United Kingdom Secretary Jeremy Hunt organized an event on the Rohingya catastrophe. The determination of Bangladesh is acknowledged in this event and stress is laid on Myanmar for the peaceful and safe return of 'Rohingya' back.[68]

United Kingdom: UK Minister for Asia, Mark Field, urged that the 'Rohingya' catastrophe as "unacceptable tragedy" and warned the Suu Kyi's to end this massacre.[69] On the demand of U.K. a special convention of S.C was held to condemn and discuss the ruthless action of Myanmar.[70] UK has contributed more than one third of the total amount contributed by the international community.[71] U.K Foreign Minister, Boris Johnson visited Myanmar and stressed on the establishment of Myanmar for an autonomous investigation of the catastrophe and hold to account that are responsible. He also stressed the establishment to take such procedures that 'Rohingya' would return back to their homes.[72] Leader of U.K Lahour Party, Jeromy Korbin demanded from Suu Kye to stop the massacre of 'Rohingya'.[73] Lord Nazir Ahmed, the 'UK Minister of State for the Commonwealth' held military of Myanmar accountable for ethnic cleansing.[74] Britain has seized its educational training course to Myanmar military in its support to 'Rohingya'.[75] The Army Chief of Myanmar, Min Aung Hlaing accused the UK for the current catastrophe as the 'Bengali population (Rohingya Muslims)' came to Myanmar under their time period.[76]

Conclusion

The crisis emerged in Myanmar on August 25, 2017 enforced almost 700,000 to 900,000 Rohingya to leave their own country and took shelter in neighbouring countries, thousands are internally displaced, almost same are killed and women are brutally raped or gang raped. International response on this inhuman catastrophe is not unanimous. Even the permanent members of UNSC are not on the same page. Rather than criticizing the establishment of Myanmar for carrying out massacre of Rohingya China and Russia supported the efforts of Myanmar to bring stability in the country. China and Russia believed that involvement of any third party can

lead to destruction rather than resolving the situation. China itself is under criticism on human rights abuses in Xinjiang provinces. U.K., U.S. and French supported the Rohingya. The leaders of these nations publically criticized the Myanmar establishment to carrying out brutal act against Rohingya. Such humanitarian catastrophe can occur in future if all the nations of the world do not take this one serious and unanimously criticized it and isolate such nation that are involved in human right abuses at such large scale.

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THE UNITED NATIONS' ROLE IN SYRIA AND YEMEN: A COMPARATIVE ANALYSIS

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Abstract: The Middle East is descending increasingly into an abyss of violence. Expectations from the United Nations (UN) as a robust, reconstructive tool towards peacekeeping and championing human rights have been met with disappointment especially because of experiences since the occurrence of the Arab Spring in 2011. In Syria, the UN has carried out a variety of roles falling in the realm of various extensions of the organisation such as the Security Council, the General Assembly and the Human Rights Council. Adoption of resolutions being beholden to interference by great powers cannot be disregarded while talking about the failure of the UNSC especially in the case of Syria. In Yemen, even though the UN acknowledges it as the largest humanitarian crisis in the world, the Organization's credentials on the Yemen conflict show that it has often circumvented important matters, leading many to believe that it is more obligated to state and/or great power interests. This paper will compare the UN's role in Syria and Yemen. It will conclude that in both cases the UN's policies subsist more as a voice for expressing dissatisfaction than a force apt for administering the political landscape. In its stead, rising powers with their own vested interests are replacing the UN. As the humanitarian crisis intensifies and the influx of refugees grows, it is being established that the UN is proving to be a redundant organisation.

Keywords: Syria, Yemen, United Nations, Refugees, Houthis, Security Council, Arab Spring

Introduction

The Middle East region is presently the most contentious region in the world. Be it civil war in Libya, economic crisis in Lebanon, the decades old Palestinian conflict or the proxy wars in Yemen and Syria, the Middle East has become a cradle of conflict. While some of the worst possible scenarios have transpired, endeavours to curb the turbulence prevalent in the region have so far failed, thus bringing into question the competence of the United Nations as an arbitrator. Long accepted mechanisms for mediation are being challenged- in essence peace efforts to resolve wars have turned more into efforts to sponsor political evolutions and transitions as showcased by events in Syria, Libya and Yemen. The ever increasing complexities in wars means that it is time to re-analyse and rethink the conciliation efforts being made by the UN and address the challenges mediators face.

In Syria, the UN has performed miscellaneous, roles in different capacities, falling in the realm of different extensions of the Organization. These include the Security Council, the General Assembly and the Human Rights Council. However, the immensity of the complications and intricacies involved such as the question of the vetoed resolutions has impeded the Council. Furthermore, adoptions of resolutions being dependent on great power occlusions is something which cannot be ignored while taking the failure of the UNSC, especially in the Syrian war. In Yemen, even though the UN acknowledges it as the largest humanitarian crisis in the world, the organization's credentials on the Yemen conflict show that it has often circumvented important matters, leading many to believe that it is more obligated towards state and/or great power interests.

Literature Review

The dereliction of the UNSC is well documented and debated. Much of the literature criticises the Council as having failed in its elementary duty to maintain international peace and security Cases such as Rwanda, Somalia and Iraq in 2003 are often cited. In the book *Delegation and Agency in International Organizations (2008)*, the author argues that that the United Nations is far from flawless, primarily because it is founded by the most powerful nations[1] which construes it largely subservient upon those countries. Thus, the power held by the Security Council is a matter of serious concern with regard to the UN structure.

In his article *The Politics of Indifference at the United Nations and Genocide in Rwanda and Bosnia (1997)* , Michael N. Barnett states that based on UN performance in cases such as Rwanda and Somalia, the high expectations from the UN were dashed.[2] The fact that the State and UN officials chose to ignore the war crimes that were being committed and gave politics precedence over humanity is what impeded action in both Bosnia and Rwanda.[3]

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In his article, *Reading "Threats to International Peace and Security," 1946–2005 (2005)* Hikaru Yamashita maintains that the fact that the UNSC could not prevent action by the US in Iraq in 2003, showcases the organisations ineptitude. That said he also states that the UNSC still has the potential for being a viable mechanism for maintaining peace and security.[4]

In his article, *Effectiveness and Ineffectiveness of the UN Security Council in the Last Twenty Years: A European Perspective (2009)*, David Hannay examines the role played by the UNSC from 1989-2009.[5] After studying cases such as that of Bosnia, Rwanda, Somalia and Iraq he concludes that the UNSC has seen more failures than successes Even though the UN's peacekeeping roles are noteworthy, there is no doubt that the UNSC is by all standards ineffective at maintaining peace in the international order.[6]

In the book, *The United Nations and Global Security (2004)*, the authors while appreciating the usefulness of the UNSC and the veto power, direct attention to the fact that the founders of the UN had already accepted that superpowers would essentially be making decisions on issues of peace and security.[7] Hereby this further perpetrated the acknowledgement that any decision in the UNSC would only hold if deemed to be unanimous by the superpowers.

Methodology & Research Questions

This paper will compare the UN's role in two countries in the same region: Syria and Yemen. It will showcase whether the UN is unified in applying its principles; or does it have a standard while applying rules across different war zones. Using the comparative method of research to analyse the data, the paper will aim to answer the following questions:

Question 1: What has been the UN's role in Syria and Yemen?

Question 2: How has the UN failed in both Syria and Yemen?

Question 3: What can the UN do to improve the situation in both countries?

Brief Overview of the Syrian War

The conflict in Syria flared up in 2011 when Bashar al Assad's forces tried to ruthlessly suppress pro-democracy protests which were an extension of the on-going Arab Spring. The present situation in Syria is a result of mix of weak opposition in the government, sectarian strife and absence of free speech. The resultant void allowed the Islamic State (IS) to rear its head in 2014. The Syrian war, now into its seventh year, has killed more than half a million people according to the Syrian Observatory for Human Rights[8], displaced more than 11 million[9] since 2011 and has divided the country into various power clusters, each striving for areas of control. According to the United Nations, 6.1 million[10] people are internally dislocated; more than 5 million[11] have fled Syria and 13 million[12] - including 6 million[13] children - desperately require aid.[14] The present humanitarian situation is ineffable- neighbouring Jordan, Lebanon and Iraq are struggling to host a flood of Syrian refugees in the face of a situation that is only escalating into destitution.

Foreign intervention has played a large role in the Syrian war. Presently, the Syrian war is a culmination of at least seven countries (America, Britain, France Israel, Russia, Syria and Turkey) as well as a number of insurgent groups. Moscow stepped into the conflict in 2015; the governments of both Shia majority Iran and Lebanon have been staunch Assad allies, while Sunni majority Saudi Arabia and Qatar have been on the other end; Turkey's main ambition is to wipe out the Kurdish groups to avoid a spill-over into its territory; the US and its allies aim to exterminate IS and Israel's aim is to prevent Iran forces from taking a hold in Syria. Over time the war in Syria has changed from a civil war to one where each party has its own vested interests, some circumventing Syria and Syrians altogether.

In April 2018, the situation became more complicated when the US and its allies carried out airstrikes outside of Damascus and Homs in Syria as a response to a supposed chemical attack on the province of Eastern Ghouta by the Assad regime. The aim was to wipe out all alleged chemical facilities in the area. While back in 2017, The Organization for the Prohibition of Chemical Weapons (OPCW) validated that Sarin and Chlorine had been used in Syria, in its 2018 report could not "confidently determine whether or not a specific chemical was used as a weapon in the incidents that took place in the neighbourhood of Al-Hamadaniyah and in the area of Karm al-Tarrab."[15]

The present spotlight is on Idlib. Idlib province is the final major rebel territory in Syria. It was first captured from the regime in 2015 and hosts nearly 3.5 million people[16] - all of which are suffering brutal conditions in overcrowded camps, without even the provision of basic facilities. The province comprises of an estimated 70,000 fighters.[17] A much hoped for development came on September 17, 2018 when President Erdogan met President Putin in Sochi and agreed to create a demilitarized zone in Syria's Idlib province[18] to thwart a likely humanitarian predicament. Though some rebel groups have conceded defeat, the largest group the Hayat Tahrir al-Sham has not yet responded.

Brief Overview of the Yemen War

Another upshot of the Arab Spring was mounting dissent against the administration of President Ali Abdullah Saleh in an already unstable country due to depraving economic conditions. The US backed Saudi-led coalition comprising of nine countries, started their operation in Yemen in 2015 in response to an appeal by President Hadi against the Iran sponsored Houthi rebels. Riyadh along with its allies aims to have UNSC resolution 2216 implemented in Yemen, which entails that the Houthis forces should surrender control of the capital, Sanaa along with all the weapons in their possession. Moreover, the resolution makes it clear that Hadi is the legitimate ruler, hence not only upholding him as the sole representative of the country but also providing legal cover for the Saudi alliance operations.

At present the focus is on the port city of Al Hudaydah where spearheaded by the UAE, the Saudi coalition is partaking in what is to date the largest operation in Yemen. Even though the UN attempted to factor in a ceasefire agreement, it did not hold for much long, and fighting resumed with much more intensity in July. The Houthi rebels have retaliated to Saudi strikes with missile attacks on Saudi territory. The situation is further complicated because the Southern Transitional Council (STC) - a self-professed body- had increasingly broiled with UN-sponsored forces in Aden. At the end of January 2018, the STC had stipulated that Hadi disband his government because it was inept and corrupt.[19] The STC believes in separation from the present government back to the two-Yemeni state situation that existed before the 90s. Additionally the STC is backed by Emirati forces. Moreover, in May 2018, the takeover of the Yemeni island of Socotra exhibited, the force majeure between the Yemeni government and its ambitious ally, the UAE.[20]

Meanwhile on the humanitarian front, Yemen faces a possible third wave[21] of a cholera epidemic. Between the beginning of the year and mid-August 2018, nearly 120,000[22] suspected cases of cholera have been reported and some 28 million people[23] are on the verge of famine.[24] There are an estimated 22.2 million number of people in need of assistance, 16,200 estimated civilian casualties since March 2015 and an estimated 2 million displaced people.[25] The UN has labelled the Yemen war as the world's largest humanitarian disaster.[26]

UN Role in the Syrian Conflict

The polarised world order has added to the chaos in Syria and is a primary reason why compared to Libya's 28 resolutions, 21 were adopted by the UNSC when it came to the Syrian war from the period 2011-2017. These encompassed aid distribution, short term cease fires and preventive measures against IS militants. However it may be noted that on at least ten occasions resolutions condemning Assad's government or the apparent usage of chemical weapons by the Syrian regime were not accepted due to defiance from the Russian quarters.[27] Stats show that in the year 2017, veto power was used five times, which is the highest number of veto power used in a single year since 1990. In order to overcome the clear divide and resultant deadlock in the UNSC, the General Assembly issued resolutions in addition to presidential statements.[28] Of the 23 resolutions adopted (circa 2018), only seven accentuated the need for passage for humanitarian aid and for clearing out civilians from Aleppo, while four dealt with investigation into chemical weapons usage and a further four called for action against IS and Al-Qaeda affiliates.[29] At this point it should be noted that three resolutions have called for political dialogues opposed to military intervention.[30]

In Syria the United Nations has had a very disorganized and ineffective response despite the fact that high expectations were attached to the organisation given that in 2012, Kofi Annan who had previously been the UN Secretary-General, was appointed as the special envoy to Syria.[31] However as with his successors: Lakhdar Brahimi and Staffan de Mistura, both well renowned in the area of conflict resolution, efforts kept oscillating. Initially the proposals lead by Kofi Annan called for the resignation of Assad- something which the regime was adamant would never happen.[32] Brahimi in his tenure acknowledged the stalemate and removed the resignation clause, instead turning to Iran, hoping that participation by an ally of Assad would help the UN

make headway. Unfortunately, despite this, not all opposition parties were on board during the Geneva II conference in 2012.[33]

As the Syrian war became more chaotic, the UN appealed to the US and Russia for assistance with the expectation that if these two powers agreed, their local proxies on ground (opposition groups) would also agree for an amicable solution. With this, an International Syria Support Group consisting of twenty countries and organizations, jointly managed by both Washington and Moscow held deliberations in 2015 to show a united front against the threat of IS. Using this as inspiration, separate efforts by Turkey and Russia also took shape in 2016.

In 2016, three rounds of the Geneva talks were held to enable dialogue between the Assad regime and opposition. Under the supervision of special envoy Staffan de Mistura the agenda points included confidence-building measures (CBMs), counter-terrorism efforts and rebuilding the Syrian constitution so as to make it more inclusive.[34] However due to ceasefire violations, these negotiations hit a deadlock. On December 14, 2017, after a fresh round of negotiations, de Mistura blamed the Assad regime for not taking part in the talks leading to a "big missed opportunity."[35] On January 26, 2018 a ninth UN round of peace talks were held. These too were a futile effort.

UN role in the Yemen Conflict

The Saudi coalition intervention in 2015 is wrong on all fronts. Moreover, the fact that it was conducted despite UNSC rules showcases that the UN is being undermined. Regardless of appeals for aid, the UN has received little and Yemen keeps falling deeper into a humanitarian catastrophe abyss. According to UN emergency standards, the Yemen crisis is placed at level three which is the highest possible classification of a catastrophe.[36]

On Yemen, the Security Council has executed eight resolutions since 2011.[37] The underlying theme in the resolutions adopted after 2015 is to punish the Houthi rebels for their non-conformity in ending the fighting.[38] UNSC Resolution 2201, in 2015 was followed by prohibition on arms accumulation as well as restrictions on travels of the Houthi rebels. The rules were in place till early 2018. The UNSC also demanded the imposition of Resolution 2216 in 2015[39] that all Houthi rebels should pull back from the territories they had captured. However, this was disregarded, as was the call for a humanitarian pause. Sideways, Riyadh stopped an investigation aimed at war crimes being committed.[40]

In order to expedite a political agreement, the UN succeeded to the extent of the formation of a National Unity Government and hence paved way for inclusive dialogue, hopeful that this would achieve "democratic governance founded on the rule of law, human rights and equal citizenship". [41]

Even though the task seemed arduous, the UN was focusing on achieving power sharing in the hope that through dialogue, peace would ensue, case in point being when the UN envoy managed to bring both the Houthi rebels as well as members of the STC to the National Dialogue Conference in 2013. However, the Hadi government thought that Benomar was colluding with the rebels and the Houthis stated that the whole process was not inclusive to begin with. Unsurprisingly, the talks failed.[42] Benomar, was succeeded by Ismael Ould Cheik Ahmed who in turn was followed by Martin Griffith in 2018. On August 10, after dozens of children died when school buses were bombed by the coalition, the UNSC arose from inertia and called for an immediate investigation. Following his briefing in early August, Griffiths announced his intention to organise a first round of consultations with the warring Yemeni parties on 6 September, 2018 in Geneva to set up a framework for negotiations and CBMs. However, since both parties refused to meet, deadlock ensued.

UN failures in Syria and Yemen

Where Syria in concerned, a concrete result of mediation attempts came ironically not from the UN but from joint sessions of the Astana and Sochi talks under the direction of Iran, Turkey and Russia. The implementation of de-escalation zones even though created for vested interests highlight the inability of the UN to carry out what should essentially fall under its control. Because these parties have taken an upper hand they are now free to decide the fate of Syria, regardless of UN consent. In the face of Turkey's incursions into Afrin and Russia's military bearing in Syria, the only response the UN has come up with is to caution against civilian deaths.

Riyadh's obstruction of aid to Yemen civilians went on for at least a year before the UNSC spoke up and finally adopted resolution 2402, which stated that all humanitarian assistance should be allowed into the country unobstructed. Despite this even now, the Saudi coalition sporadically chokes off aid flow showcasing that Yemeni civilians have to depend on the instigators of war rather the supposed mediators.

The UN's achievements in assisting anti-colonial and anti-apartheid struggles should not be disregarded. However, lately few instances have occurred where the UN has delivered momentous decisions, hence throwing the viability of the organisation into question. In short while in both Syria and Yemen, the United Nations has regressed and resultantly been replaced. Moreover, by passing the baton to super powers, there is a concern of whether the countries which make up the UN body are actually dedicated to preserving humanity.

Conclusion

While the UNSC is well-driven in its motives it has been improperly put together. The permanent membership of the UNSC has not changed since 1945- something which needs to be amended - since a more democratically representative body would be better equipped to genuinely tackle issues rather than protect self interests. In essence it does not make sense that decisions affecting the 194 countries of the world are being essentially undertaken by the five permanent members of the UNSC.

Kofi Annan explicitly stated that the UNSC needed to be reformed primarily so because the world had changed and the UN should be reflective of it.[43] At this point, a mixture of proposal for UNSC reforms proposed by the G4 seems most viable.[44] The plan calls for six permanent seats without veto power, four non-permanent seats and two African seats without veto power. In addition to this proposal, the European Union (EU) member states should vote as a single permanent member.

The world seems to have forgotten that destruction is not caused through warfare alone. Starvation and sieges also have a part to play. The real victims of course are the civilians- the people who should be the top priority for the Council. Unfortunately, this is something the UN seems to have forgotten. The United Nations was created in 1945 after its predecessor, the League of Nations failed to fulfil its responsibility in stopping the Second World War. It is an important platform for maintaining peace and security. However blatant disagreements within the council have undermined its role and if these further intensify could lead to enormous repercussions for the very people whose rights the UN is supposed to protect and champion.

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THE UPSURGE OF YOUTH CULTISM IN NIGERIA: ALLURES TO INITIATION IN BHAHUMONO REGION

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Abstract: *Despite government interventions, there is an annual upsurge of cult initiation and its related crimes. Among a myriad, cult groups commonly practice rape, kidnapping, theft, rival killings and drug abuses. These practices have caused unrest in many societies of the country. Even though people, especially parents dread the mayhem resulting from these practices, young people both in rural and urban communities still surrender themselves for initiation before the age of 18. This ordeal has become a norm even in Bhahumono region where at least a member in either one or more cult groups is in almost every family. It is not clear as to what might be the specific acuities of youth that resort to cultism. The nexus was unravelled using an exploratory sequential research design. A snowball sampling technique informed the sampling of participants until the point of saturation. Open-ended and closed-ended questions guided the data collection. Atlas-ti version 8 and SPSS version 24 computer-based data analysis tools were used to analyze the data. 'Urge for influential looks (15%), the quest for protection (14%), crush on lifestyle (12%), and desires to share in common with peers (11%) were key findings. Other reasons include the drive to look rugged and fearful and the need for assistance. The study recommends that youth be sensitized on the implications of cultism and that strong security measures be put in place to protect them from being recruited within their areas. Further examination to understand if the underlined expectations were met is also suggested..*

Keywords: Crimes, cultism, society, unrest, youth.

Introduction

Since the 1980s, youth secret cultism (sometimes referred to as confraternity movement) in Nigeria has attracted global concern and numerous discourse on its negative impacts and control.[1] Many are beginning to wonder if the praxis that has occupied a larger segment of the human socioeconomic world exist with humankind from its origin.[2] The dilemma of cult activities is widely recognized, grounded, rooted and culturized in many societies. It has been celebrated by young and old, appreciated by rich and poor, embraced by educated and non-educated and practiced by female and male.[3] This practice is gradually shifting from the secret settings in the dark (which qualifies it a 'secret cult) to a more open social platform where members convene in the public to dine and wine (although, to strengthen social ties and cohesion) but also perpetuate atrocities.[4] This progress has given it a stronger edge to unfold in dimensions as members commit the felony in the public without fear of persecution. One cannot tell if this flamboyance were because of poor security measures or the level, in which such practice is accepted in modern societies, despite its deadly venom.

Scholars have proved empirical nexus of cultism and high crime rates.[5,6] Unfortunately, despite several recommendations gathered from numerous studies to adverse its negative impact, these practices keep seething even worst, as more people across categories got initiations to expand and strengthen the movement.[7] It is against these odds that, instead of the general issues that are concerned with the peripheries of cultism; this study saw the need to focus on what ignites the interest of becoming a cultist. The outcome might go a long way to cut down on initiation by sensitizing potential individuals on the vise, whose multiplying effects would shrink the cults-growing exodus. Apparently, a slash in potential members would be a proportionate reduction in cult-related crimes. More so, polices are prone to be more active on a governable population, in the case where very few will be left in the movement.

Unlike in the 60s where cult initiation in Nigeria was limited to students in tertiary institutions, it has snowballed to involve youths that are not in school and have no intention to acquire formal education.[8] Many have expressed frustrations that leaving such practice in the hands of illiterates will

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not only destroy its intrinsic value but cause controversies and calamities.[9] Unfortunately, the envisaged ordeals are ongoing in both urban and rural regions outside university territories.[10] Crimes such as robbery, theft, rape, kidnapping, rival killings, and drug abuses are common in the movement, resulting in mayhem and fear, irrespective of the region.[11] Consequently, the majority of people hold strong acuities that crimes masterminded the introduction of the confraternity.[12] In order words, many resorts for the initiation to benefit on cult-related crimes. Some have argued that confraternity is a platform that brings people of like minds together to integrate, and share strategies to improve their material and psychological prowess, thereby adding meaningful value to their lives.[13] It is not clear which of these fallacies is authentic. However, an understanding of how to resolve the negative impacts of cultism will be significant in building a better society for the masses.

Overview of cultism in Nigeria

Confraternity movement in Nigeria evolved in 1952 with a group of seven intellectual friends, having Wole Soyinka as the leader.[14] The movement named the "Pyrate Confraternity" was an affiliate of the elite University College, Ibadan (previously part of the University of London).[15] The essence is to differentiate the elites from stodgy arrangements and its pretentious products in a new educational institution different from a culture of hypocritical and affluent middle-class, which differ from alienated colonial aristocrats in higher institution of learning.[16] The membership was open to reputable male students, and many were inspired by the Vienna circle. Unfortunately, suspension of members who failed to meet the expected standards of the pirate in 1972, and other crimes in relation to the student crises on campuses in the late 1960s informed the formation of other confraternities.[17]

In 1965, arrangements had begun on the establishment of the Supreme Eiye Confraternity (also referred to as the National Association of Air Lords) at the University of Ibadan, which went across over 300 institutions in the 1980s.[18] As at 1990, the Neo-Black Movement of Africa (also known as the Black Axe) already evolved in the University of Benin in Edo State.[19] Eternal Fraternal Order of the Legion Consortium (also known as the Klan confraternity) begun at the University of Calabar in Cross River State, as well as the Supreme Vikings Confraternity (called the Adventurers), the Family Confraternity (known as the Mafia) in Abia State University.[20] The Brotherhood of the Blood (also called Two-Two or Black Beret) started in Enugu State University of Science and Technology, and the Victor Charlie Boys evolved in Rivers State University of Science and Technology.[21] Almost all the higher learning institutions in the country are victims of the circumstances of youth cultism by 2018.

Following its outbreak in the 1990s, which extends cult practices beyond the boundaries of the higher learning institutions, a host of the legion, street, and creek groups came to existence.[22] Groups such as the Night Cadet, Second Son of Satan (SSS), Sonmen, Temple of Eden, Mgba Mgba Brothers, Trojan Horse, Jurists, Gentlemen Clubs, White Bishops were introduced.[23] Also, Dewell, Deebam, Icelanders (German), Fame, Dreaded Friend of Friends, Executioners, Eagle Club, Black Scorpion, Fraternity of Friends, Red Sea Horse, Daughters of Jezebel, Black Brazier, the Damsel and the Viqueens and also evolved.[24] At this point, confraternity practices escalated dramatically to almost all the higher learning institutions and communities of the country. Both students and nonstudents were involved.[25]

Even though many people, especially parents dread the mayhem resulting from these practices, the majority of young people still surrender themselves for initiation before the age of 18 in many societies.[26] Bahumono region is no exception, as at least a member in either one or more cult groups exists in almost every family in the villages. Empirically, there have been controversies as to why young people join cults despite its predicaments? This is an issue of concern. In as much as many were compelled and forced to join,[27] majority voluntarily and willingly identified with a cult group to achieve evil and inhuman desires, to have protection, become famous and rich.[28] Unfortunately, little

is known about those who are not students, as several studies anchored on students. This set the stage for this investigation.

This study draws on the theory of triadic influence, which sees human actions as driven by three streams namely: ultimate, distal, and proximal. The specific concern is on the ultimate triadic influence which holds that human behaviors are subjects of factors they little or have no power to control. An author mentioned the cultural environment,[29] and expressed views on political influences, religion, socioeconomic issues, traditional leadership, and urge for supremacy while.[30] This in a way relates what some authors have revealed that top politicians, religious leaders and personnel of private and public establishments hire cult members to carry out deadly missions, with financial support and provision of sophisticated weapons.[31] [32] This confirms arguments that some University management have used the cult group as an instrument to threaten and deal with students who trouble the institution. Influential stakeholders in the society use them as political thugs and guards.[33] For instance, there is an ongoing allegation that the All Progressive Congress (APC) in Bayelsa State chapter of the country is "recruiting cultists as part of its preparations for the 2019 general elections."[34] This has been the case in many other states and political parties. Appreciating cultism to this extent has influences. Aside from the economic implication in terms of incentives, it creates opportunities for people with ulterior motives to access weapons. These arguments conform to the theory of ultimate triadic influence.

Given that even the management of higher institutions of learning and influential stakeholders has resorted to using the cult groups instead of the legal systems to resolve issues,[35] [36] one would argue that the ordeal of cult practices goes beyond students and the youth. In other words, staffs in institutions of higher learning and prominent stakeholders in the society are influences of such practices. In addition, Nigeria currently has economic crises and unemployment issues that have pushed many to hardship;[37] it is possible that one identifies with such movement to earn a living through illegal means, just as one author mentioned that some students joined the cult for enrichment.[38] Obviously, such drives will always betray the original purpose of differentiating the elites from "stodgy establishment" in which confraternity or youth cult movement was established. Scholars have argued that cult and co-fraternity have become different from what the Laureate and his colleagues envisaged, during the birthing of Pirates Confraternity.[39] [40] If this is the case, then the government needs to strengthen not only security measures but economic underpins, influencing a broad array of cult behaviors in the country. This could revamp the upsurge of cult initiations. It is against these arguments that this study unpacked what could be the reason for becoming a cultist in Bahumono.

Materials and methods

Bahumono is a homeland settlement in West Africa located in the Southeast region of Nigeria. It is part of the Central Senatorial District of Cross River State, under Abi Local Government Area. It has nine villages namely: Usumutong, Ediba, Ebom, Enong, Ebijakara, Afafanyi, Abeugo, Igonigoni 1, and Igonigoni 2 with a population of approximately 60,000.[41] It borders Ndibe, Abeomege, Abriba, and Abeomege of Ebonyi State on the East, with a river separation. To the north, it has Itigidi across the river demarcating Ebijakara, Ebom, Igonigoni I, Igonigoni 2, Afafanyi, Abeugo, Ediba down to Enong. It also shares a common boundary with Ekori and Ugep (Yakurr LGA) on the West emerging from Enong, Ediba down to Usumutong, and to the South with Ijom (Biase LGA) which borders Usumutong, Ebijakara, and Ebom. All these communities have one language (*Ohumono*) in common and have recorded several cult related unrest, some even amount to serious injuries and loss of lives.

An exploratory sequential mixed research design was used to unpack the allure of youth cultism in the area. The study used a snowball sampling technique where participants maintain the chain of referring other participants until saturation was met. This was because it is difficult to identify most of the members since initiations are secret. One-on-one participatory data collection approach using semi-structured questions informed the exploratory phase of the study. This was profiled using thematic method through Atlas-ti software version 8. Census of the first phase sample was the source of data in

the second phase of the study, which was quantitative and confirmatory in nature. A questionnaire, requiring responses on a Likert-type scale was used to collect data and was analyzed using cross-tabulation through the Statistical Package for the Social Sciences (SPSS) version 24.

Result and Discussion

There are situations although, where young people are being kidnaped and forced to join a cult. In the most liberal situation, some deceived, convinced and compelled by their friends, colleagues or mentors to join. However, this study revealed several personal reasons why young people in the area, specifically those who are not in higher learning institutions joined cult movements. Boredom, the quest for protection, soar for vengeance, enmity, ruggedness, vengeance, urge to be influential, desires to join peers and share in common, zeal to establish networks and connection and personal crush were the driving factors found common amongst. Figure 1 presents the concept position of personal reasons for joining a cult in the area.

Figure 1: Factors that Draws Youth to Cultism
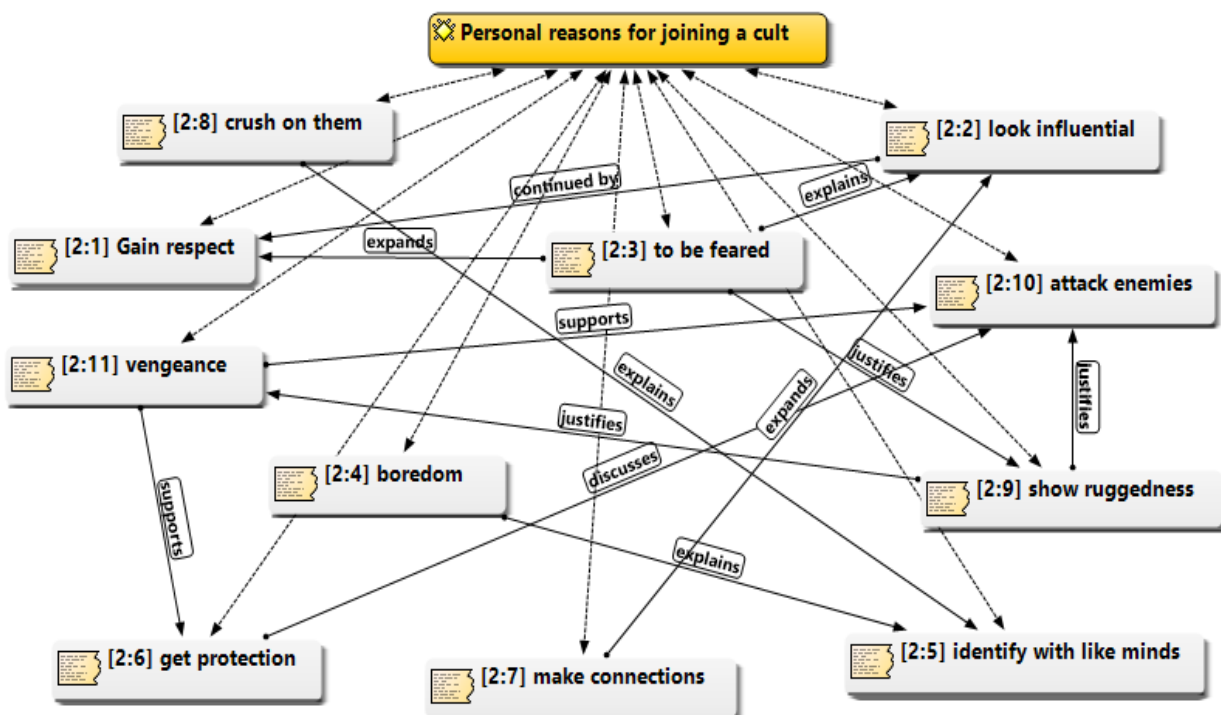
Ranks of these factors in terms of priority revealed the 'urge for influential looks' constitutes the largest proportion of 15% out of the 11 factors profiled. The quest for protection (14%) came second, followed by personal crush (12%), and desires to share in common with peers (11%), with zeal to establish networks and connection (4%) taking the least. Figure 2 presents ranks of factors that draws youth to cultism.

Figure 2: Ranks of Factors that Draw Youth to Cultism
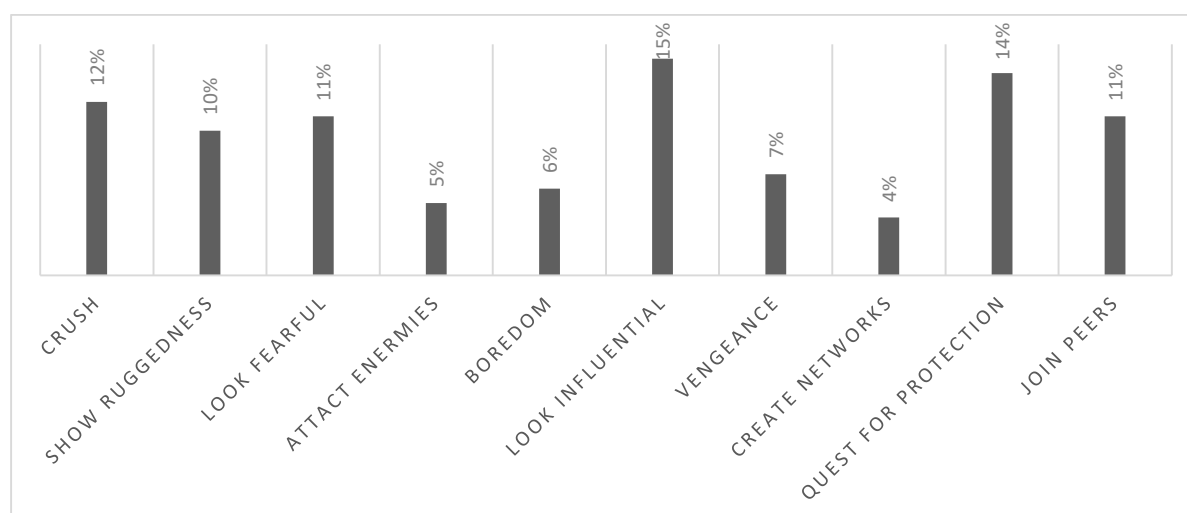
From findings, people admired the concept and behaviors of some cult members. For instance, a young boy confessed that *"I was in love with the colors, putting on a black jean with a red barrette during festive periods in our community makes them cute."* Unfortunately, nonmembers cannot dress in that code. The implication is that anyone who desires to be dressed in that form must identify with the group otherwise, end up being attack and beaten. This argument confirms[42] who stressed that cultural environment influences people's behaviors. It could be stressed that the protection of human rights will allow for favorite dresses without implications.

A participant noted, *"I am always intimated by people around the community." "People drink in my bar without payments; I resorted to joining a cult so that my men will help in dealing with these people."* An author has given a clearer picture of how cult members convince prospective members with promises of protection.[43] Although, the author's arguments focused on student's comfortability, examination, and secured life while in university. This phenomenon implies that there is a lack of security measures, legal systems, and awareness on how to harness means of fighting a case justice rather than cultism. Issues relating to land expropriation, politics, girlfriends, and disputes in workplaces were also mentioned in having a role to ignite the urge to belong to a cult. Apparently, people prefer to deal with their opponents illegally. The implication is that most often groups will clash and cause unrest in the area.

Just like what has been found that confraternity provides platforms for improvements wherein, people of like-minds convene and share in common,[44] the majority picked interest in relating with people of repute in order to be recognized. Higher education, especially the university is very much adored and respected in these villages. As such, students, irrespective of their academic background, level of studies and family background are highly respected. To this fact, those in the villages hold the notion that becoming a cult member will earn them similar respect as that of students, given that university is the cradle cultism. This also supports the argument that if an individual aim to improve a lifestyle, success in once behavior can influence changes in other behaviors.[45] This is most obvious when the two behaviors intertwine.

Unlike some who viewed cultism with positive lenses, many were into it to prove their ruggedness. *"People believe so much believe in us." "One will never have their stamina proven in this village except through these practices,"* said one of the members. This in a way shows that people intentionally join the cult for selfish interest. This has been stressed in the literature that a majority of students willingly identify with cult groups to fulfill their evil and lustful desires.[46] This is in connection with an author stressed that cultist makes personal gains from their practices, being hired by top

politicians, religious leaders and managers in both private and public sectors to carry out deadly missions with a huge ransom.[47] For instance, a member notes that *"You could attack anyone at any time; even take what belongs to others forcefully without being questioned." It gives us the liberty to operate as kings and lords in our territories because everyone is frightened.*" Given this situation, other young people in the area might join them either to get the benefits of illegal deals or prevent attacks that might come to nonmembers. These factors set a stage for ranking to understand which amongst the allures is pertinent.

Conclusion

Pertinent to the study is the fact that 'cultism' dilemma has been widely researched but the praxis in rural Nigeria is yet to be dealt with in sufficient measure. Even though cult practices have been dominant amongst nonstudents in rural and urban regions, the scope of discussions on allures for initiations was limited to students. It is without the doubt that institutions of higher learning are the cradle of the cultism. However, an understanding of such practices amongst nonstudents could assist in the control given that prospective students have their base in social communities. The possible approach will be on active awareness and policy measures to discourage membership. Slashing the population systematic wherein, prospective members have a basic orientation to restrain, while pulling out potential members will bring a meaningful growth the control of cultism. The exploratory study revealed that; urge to be influential, the quest for protection, personal crush, and desires to join peers were the major driving factors. Zeal to establish networks and connection, show ruggedness, attack enemies, vengeance and boredom were other factors identified. This study recommends proper awareness and severe sanctions on victims. Adapt proper security measures and strengthen the legal systems such that justice is enhanced to promote human rights. It could go a long way with policy measures to understand if expectations of the victims were met after initiations. Continues study should be on the correlation between poor economic performance and increase in cultism. Furthermore, it is important to examine the relationship between community stakeholders and cult practices.

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Academic Session: 10

Security, Peace and Human Rights Vulnerabilities in South Asia

Session Chair: Prof. Sajjad Naseer

HUMAN RIGHTS VIOLATIONS BY THE STATE: A CASE STUDY OF IOK

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Abstract: *Human rights violations on the basis of ideology, religion, sect, caste, creed, and ethnicity have been a recurring theme in the history of mankind. This sad state of affairs persists even today, in the extensively globalized world. In the contemporary era, the international community has come a long way in evolving the international treatise of human rights but, despite all the measures taken by international community to protect human rights, international community remains unable to protect Human Rights (HR) against the violations of individual/community rights by the state itself. Debating on the state and human rights, this paper highlights the plight of Muslims in Indian Occupied Kashmir (IOK) as a case study to analyze the human rights violations by India and the failures of international institutions in this issue. This study also identifies the inseparable link between South Asian stability and human rights violations by Indian government in IOK. It concludes by stressing that the need of human rights protection of Kashmiris is the prerequisite for a durable and long-lasting peace in South Asia.*

Introduction

Human rights violations are as old as the history of mankind and, throughout the history, various measures and initiatives have been taken by the empires and, afterwards, states to define and protect human rights. It is debatable nonetheless as to what extent these definitions and parameters served the purpose. In the contemporary era, the Universal Declaration of Human Rights (UDHR) is an international document which comprehensively defines individual rights from different dimensions such as gender, religion and ethnicity. UDHR is a globally acknowledged resolution that has been ensuring human rights since 1948 and other international treaties and documents on human rights are based on the guidelines provided in UNDHR.

International community has come a long way in defining and describing universal human rights from different perspectives and angles, the violations continue, more ironically by states which are party to the international human rights agreements. Although the role of international institutions, in the evolution of international human rights regime is laudable, it has been unable to protect people against the violations of individual/community rights by the state itself. In this milieu, Kashmir is but one example. Kashmir is such an intractable issue whose humanitarian dimension is ignored as if it neither exists nor affects humans living in the Valley. Truly, it is a festering wound in Indo-Pak relations and, one of the reason why, it has always been viewed from a geopolitical and historical prism. Its humanitarian aspect has, more too often, been ignored and overlooked.

Lost in the tortuous path of geopolitics, the plight of the Kashmiri people remained untold and their miseries left ignored. For the Kashmiri men and women, who pass through joys of life and agony of death as a matter of daily routine, humanitarian issues are more relevant. It is true that history provides the guiding narrative for resolution of Indo-Pak disputes but viewing the Kashmir dispute through humanitarian lens is more credible to determine who the victim and who is the usurper of the fundamental rights of the people of Kashmir. Yet, not to deny the importance of geopolitics in resolving the issue of Kashmir, this study does emphasize the significance of human rights violations as a critical component of conflict resolution of Kashmir crisis.

Written in this context, this paper is an endeavor to highlight the human rights violations committed by India and the role of international community in this issue while assessing how this issue has created instability in South Asia. In this regard, the following mentioned questions are the theme of discussion:

1. How India is violating human rights of Kashmiri people?

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2. Why international community is unable to protect human rights against state-led violations in IOK?
3. How human rights violations by India in Kashmir is causing instability in South Asia?

This paper has been divided into four sections. First section, *International Treatise on Human Rights*, enlists the major documents of international human rights law which are binding on states. Second section, *State and Human Rights*, delves into the debate of state sovereignty and human rights. Third part is an overview of human rights violations which have been committed by India in the IOK. Section four traces the history of involvement of international community in Kashmir issue, since its inception in 1947, while analyzing why this issue is caught in Indo-Pak politics and how international community has been unable to resolve the issue so far.

International Treatise on Human Rights

Guided by the UN Charter, the Universal Declaration of Human Rights is the primary international document on human rights. It has 30 articles that describe the basic human rights for all humans in all parts of the world.[1] According to this international document, all humans are born equal and free. They have right to life, trial, privacy, movement, nationality and seek a safe place to live in. Slavery, any form of discrimination, torture, detention and restriction to movement are in utter contradiction to human rights.[2] This document also states that equality before law and protection of human rights by law also fall under the domain of human rights.[3] UDHR is the guiding document for all other international treatise on human rights.

THE 30 UNIVERSAL HUMAN RIGHTS

Article 1: Freedom & Equality
Article 2: Human Rights for All
Article 3: Life, Liberty & Security
Article 4: Freedom from Slavery
Article 5: Freedom from Torture
Article 6: Legal Recognition
Article 7: Legal Equality
Article 8: Legal Assistance
Article 9: Freedom from Unlawful Detainment
Article 10: Fair & Public Trial
Article 11: Innocent Until Proven Guilty
Article 12: Privacy
Article 13: Domestic & International Mobility
Article 14: Asylum
Article 15: Nationality

Article 16: Marriage & Family Equality
Article 17: Personal Property
Article 18: Freedom of Religion
Article 19: Freedom of Expression
Article 20: Peaceful Assembly
Article 21: Democratic Participation
Article 22: Social Security
Article 23: Fair Employment & Right to Unionize
Article 24: Rest & Relaxation
Article 25: Health, Wellbeing & Security
Article 26: Education
Article 27: Culture & Community
Article 28: Social & International Order
Article 29: Communal Responsibility
Article 30: These Rights are Indisputable

Source: "Universal Declaration of Human Rights, *The United Nations*, http://www.un.org/en/universal-declaration-human-rights/

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) further elaborate the civil, political, economic, social and cultural rights. Under the Article 1 of ICCPR, the state commits itself to ensure the right to Self-determination of people.[4]These two international covenants and the Universal Declaration of Human Rights are collectively called as the International Bill of Human Rights.[5] Elimination of racial and gender discrimination, women's rights and Children's rights have been further elaborated and enshrined in many international documents. There are 9 international treatise on human rights and several other optional protocols. Some of them are given below.

Table 1: International Treatise on Human Rights

Sr.no	International Treatise on Human Rights	Adopted	Entered into Force
1.	The Universal Declaration of Human Rights	10 December 1948	
2.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 December 1966	3 January, 1976
3.	International Covenant on Civil and Political Rights (ICCPR)	16 December 1966	23 March, 1976
4.	Optional Protocol to the International Covenant on Civil and Political Rights	16 December 1966	23 March, 1976
5.	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty	15 December 1989	11 July, 1991
6.	International Convention on the Elimination of All Forms of Racial Discrimination	21 December1965	4 January, 1969
7.	Convention on the Elimination of All Forms of Discrimination against Women	18 December 1979	3 September, 1981
8.	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		
9.	Optional Protocol to the Convention on the Rights of the Child on the involvement of the children in armed conflict		

State and Human Rights

For long, state made 'human rights' it's reserved domain and justified it under the narratives of sovereignty. Even so a state, despite having sovereignty in its internal affairs, is not free to do whatever it wants to. The UN Charter and international treatise morally and normatively bind a state to ensure human rights protection to its people. Therefore, state sovereignty cannot be interpreted as complete impunity to human rights violations and abuses. In modern times, state sovereignty is interpreted in combination with the international law and global normative standards while giving due diligence to other states' sovereignty.[6] There is an extensive literature on state and human rights which covers the debate on this very important subject.

In 2000, Allain Pellet maintained that, in the current global settings, sovereignty is not a defense anymore for a state which commits gross human rights violation.[7] In 2004, Jack Donnely propounded that human rights have not undermined or eroded the state sovereignty but human rights have modestly transformed the concept of Sovereignty. In his view, now, human rights have acquired more space in human societies particularly in the practices of state sovereignty.[8] In 2008, Christine Min et al discussed why states ratify the international treatise on human rights despite knowing the potential cost in terms of Sovereignty. According to them, normative pressures and limitations in the global arena compel a state to sign and ratify these international documents on human rights.[9]

There are various examples of the states which, having been party to various international treaties on human rights, commit gross human rights violations. Here, comes the question of bringing state under the global normative pressure for ensuring the human rights of the people. Israel, India and Myanmar are a few examples which are committing the inhuman acts and getting away with impunity.

Human Rights Violations by India: IOK a Case Study

"Kashmir is a conflict that has robbed millions of their basic human rights, and continues to this day to inflict untold miseries."

Zeid Ra'ad Al Hussein, Commissioner for Human Rights[10]

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Farhana Qazi, Author of The Secrets of Kashmir ValleyUN High[11]

The paradise on earth, Kashmir is a place of great tragedy. It is now amongst the oldest conflicts and the most-militarized zone on earth. The people of Kashmir have been robbed of their fundamental rights, unfortunately, on daily basis. Caught between the political tussles of India and Pakistan, the life of Kashmiris have reduced to pain and anguish. They are not the master of their destiny. No Kashmiri is living a normal life. Their women are molested, raped and widowed by Indian army. As residents of a modest culture, the sexual harassment and trauma these women bear mostly go unreported.[12] The home to the largest number of half-widows, Kashmir is also a metaphor of plight of these half-widows who get old and then die awaiting their husbands without knowing whether he was dead or alive. The sons of Kashmir are detained routinely, tortured to an extreme level, blinded by pellet-guns and buried in mass graves. In Indian-Occupied Kashmir, the locals cannot walk in the street without any purpose. [13] The Kashmiri's right to use ballot is being suppressed by bullets and pellet-guns.

In fact, no one is free there. Such is the plight of Kashmiris whose homeland is Kashmir and such is the state of human rights in the land whose name is Kashmir. The human rights violations in Kashmir are not random but they are structured in the administration, constitution and laws that India formulated specifically for curbing the freedom of Kashmiri people. According to the latest UN report on human rights violations in Kashmir, the Armed Forces Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA) created structures that provide impunity to the Indian army and police while jeopardizing the Kashmiri's right to appeal for justice and report human rights violations.[14] Extrajudicial killings and murders have become a norm in the IOK and the above mentioned instruments of brutality and suppression of human rights, at the disposal of Indian state, only exacerbate the sorry state of affairs of human rights in Jammu and Valley. The human rights violation by India is nothing new as it has been documented extensively in various reports. In a 1993 Human Right Watch report mentions the impunity which the Indian armed forces have while killing a Kashmiri. Farhana Qazi succinctly penned down the agony of a mother, Mughli, who kept waiting for her missing son and died waiting. Mughli talked to Ms. Qazi and said," I want to know the truth. If he is dead, I want to give him proper burial. I would hug his grave." Ms. Qazi narrates that Mughli dies without knowing whether his beloved son was alive or not. Her soul remained in agony. Ms. Qazi passionately further the cause of humanitarian aspects by writing "If there was ever a woman who should be happy, it was Mughli. If there was ever a mother who should be heard, it was Mughli."[15]

Mankind is one race and all humans have the right to live a better life but the gross human rights violations that India is committing in Kashmir are of its own kind. According to the latest UN report on Kashmir, India is curbing following rights of the Kashmiri people:

- Lack of access to justice and impunity to Indian armed forces
- The structural and institutional impediments to providing justice
- Administrative detentions
- Excessive use of force
- Civilian killings in 2018
- Use of pellet-firing shotgun
- Random arrests and detention (including children)
- Torture
- Forced disappearances
- Violation of health rights
- Violation of the right to freedom of expression
- Violation of the right to education
- Crackdown on human rights defenders and journalists
- Sexual violence

- Human rights abuses by Indian armed forces[16]

The Kashmir Conundrum: International Community and Instability in South Asia

International community began to engage in the Kashmir conflict as early as its eruption in October, 1947. Since then, there have been many phases and modalities through which it remained involved in resolving this intractable dispute. Earlier, the UN was very active and the UNSC Resolutions guided the path to resolution of the dispute in the light of fundamental human rights of the Kashmiris.[17] Later on, it is claimed that, in the wake of Indo-Pak war in 1971, the Simla Agreement confined the dispute to the bilateral arena. On the contrary to this, Pakistan maintained its stance that, even as Kashmir dispute was agreed to resolve through bilateral means, the Simla Agreement was negotiated on the basis of UN Charter, implying internationalizing the dispute was never out of the options.[18] True that the human rights of the people of Kashmir got stuck in the Indo-Pak politics but it is equally true that the major powers of the world either became less involved or saw the issue through geopolitical lens. The humanitarian aspect of the Kashmir dispute, unfortunately, has been overlooked. However, above all is the infectivity of the UN in implementing its resolutions in Kashmir.

India brought the issue of Jammu and Kashmir to the UN in January 1948. The US and UK played a proactive role in resolving the dispute because earlier they preferred to champion the cause of human rights and the later left the Sub-continent with an unfinished agenda of the partition. Other states largely remained at the back of US-UK initiatives and sent seasoned diplomats who were part of various delegations that visited Jammu and Kashmir. Partly, it is also due to the efforts of the delegations that Kashmir Issue is still alive, be it in seminars and conferences only. In response to the India's request, the United Nations Commission for India and Pakistan (UNCIP) was established. UNCIP called for a ceasefire, withdrawal of both Pakistan's and India's armies, and holding of a plebiscite under international supervision. This, till date, has not been implemented and international community played the role of bystander mainly.

Pakistan conditioned the withdrawal of its forces with the withdrawal of Indian forces first although the former was ready for the plebiscite. India never agreed to wither of the options despite the fact that the plebiscite grants the very fundamental right to the Kashmiri people, *Self-Determination*. UN sent a series of high-level missions for resolving the issue but they remained futile mainly due to Indian intransigence. The UN Military Observer Group that was stationed along the ceasefire line, however, did remain successful in de-escalating the tensions between India and Pakistan until 1962 war erupted. Nonetheless, this Group too couldn't do much in terms of granting human rights to the Kashmiri people. These developments were reflective of the unfortunate fact that the Kashmir issue was looked through political prism instead of humanitarian perspective.

From outbreak of 1965 war, Soviet Union also played an active role in this dispute. In 1966, Prime Minister of Soviet Union Alexi Kosygin facilitated the Tashkent Agreement which did end the conflict but could not break the status quo. Kashmir's political future remained caught in the political intransigence of two rival countries. In 1971, Kashmir triggered another war between India and Pakistan. Here again, the Soviet Union mediated and helped for another peace agreement, Simla Agreement, in July 1972. In 1999, Kargil Conflict broke out, in which US mediated the crisis and the Kashmir Issue was brought to the previous status quo. Thus, the stalemate lingered on and the human rights violations prolonged. Before the Kargil Crisis, the UNSC and Group of Eight offered to mediate between India and Pakistan and, even after the crisis, the US presidents, George W. Bush and Bill Clinton urged the two nations to play a more "facilitating" role if the Pakistan and India agree to mediation. Indian stubbornness clouded any prospects of resolving the issue effectively.

Meanwhile, India began to temper with the demographic elements in the Valley and the human rights violation skyrocketed. In the late 1980s and 1990s, when the armed struggle of Kashmiri people was on its peak and reached to Doda district and Rajouri-Pounch, a large number of Hindu population began to migrate close to the International Border and Jammu. This development alarmed the ring bells when a large number of Hindu community started buying lands in Jammu. It all highlighted a well-planned policy to alter the demography of Indian Occupied Kashmir.[19] During this period, international community turned a blind eye to the miseries and plights of the Kashmiri people. The period of early 2000s is more of an extended tale of 9/11 and western narratives on the Global War on Terror (GWOT). It is also the period which is marked by less-proactive diplomacy by Pakistan, due to its engagement in GWOT, while India was successfully selling its narratives under the pretext of 'Rising India, Shining India." The lucrative benefits that a large democratic (so-called) state loomed large over the profitless (humanitarian) aspects of Kashmir Issue.

Later on, in July 2016, the brutal murder of a young Kashmiri, Burhan Wani, the mass killings, pellet-gunning and atrocities of the Indian state came in open. A New Intifada (Uprising) brought the issue of human rights violation by India to the forefront in the global arena. Jammu and Valley heard the old anthem again:

My Shangri-La beneath the summer moon,
I will return again.
Like the dust that lifts high in June,
When moving through Kashmir.

In July 2018, the report of the Office of the United Nations High Commissioner for Human Rights (OUNHCHR) exposed the gross violation of human rights that Indian state is committing in Kashmir. With this report, it is apt to say that the conscience of international community is awakening again. Yet again, the issue of implementation still remains unanswered.

Conclusion

Success stories of human rights revolve around the protection of HR where state is not at back of violations, It is unable to prevent/change state behavior in case of violations by the state itself, This passive approach of international community is primarily due to guarantee of sovereignty by UN charter which explains that outside actors cannot interfere in domestic affairs of any state. States exploit this clause of UN to defy individuals/community rights of fundamental freedoms and the right of self- determination, this has been the root cause of HR violations in various countries like Myanmar and India. The international community has been unable to bring peace to the Valley because this issue has been viewed from security prism.

The tussle between the two arch rivals in South Asia- India and Pakistan, is one of key impediment of regional peace and stability, which is linked with human rights protection in IOK. International community should take Kashmir Issue from humanitarian perspective. There is a need to distinct between state sovereignty and human rights violations. The protection of human rights is a primary obligation of international community and any state. Protection of Kashmiris from despotic treatment of Indian government will be the starting point of durable solution of this long lasting issue between nuclearized rivals of South Asian region. It will pave the way towards regional peace and stability.

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SECURITY, PEACE AND HUMAN RIGHTS VULNERABILITIES IN SOUTH ASIA: A CASE STUDY OF PAKISTAN IN THE BACKDROP OF WOT

Fehmeedah Khalid *
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Abstract: *State narrative about security has entirely transformed after 9/11. Security measures have been taken by the internal and external stakeholders to ensure peace and security in the South Asian (SA) region. In the struggle for achieving peace, appalling human rights violations were committed in the name of War on Terror (WoT) in the South Asian region, while the most affected countries were Pakistan and Afghanistan.. Pakistan has been dealing with the unwanted WoT since 9/11, at the expense of its own human and material resources. Pakistan's security forces have carried out various military operations in the country to root out terrorism such as Operation Rah-e-Haq 2007, Operation Rah-e-Rast 2007, Operation Rah-e-Nijat 2009, Operation Zarb-e-Azb 2014 and most recently Operation Radd-ul-Fasaad 2016. National Action Plan (NAP) of 2014, the Protection of Pakistan Act (PoPA) 2013, that later have been shifted to the anti-terrorism courts (ATCs), and military courts were also established in 2016 to deal with terrorism and extremism. In this article, Pakistan is taken as a case study to analyze the vulnerabilities of human rights (HR) in South Asia using qualitative method (surveys). This study aims at exploring the linkage between security measures and resultant upsurge in HR violations in Pakistan from 2007-2017. It will also analyze how HR breaches have aggravated particularly in past ten years since WoT was imposed in Afghanistan and its trickledown effect on Pakistan.*

Keywords: Narrative, Vulnerability, Security measures, Military operations, WoT, South Asia, Afghanistan, Pakistan

Introduction

I cannot believe that there can be a trade between the effective fight against terrorism and the protection of civil liberties. If as individuals we are asked to give up our freedom, our liberties, our human rights, as protection against terrorism, do we in the end have protection?

-UN Secretary-General Kofi Annan, September 2006.

The cost Pakistan has paid for becoming an ally of the US in the War on Terror (WoT) is huge. In its pursuit of the US-led WoT, the Pakistani government has taken different steps and formed policies to counter terrorism. However, in this battle while the government, to a greater extent, succeeded in combating terrorist elements, it also stumbled in certain domains and could not fully ensure protection of fundamental rights to all, granted by the Constitution of Pakistan.

This research paper provides a brief historical overview of WoT. The first section deliberates upon the importance of security, peace and human rights globally under UNO Charter and it also looks at peace, security and human rights situation under Pakistan's Constitution. The second part discusses Human Rights (HR) Violations in South Asia i.e. India, Bangladesh, Afghanistan and Pakistan. Third section explores the security measures undertaken by the Government of Pakistan and consequent upsurge in HR violations from 2007-2017. This section will highlight the increase in HR Violations in past ten years since WoT was imposed in Afghanistan and its trickledown effect on Pakistan. The final part analyzes views of the experts, researchers, intellectuals on WoT and breaches of human rights and will offer policy recommendations and way forward.

Historical Background

After 9/11, the definition and understanding of terrorism has evolved internationally. A glance on the literature on terrorism reveals that literature on terrorism started appearing in the early 1980s although difference of perceptive prevailed. Prior to September 11 2001, 'terrorism' had generic connotations. As "the first use in English of the term 'terrorism' occurred during the French Revolution's Reign of Terror, when the Jacobins, who ruled the revolutionary state, employed violence, including mass executions by guillotine, to compel obedience

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to the state and intimidate regime enemies".[36] "The association of the term only with state violence lasted until the mid-19th century, when it began to be associated with non-governmental groups. Anarchism, often in league with rising nationalism and anti-monarchism, was the most prominent ideology linked with terrorism. Near the end of the 19th century, anarchist groups or individuals committed assassinations of a Russian Tsar and a U.S. President".[37]

In the 20th century, "terrorism continued to be associated with a vast array of anarchist, socialist and nationalist groups, many of them engaged in 'third world' anti-colonial struggles. Some scholars also labeled as terrorist the systematic internal violence and intimidation practiced by states such as the Stalinist Soviet Union and Nazi Germany".[38]

After 9/11, terrorism was directly associated with the religion.[39] Moreover, it was also argued there was a link between terrorism and energy sources.[40] Terrorist attacks were orchestrated to capture energy resources in the world.[41] In addition, poverty and unemployment were viewed as causes of terrorism in the world.[42]

William F. Schulz proclaimed that the 'War on Terror' waged by the Bush administration attached high importance to security while showing total disregard for the sanctity of human rights. He cited United States' traditionally hesitant take on human rights and postulates that respect for them will consequently make this otherwise lost war a success.[43]

On the other hand, Obama government started the mantra of endgame in Afghanistan as well as withdrawal of US and NATO forces from the region in 2012. But it has not materialized up till now. M. W. Herold drew attention to scores of civilian deaths by the relentless bombing campaign of US and its allies against the Afghan Taliban. He condemned the use of air strikes by the US in Afghanistan, arguing that civilians were killed to reduce risks to U.S. soldiers. He explored the direct and indirect impact of killing each target type, drawing attention to inhumane US policies, Afghan war and resultant civilian casualties aka 'Unworthy Bodies'.[44] As figures given by Watson Institute, "During the war in Afghanistan (2001–present), over 31,000 civilian deaths due to war-related violence have been documented; 29,900 civilians have been wounded. Over 111,000 Afghans, including civilians, soldiers and militants, are estimated to have been killed in the conflict."[45] This is the major human right violation in the 21st century by a super power of the era. By the end of August, 2018, five US troops were killed in the war. The US has around 15,000 troops in Afghanistan. According to Uppsala Conflict Data Program, "the total number of deaths including civilians and combatants will surpass 20,000 by the end of 2018".[46]This is an alarming situation for the Human Rights champions.

Security, Peace, Human Rights and the United Nations

'Human Rights' has been mentioned multiples times in the UN Charter, which takes protection and promotion of human rights as guiding principle and main purpose of the organization. The 1948, *Universal Declaration of Human Rights* brought fundamental human rights into the periphery of international law to ensure their protection globally. Since then, UN has worked extensively to protect human rights through legal instruments and activities which are on-the-ground.

The Universal Declaration of Human Rights (1948) was the first legal document protecting universal human rights. Together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the three instruments form the so-called International Bill of Human Rights. A series of international human rights treaties and other instruments adopted since 1945 have expanded the body of international human rights law.[47]

Human Rights and the Constitution of Pakistan

In the struggle to achieve peace and security, provision of basic human rights has generally been neglected to some if not all segments of society. This is especially true for terror suspects, and war journalists. Fundamental human rights are enshrined in the Constitution of Pakistan. Chapter 1 of the Constitution contains articles about the fundamental rights. Articles 8 to 28 of the constitution deals with the all fundamental rights provided to the citizens of Pakistan. (See annexure).

Human Rights (HR) Violations in South Asia

Human rights violations in South Asia, especially in the countries like India, Bangladesh, Pakistan and Afghanistan can be observed at large level. The South Asian Association for Regional Cooperation (SAARC), a regional forum to integrate the regional countries, has also failed to a greater extent in resolving longstanding conflicts, protecting human rights and mostly remained focused on the economic and educational issues of the region. Human security and sanctity Organization's charter has overlook. Lately, these vital issues have been at various levels and how to develop a mechanism for human rights protection.

South Asian region is engulfed in religious and ethnic conflicts, political unrest, civil-military strife, extremism etc. 'Emotions run hot' in this part of the world.[48] Freedom to practice religion is a mere rhetoric. Minorities are vulnerable and are being persecuted either in 'Saffronized India' or Myanmar, Kashmir to name a few. In Pakistan, the Hindu community in the desert region fears for its faith, "At least 25 conversions of young Hindu girls and women take place every month in Umerkot's Kunri and Samaro talukas alone,"[49] said an activist from a local human rights organization. The other largest minority is Christians make up one of the two largest (non-Muslim) religious minorities in Pakistan along with Hindu. Pakistan's Christian community developed a "growing sense of concern", particularly over the strict blasphemy laws .

India, which is world's one of the largest democracy, propagated a 'secular state', liberal nation, and free and independent media, is in reality a 'Saffronized State'. Persecutions of minorities especially Muslims and Sikhs and lowers castes particularly Dalits is a norm. The International Federation of Journalists ranked India on 5th number among countries with highest media killings as 6 journalists were killed in India in 2017.[50]

Bangladesh, also has fundamental rights enshrined in its Constitution. However, implementation of the law remains an issue in Bangladesh like any other South Asian country. Although Bangladesh is an Islamic Country as prescribed in law, its political system is secular. In a tussle between institutions, common people remain at the losing end as their basic rights are not fully protected or granted by the state. Poor treatment of Rohingya refugees from Myanmar by Bangladesh Government has been widely criticized in the world.

Afghanistan, the war-torn country, has witnessed and continues to witness HR violations since WoT was imposed. As recorded in World Report 2017 by Human Rights Watch:The Afghan government continued to expand its use of illegal militias, some of which were responsible for killings and assaults on civilians. Afghan National Security Forces (ANSF) were also responsible for civilian casualties from indiscriminate aerial and mortar attacks. Both the Taliban and ANSF increasingly used schools for military purposes; such abuses, along with insecurity throughout the country, deprived many children, particularly girls, of access to education. Hundreds of thousands of Afghans became newly internally displaced, including many returned refugees and migrants.[51]

The number of IDPs increased manifold due to political infighting and turmoil within the country.

The number of people internally displaced due to the conflict surged as fighting intensified in mid-year. More than 300,000 new internally displaced persons (IDPs) in 2016 brought the nationwide total to at least 1.3 million people. Humanitarian organizations reported that many IDPs were living in informal settlements where they lacked access to safe water, sanitation, health care, and education. Many returning refugees and migrants, joined the ranks of the IDPs.[52]

Pakistan, after Afghanistan, has suffered the most in terms of blood and economy in the WoT. Due to the invasion by the US and NATO forces in Afghanistan, scores of Afghan refugees turned towards Pakistan, weighing down already fragile economy of the latter.

Since USSR's invasion and now US' WoT, Pakistan has seen an influx of approximately 2.7 million Afghan refugees.[53] Their documentation began for the first time in 2005 by the Pakistan Census Organization (PCO) with support from the UNHC to determine the number of refugees residing in Pakistan.[54] In order to deal with the issue of refugees, residing in Pakistan for decades, the current government has taken a major step by announcing giving citizenship to the refugees born in Pakistan.[55]

Security Measures and Consequent Upsurge in HR Violations in Pakistan (2007-2017)

As the WoT raged in Afghanistan, terrorists became active in cross-border terrorism and perpetrated horrendous terrorist acts in Pakistan. While Pakistan was dragged into a very complex battlefield, New Delhi enjoyed an extensive role inside Afghanistan under the cover of development projects. A steep hike in terrorist activities within Pakistan was witnessed later on.

Amid skyrocketing terrorist activities on its soil, Pakistan's Army was faced with an extremely difficult mission of finding and eradicating terrorists from its localities. Pakistan's protest about Indian use of Afghan soil to support Tehreek-i-Taliban Pakistan (TTP) for terrorist activities within Pakistan was always sidestepped by U.S. and its NATO allies. They always turned a deaf ear towards Pakistani claims about TTP sanctuaries at Afghan soil.[56]

To further disrupt the social fabric of the country and weaken it internally, terrorists strayed targeting Pakistan at its most vulnerable points and perpetrated horrendous attack on Army public school in Peshawar on December 16, 2014. This incident brought the civilian government and military on the one page. Following this tragic incident, in January 2015, the political and military leadership of the country formed a 20-point counter terrorism agenda called National Action Plan (NAP) to eliminate terrorist elements.[57]

After the Mallala's episode and merciless killing of innocent children in Peshawar School, it was expected that radicalization would have increased. Militants prohibited female education in Swat. Boy's schools were also destroyed. 190 Government schools had been burnt and about 150,000 students were deprived of education. In the affected area of swat, approximately 45,504 students were enrolled in these schools. After all these destructions, government of Pakistan came into action and crafted 20-points National Action Plan. The major plan was 'Zarb-e- Azb'. That was launched against all terrorist groups without any discrimination all over the country.[58]

To root out terrorism and terrorist outfits from the country, Pakistan's security forces have launched various military operations in the country such as Operation Rah-e-Haq 2007, Operation Rah-e-Rast 2007, Operation Rah-e-Nijat 2009, Operation Zarb-e-Azb 2014 and most recently Operation Radd-ul-Fasaad 2016. On the one hand, these counterterrorism operations improved overall security situation in the country specifically Northern areas, bordering Afghanistan.[59] On the other hand, all infrastructures of these areas were damaged including houses, schools and hospitals. The number of Temporarily Displaced Persons (TDPs) and Internally Displaced Persons (IDPs) significantly increased. The number of IDPs was 64,000 (primarily those who remain displaced by counter-terrorism and counter-insurgency operations and violent conflict between militants in the Tribal Areas of Khyber-Pakhtunkhwa Province; more than 1 million displaced in northern Waziristan in 2014; individuals also have been displaced by repeated monsoon floods) (2016).[60] As well as number of Afghan refugees is 2 - 2.4 million (1.4 million registered, 600,000 - 1.0 million undocumented) (Afghanistan) (2017).[61] Nonetheless, Government started repatriation and rehabilitation and reconstruction of displaced persons in phases.

Around 82,000 families were internally displaced during the Operation and settled in different parts of Pakistan; while 10,000 families residing in border areas including Datta Khel, Shawal, and Baka Khel chose to migrate to Afghanistan and settle in Paktia, Paktika and Khost.51 The return of TDPs to North Waziristan started in a phased manner in March 2015. According to political leadership of North Waziristan, about 63,000 families returned to their homes in North Waziristan by December 2016. 52 Regarding repatriation of tribal people from Afghanistan, the first batch of 200 families, consisting of 2,000 people traversed the Ghulam Khan border crossing after two years of displacement. 53 95 per cent IDPs have returned to South Waziristan Agency so far.54 It was also reported that some families, had settled in other cities, and also set up businesses there, and were therefore, hesitant to return and shift their entire family back to North Waziristan.[62]

Furthermore, after the 21st amendment in the constitution, military courts were established in January 6, 2015 to deal with terrorist elements with iron hands. A survey (See Annexure 2I) was conducted with experts who were asked about the establishment of these courts," they responded it was need of the time to establish these courts". The survey results showed us that only 25% people were in the favor of military courts. Also they said that time period of these courts should be limited and they should not be permanent. Ultimately, civilian courts should take charge. The main concern of critics on the military courts trial is about secrecy of trial and the ambiguity surrounding military court trials.

When the survey participants were asked if the security measures taken by Pakistan were justified, 33% of people said yes, at that time those were justified, only 15% said, there should be alternative measures such as using soft power tactics, dialogue, negotiations etc.

HR Violations in past ten years since WoT was imposed in Afghanistan and its trickledown effect on Pakistan. The decade of terrorism (2007-17) witnessed flagrant breaches of human rights not only in the war-blighted Afghanistan, but also in Pakistan -the 'frontline state', which saw the trickledown effect of war. Pakistan was ranked third after Iraq and Afghanistan on the Global Terrorism Index (GTI) in a 2014 study carried out by the London-based Institute for Economics & Peace (IEP) with a 37 per cent increase in fatalities and 28 per cent increase in injuries since 2012.[63]

Pakistan is paying the cost of war not only in the form of losing its human resource (in the suicide attacks and casualties etc) but also economic cost by reducing economic activities, trade, lacking investment and high cost of rehabilitating displaced persons. The (WoT) and consequent terrorist attacks in Pakistan significantly decreased the number of tourists as Western governments issued negative travel advisories to their citizens.

Media was restricted to show any live scenes of suicide attacks and causalities. It can be called controlled media but it was need of the hour. Reforms were introduced to streamline the NGOs and to bring them under check and balance. Civil society criticized the government for this. They said that it has weakened our work and the role we could play – as the lack of access to information. In the survey conducted by the researcher, 70% percent respondents affirmed this act of government was justified and required at the time.

Conclusion and Recommendations

To address the issue of HR breaches in Pakistan its necessary to address the key issues. Following measures can be helpful in ensuring protection of HR. Justice should be free for all.

Somehow things are not as terrible in reality, as it has been propagated by media. There is dire need to build a state narrative and start lobbying of the true narrative worldwide.

Pakistan's government should impose post engagement policy vis-à-vis allying with the ever-changing US. Northern areas bordering Afghanistan should be mainstreamed. Protection of minority rights should be prioritized.

Governments of both Pakistan and Afghanistan should devise confidence building measures (CBMs) to remove mistrust. South Asian countries should use regional forums such as SAARC and SCO to fast-track peace talks and peace process in Afghanistan, integrate the region and increase people-to-people contacts, devise a mechanism to root out extremist elements, increase cooperation and engagement in order to ensure protection of human rights, which is a common challenge gnawing South Asia.

Annexure 1

Followings are the fundamental rights guaranteed to the citizens of Pakistan under constitution.

- No person shall be deprived of life or liberty, save in accordance with law (article 9)
- Safeguard as to arrest and detention. All arrested person must be informed of grounds of their arrest, they have right to consult and defended by lawyer of their choice.
- Right of fair trial under article 10A
- There shall be protection against retrospective punishment
- There shall be protection against double punishment and self-incrimination.
- Freedom to profess religion and to manage religious institution in country
- All citizens have right to preserve their particular language, script and culture

These are all the rights given to the Pakistani citizens; these are directly related to the security and safeguard of the citizens of Pakistan. For instance, as article 9 and 10 stated that, "No person shall be deprived of life or liberty, save in accordance with law; Safeguard as to arrest and detention. All arrested person must be informed of grounds of their arrest, they have right to consult and defended by lawyer of their choice."

But in reality, many Pakistani have been deprived from this right after WoT. The issue of missing persons is a very alarming for Pakistan. After the US invasion of Afghanistan in 2001, forced disappearance in Pakistan allegedly began during the rule of General Pervez Musharraf (1999 to 2008).[64] According to the International Voice for Baloch Missing Persons, "18,000 Baloch have gone missing by January 2014. Of these, 2,000 were killed between 2001 and 2013. According to a Voice for Missing Baloch Persons, 463 people were forcibly disappeared in Balochistan, out of whom 157 were tortured to death, in 2015."[65] Article 10-A gave them the right of free trial, but they have been deprived from it too.

Annexure 2: Survey Questions and Responses

1. Is the establishment of the military courts justified in Pakistan in the backdrop of WoT?

	Response Percent	Response Total
	100.00%	50
	answered	50
Yes:15%, No:20%,Not sure: 10%	skipped	0

2. Do you agree with John Stuart Mill statement that every new law caused to limit human liberty/rights to some extent?

	Response Percent	Response Total
	100.00%	50
	answered	50
Yes:15%, No:20%,Not sure: 15%	skipped	0

3. Was the War on Terror a "just war"? And was Pakistan's participation as an ally the right decision?

	Response Percent	Response Total
	100.00%	50
	answered	50
Yes:0%, No:45%,Not sure: 5%	skipped	0

4. Is the Pakistan government's policy "Regulation of INGOs in Pakistan" justified?

	Response Percent	Response Total
	100.00%	50
	answered	50
Yes:40%, No:5%,Not sure: 5%	skipped	0

5. Are the security measures being taken by the Pakistan to ensure peace justified?

	Response Percent	Response Total
	100.00%	50
	answered	50
Yes:33%, No:15%,Not sure: 12%	skipped	0

6. Do you agree with that to attain peace, appalling human rights violations were committed in the name of the War on Terror in Afghanistan and Pakistan?

	Response Percent	Response Total
	100.00%	50
Yes:45%, No:%,Not sure: 5%	answered	50
	skipped	1

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HUMAN RIGHTS VIOLATIONS IN INDIAN HELD KASHMIR (JULY 2016-JULY 2017)

Dr. Khusboo Ejaz*

Abstract: *Indian held Kashmir enjoy special status according to Article 370 of Indian Constitution. It provides high degree of autonomy to its residents as they can only buy land in Jammu and Kashmir other residents of India are denied of this right. Indian constitution which is considered as secular, liberal and democratic in nature has failed to provide basic human rights to Kashmiris, especially after the episode of Burhan Wani's killing. This paper will investigate human rights violations in Indian held Kashmir from July 2016- July 2017. This is a qualitative study. Interview method has been used for data collection from Indian Occupied Kashmir. It has been concluded that Indian Government and forces have violated basic human rights. Kashmiris were not provided the right to equality (Article 14-18) as excessive usage of brutal force in the shape of curfew and pallet guns and then replaced by the PAVA chilli bombs has damaged and infected civilians. Legally pallet guns are allowed to be used by the government, targeting the lower body, however, Indian security forces have been targeting the upper body particularly eyes. Indian security forces have stopped discriminating between adults and children in the conflict, and were involved in gang rapes. Illegal arrest and preventive detention of popular political leaders is another violation of rights of constitutional remedies (Article 32). Cultural and educational rights (Articles 29-30) were denied as many schools were closed due to curfew. Right against exploitation (Article 23-24) has been violated in many areas in IHK. Right to Freedom (Article 19-22) has been denied as there were restrictions on use of mobile and internet in most of the areas from July 2016-July 2017.*

Keywords: Human Rights Violations, Indian Held Kashmir

Introduction

Human rights are sometimes referred to fundamental rights or natural rights. Human rights are moral claims which are in inherent in all individuals by virtue of their humanity alone irrespective of caste, creed, color and birthplace, cultural and ethnic differences or any other consideration. According to United Nations, human rights are those rights which are inherent in our nature and without which we cannot live as human beings.[1]

Human Rights are basically immunity or license to do something. Here something purely means those things which may not harm the rights of others and serve as a barrier to enjoy their rights. Every human being is entitled to these rights by birth. It is the duty people first of all, the states and then the international organizations to protect the rights of every individual without any sort of discrimination on any basis. 1948's Universal Declaration of Human Rights has played a phenomenal role in legalizing rights and setting a benchmark for further protection of rights of masses. Every country adhere to this declaration and include its clauses in their respective constitution not only to show compliance but to provide their citizens violence free environment to live and excel in a particular state.

On the other hand, International Humanitarian Law is said to be the law of war or in other words the law of armed conflict. The main purpose IHL to control the situation during warfare by enforcing penalties and to keep an eye on all mass destruction activities which harm or may harm civilians, innocent people, children, sick and last but not the least prisoner of wars(POWs).

It is said that Human Rights are dealt every time and they can never be ignored. Human rights organizations which includes organizations both at state and international level, activists, state departments, IGOs and NGOs all are always busy in figuring out violations of human rights and then launching policies to lessen the rate of violations. On the contrary, it is believed that, IHL is only applied to wars or war like situation which shall include armed conflicts between states. But this is not so. This would be proved by the analysis of situation in Kashmir. Human rights are universal, dynamic, generic and inalienable. They go on expanding with socio economic, cultural and political developments within the state.[3]

In 1945, after the formation of United Nations (organization), there appeared a legal body which could set rules, declare sanctions and penalties to regulate international affairs. Though, the decisions of UN are not

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binding but the states obey and show their compliance towards it just to fulfill their own needs and draw benefits out of it. Like within states, there is legislature, executive and judiciary who make, enforce and interpret laws respectively. Likewise, United Nations serves as all three at the international platform.

One of the major responsibility cum duty of UN is to protect and interpret all existing rules which are the result of conventions, treaties, congresses, pacts, tradition, usages, etc. International law, which is a set of rules and regulations which states obey to regulate their conduct with other states. Other than regulating the relations between states, it is also concerned with the conduct of hostilities. The principles that regulate the conduct of war are codified in the form of International Humanitarian Law (IHL). These codes of conduct cover the treatment and protection of prisoners of war, civilians in occupied territory, sick and wounded people of war and human rights violations during conflicts.

International Humanitarian Law is said to be the most important and only codified part of international law. The two major sources of International Humanitarian Law are Hague Conventions of 1899 and 1907 and Geneva Conventions.

Theories of Human Rights

The origin of human rights is as old as human history. Doctrines of natural law and natural rights are basis of human rights. Thomas Hobbes advocated that no individual could ever be deprived of the rights to life which he enjoyed in the state of nature. He advocated that all human beings are equal without any considerations.[4] John Locke   has further developed the idea. He was one of the staunch defender of natural rights. He argued that every human being has a natural right to life, liberty and property.no government has this right to deny civil and political liberty in societies. [5] Rousseau believe that all men are born free but everywhere, he is in chains. Rousseau proclaimed that men are bestowed with alienable rights of liberty equality and fraternity. This concept was popular in French revolution .[6]

English Bill of rights (1689), American declaration of Independence, French Declaration of Rights of Man and citizen (1789), ten amendments in the US constitution (bill of Rights 1791), Covenant of league of Nations, and the Universal Declaration of Human Rights of United Nations (1948) constitute framework of human rights.

Theory of social rights was propounded by Bentham, Mill, and Laski. They advocated that right are not independent of society but inherent in it .Theory of legal rights was propounded by Austin. According to this theory rights are created and maintained by the state. The state is only source of right, outside state there are no rights.Theory of economic rights have roots in Marxism. Marx was of the opinion that rights of individual can be safeguarded only in classless society.[7]

Research Methodology

This is a qualitative study. Interview method has been used for data collection from Indian occupied Kashmir. Journalists, peace activists and members of JKCSS were interviewed for this research.

International Humanitarian Law and Human rights

A confusion lies here that whether International humanitarian law just applies on international conflicts/ wars or is it also applicable on national conflicts or the conflicts that exists there within states. International conflicts are those conflicts which are there between two or more states while all those conflicts which arise within a state do not lie under the jurisdiction of IHL. [8]

Kashmir Conflict: Violation of Human Rights or International Humanitarian Law

Valley of Kashmir is said to be heaven on Earth. Kashmir or Cashmere has Sanskrit origin. The word literally means water desiccated (land).According to some old myths it is said that Kashmir was at first a place of lakes but later as the lakes dried hence it was left with valley surrounded by hills and mountains. This valley gives us a look or a picture of fairyland. It is more or less beyond imagination.

Pakistan and India got independence from British Rule and are sovereign states for last seven decades which is not a small time period, but since then, Kashmir issue has been serving as one of the major hindrances in normalization of relations between both countries. Britishers who were the rulers of that time themselves claim that they left such disputes i.e. Kashmir conflict so that no state those they granted independence may not

live peacefully and require their assistance forever. And this is what is actually happening. India and Pakistan have fought two full-fledged wars technically three I.e. 1948, 1965 and 1999, still they couldn't come to some resolution.

India claims the whole territory of Jammu (occupied by India) and Azad(occupied by Pakistan)Kashmir as the part of their state while on the other hand Pakistan has always favored voice of Kashmiris and strived hard to get them their right of self -determination.

The people of Kashmir(Indian occupied territory) on the other hand, want to join Pakistan and have hoisted the Flag of Pakistan many a times which developed angry feelings amongst Indians and they have always retaliate the act by launching attacks on innocent Kashmiris.

Curfews, rapes, torture, discrimination, mass killings, suppression, sexual abuse, target killings, enforced disappearances, use of chemical weapons on people and all other sort of brutal treatment by Indian Army in Indian occupied Kashmir has turned this heaven like place into hell. Just to escape from the brutality of Indian Army women commit suicide.

Till now it might seem like that whatever is happening inside Kashmir(Indian occupied territory), is the violation of Universal Human Rights Declaration but there are certain reasons why Kashmir Conflict and what is going on within and in between is a violation of International Humanitarian Law and hence falls under the domain of IHL.

First of all, it becomes all clear when Appeals Chamber of International   Criminal Tribunal describes the scope of armed conflicts. Keeping in mind the text, IHL can be applied on or in Kashmir until and unless both Pakistan and India reach to a peaceful settlement.

Secondly, some people may disagree with the fact that Kashmir issue is an armed conflict and can be categorized as minor cold war between India and Pakistan. It's an Armed Conflict actually as it involves the army and artillery both whenever some kind of violation of ceasefire or more commonly known as "Line of Control" takes place. This not only result into a fight or a clash between armies of both countries at the border but also takes away lives of many guiltless civilians. Furthermore, in order to retaliate actions and reactions of each other, both India and Pakistan had have been using insurgents to fight on their behalf respectively which is more like a mini cold war going on. Now, this Kashmir conflict which was to be dealt separately more through negotiations and peace talks, is converted into an armed conflict between India and Pakistan. And this conflict has taken away the lives of many innocent Kashmiris. From wounded to sick and the ones not even involved in the conflict are being badly affected by the situation. After examining such conditions, it is totally believable that its more violation of International Humanitarian Law.

Thirdly, The Fourth Geneva Convention set rules for safe occupation. It is the duty of the occupier to protect the occupied and work for their betterment rather than treating them inhumanely. But, violating the clause, the situation of Indian Occupied Kashmir is becoming worst day by day. Indian Paramilitary forces use pellet guns which are causing eye diseases, tear gas shells, and rubber bullets, assault rifles which resulted in the death of hundreds of civilians and left injured many. Muslims are stopped from practicing their religion and are forced to follow Hindu Rituals. They are degraded and treated in the baddest way possible. Paradise (Kashmir) has become hell on Earth.

Fourthly, if we see the literal spirit of the term "International Humanitarian Law" than the word Humanitarian means concerned with human welfare. Hence, it is applicable on any matter that concerns human and any action can be taken under the spirit of IHL for the protection of human beings. Additional Protocol II to Geneva Conventions of 1949 adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts is another achievement in this regard. Article 18 of Additional Protocol II of Geneva Convention states:

> " If the civilian population is suffering undue hardship owing to a lack of the supplies
> essential for its survival, such as foodstuffs and medical supplies, relief actions for the
> civilian population which are of an exclusively humanitarian and impartial nature and
> which are conducted without any adverse distinction shall be undertaken subject to the
> consent of the High Contracting Party concerned."[9]

The only provision applicable to non-international armed conflicts before the adoption of this Protocol was Article 3 common to all four Geneva Conventions of 1949. This Article proved to be inadequate in view of the fact that about 80% of the victims of armed conflicts since 1945 have been victims of non-international conflicts and that non-international conflicts are often fought with more cruelty than international conflicts. The aim of the present Protocol is to extend the essential rules of the law of armed conflicts to internal wars.[10] Therefore, it is clarified that Kashmir issue can be dealt under the domain of International Humanitarian Law.

All ongoing conflicts and the ones which have been resolved, resulted in spreading terror, anger and hater and caused mass destruction. International Law due to its non binding nature is not very effective in this regard as states follow or unfollow rules or principles set according to their own will or whenever they feel like obeying it. There is no body which could force them to bind by International Law (IL) and punish its violations. Thou, there do exist United Nations and its sub agencies and organs which apparently serve as enforcer and Interpreter of IL but even their decision is not always binding.

Human rights are being violated in Kashmir and all other conflicting zones. But Kashmir Conflict as we speak, comes under the range of International Humanitarian Law. If it was just the matter of self-determination and other freedoms then it is just the violation of human rights but the situation is even more worst and beyond the violations of human rights. Indian Occupied Kashmir has become a war zone where everyday people are brutally killed and treated   inhumanely as if they are not Humans.

All living things are to be dealt with ultra-care and respect without any discrimination. And where the world seems so concerned about so many other matters I.e. pollution, animal rights, children rights, women rights etc then why nothing has been done yet to resolve Kashmir issue. What about the rights of Kashmiris. It seems like the blood of Kashmiris does not at all matters. Or maybe the international community do not want to involve itself in resolving Kashmir conflict between India and Pakistan.

Hence, there should be strong enforcing and punishing body whose decision shall be binding. Moreover, international community shall take immediate action to resolve Kashmir issue as it is not just a problem between two states but a matter of international concern.

Human Rights violations in Kashmir July (2016-2017)

After the end of British Raj, the federalizing process in India took a unique turn. It not only seems to be an arrangement of the decentralization of authority to the provincial governments but also an organization of integration of the acceding States. Among the acceding states the state of Jammu & Kashmir emerged as a legacy of the British divided sub-continent. In lieu of this maturing of federalism structure Article 370 of Indian constitution grants Jammu & Kashmir a special status .It provides a fairly high degree of autonomy to the state, enables the state to have its own constitution (unique in an Indian context) which permits the state to give some special privileges to its "permanent residents". One such special privilege is that only a permanent resident can buy land in the state and citizens from other Indian states face some restrictions. This very article provides the bedrock of the relation between Indian govt. and Jammu & Kashmir.

Recently up roared Kashmir conflict in full throttle not only brought implication for the regional stability but also triggered a never ending debate at international level**.** Kashmir has erupted into violence recently after a Hizbul Mujahideen commander Burhan Wani was killed by security forces in July this year. This issue has not only rekindle the dispute not only regarding the status of the Jammu & Kashmir as a conflicted zone for past 69 years but also questioning the towards the Indian government. Clearly and evidently Indian Government has failed to live up to its very ideology of liberalism especially in managing the recent uprising in Kashmir. Undoubtedly Jammu &Kashmir is Indian Administered area and comes under the Indian legal regime.

This way they do come under the protection provided by the Indian Constitution to its citizens under Articles 14-32 which provides the corner stone of the Indian ideology and Constitution. Right now Kashmiris in India are being deprived of their fundamentals rights such as Right to equality (Article 14-18), extreme volition in such terms have been seen and witnessed, curfews for longer days and access to the daily life resources is been restricted and somewhat denied . Right to freedom (Article 19-22), multi banned on the information technology including internet, broadband and mobile service has not only crippled the flow of information but has also cut off the Kashmiris with the rest of the world. Right against exploitation (Article 23-24), exploitation of Kashmiri land by the security forces is evident from various resources. Cultural& educational rights (Articles 29-30), difficulties facing by the civilians in reaching the schools and practicing

their cultural rituals is been reported many times. Recent reports have shown that educational institutions have been shut down by the authorities, which not only hamper the basic educational right but also have dented the very liberal approach of Indian constitution.

Right to constitutional remedies (Article 32), main political leadership of in held Kashmir is under house arrest and has strict restrictions on their movement. Recent illegal arrest after the prolonged preventive detention of Khurram Pervaiz of Jammu Kashmir Coalition of Civil Society (JKCSS) has not only stirred reaction nationwide but across the globe .

The human rights violations in Indian held Kashmir has been reported wildly in social media. The UN High Commissioner for Human Rights at that time, Zeid Ra'ad Al Hussein, has showed serious concerns over rigid stance of Indian Govt. over this situation. UN has maintained peace in this region. However, in Kashmir and ceasefire violations at LOC has escalated the tensions between the two nuclear armed neighbors of the South Asian region as well which threatens the stability of the region.

Whatever policies and steps taken by the Indian Govt. in Jammu & Kashmir which the Indian authority is justifying under the name of security is not justified under human rights at all. Excessive usage of brutal force in the shape of pallet guns and now replaced by the PAVA chilli bombs has damaged and infected civilians at larger scale. Legally pallet guns are allowed to be used by the govt. targeting the lower body, however, Indian security forces have especially targeting the upper body particularly eyes. One more thing, that Indian security forces have stopped discriminating children from the conflict. Another violation on the part of Indian Security forces is their involvement in gang rapes. [11]

Pakistan Government fully supported Kashmiri freedom struggle. India agreed upon implementation of UN resolution but it has not yet implemented it. International community has shown diverse reactions towards the conflict. OIC, US and China have supported idea of holding referendum in past. India tried to avoid accountability when it missed SAARC summit. Russia, China and BRICS should come up for any solution of this long standing issue. International community is not performing its duty to resolve this human issue where Indian authorities are involved in genocide in IHK.

Conclusion

It has been concluded that Indian Government and forces have violated basic human rights and international humanitarian law. Kashmiris were not provided the right to equality (Article 14-18) as excessive usage of brutal force in the shape of curfew and pallet guns and then replaced by the PAVA chilli bombs has damaged and infected civilians. Legally pallet guns are allowed to be used by the government, targeting the lower body, however, Indian security forces have been targeting the upper body particularly eyes. Indian security forces have stopped discriminating between adults and children in the conflict, and were involved in gang rapes. Illegal arrest and preventive detention of popular political leaders is another violation of rights of constitutional remedies (Article 32). Cultural and educational rights (Articles 29-30) were denied as many schools were closed due to curfew. Right against exploitation (Article 23-24) has been violated in many areas in IHK. Right to Freedom (Article 19-22) has been denied as there were restrictions on use of mobile and internet in most of the areas from July 2016-July 2017.

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PAKISTAN'S COUNTER TERRORISM NARRATIVE: EVALUATING NACTA AND THE WAY FORWARD

Tehmina Aslam[*]

Abstract: *In June 2014, the military launched Operation Zarb-e Azb in response to prevailing threat of terrorism in the country and the subsequent attack on Army Public School in December 2014 was a response of the Taliban to the operation. The Army Public School (APS), Peshawar massacre transformed both the internal and external policies of Pakistan. After this horrific incident, the Civil and the military leadership decided that it was high time to take action. Prime Minister Nawaz Sharif called an All Parties Conference for the purpose of formulating a counter terrorism strategy at this point. Since coming into power in May 2013, the Muslim League introduced two counterterrorism policy frameworks. The first was the National Internal Security Policy (NISP) presented to parliament in May 2014, and the second was the National Action Plan (NAP) presented in December 2014. Pakistan's new counter-terrorism policy measure – the National Action Plan (NAP) was introduced immediately after the Peshawar Attack. NAP is the identification of all those areas which are needed to improve to get rid to the menace of extremism, violence, terrorism, and militancy. It was evolved through a national consensus to make Pakistan a secure country for furthering national progress. In many ways, NAP is Pakistan's national stance and unity to say no to terrorism. The research aims at analyzing Pakistan's policy on countering terrorism. The research relies on qualitative methods which include both secondary and primary resources including existing literature, interviews and documents. Hence, the results emanate that terrorism seek a refuge in weak institutions of the state which offer space to militants to exploit the system and get intrigued in the society, so Pakistan needs to establish a counter terrorism narrative to strengthen its institutions to fight the menace of terrorism. There is no quick fix solution to the issue of terrorism; a long-term comprehensive global, national, and regionally oriented approach is required to mitigate this menace. In nutshell, the paper further attempts to situate counter terrorism strategy as one of the key derivative of state's security policy and the government needs to commence campaigns on print, electronic and social media to build an anti-terrorism narrative immediately if both civilian and military lives are to be saved.*

Keywords: NACTA, Counter Terrorism, Pakistan, Strategy, Narrative, Terrorist

Introduction

Pakistan, the second most populous Muslim state, possesses the seventh largest military force of the world and is member of the 8-nations elite nuclear club.[1] Concomitantly, it is also the 13th most violent nation[2] and the 9th most fragile country of the globe[3]. This violence and fragility can be ascertained from the fact that today Pakistan shares the bronze on the suicide terror podium: Iraq is carrying the gold and Afghanistan the silver. Cornered into such a precarious situation since 9-11, Pakistan opted to become the frontline state in the war on terror to protect its 'interest'[4]. Pakistan adopted various policy guidelines, both kinetic (military) and non-kinetic (political and socio-economic), to navigate this difficult terrain. One such policy was formulation of National Counter Terrorism Authority to devise national narrative against terrorism. The purpose of this study is to analyze Pakistan's counter terrorism narrative. This will include the functioning of NACTA as key organization to fight the menace of terrorism. It will also include the past narratives and polices formed to counter violent extremism in Pakistan. Finally, suggestions for future policies are given along with steps for a holistic approach to conflict management. The following sections are related to the methodology adopted for this study, the literature review, analysis of national counterterrorism narrative and a snap conclusion with recommendations.

Rational of the Paper

The paper is going to explore Pakistan's Counter Terrorism narrative and how it has helped in shaping a counter terrorism policy. Since the Army Public School Attack in 2014, a Counter terrorism framework developed in Pakistan which ultimately resulted in an official strategy (NAP) presented in December 2014 followed by Paigham-e-Pakistan (2018).

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Central Idea of the Paper

Pakistan sorely need an effective Counter terrorism policy and a collective will to endorse and adopt counter terrorism measures.

Research Methodology

To understand the Counter Terrorism policies, a qualitative analysis of primary and secondary sources was adopted and the information thus obtained was triangulated for this study. The methodology included: Literature review: that included books, journals and article relevant to Terrorism and extremism. b. Newspaper/magazines analysis: Various national dailies and magazines (Dawn, Daily Times, Express Tribune) as well as international newspapers and weeklies (New York Times, Newsweek, Time, Washington Post, and Guardian) were utilized for the collection of information. c. Database searches: Following database links and related websites were mined. In addition, two serving DIGs and one retired IGP were contacted for their views and opinions.

Serial No	Name	Abb	Websites
1	Our World in Data	OWD	(www.ourworldindata.org)
2	Global Terrorism Database	GTD	(www.start.umd.edu)
3	Global Terrorism Database	KAGGLE	(www.kaggle.com)
4	Security Council Counter Terrorism Committee	SCCTC	(www.un.org/sc/ctc/resources/databases/
5	National Security Research Division	RAND	(www.rand.org)

Counter Terrorism Narrative

Extremist's Master Narratives: Narrative is often equated with ideology. In Pakistan Islamist political parties and non-state actors have effectively drawn on a powerful narrative in presenting their own version of Islam. They have developed their own limited world view. Their world view is based on a assumption that soon after partition India wanted to undo Pakistan. The circumstances and arguments surrounding Pakistan's birth gave rise to a particular narrative of insecurity. Religious parties exploited this narrative and promoted themselves and gained sympathy in masses. Since 1979, they have created such an environment where common Pakistani think that Islam and Pakistan are in danger. The extremists have formulated a view that the ongoing US War on Terror is war against Islam. The appalling incident of 9/11 which witnessed the fall of the twin towers and the destruction of a part of Pentagon, (military headquarters), killing hundreds of innocent people changed the US and the world; Pakistan could not stand aloof of the impact of the incident. Unfortunately, for Pakistan, the effects were entirely different as Pakistan was considered a supporter of the Taliban who were the host of the organization, (al-Qaeda) which said to have perpetrated the atrocities of 9/11.Pakistan was asked either it's with US or against US. Pakistan emerged as a frontline ally of US but this alignment resulted in rapid growth of terrorism and extremism in Pakistan. This was the time when a specific narrative was formulated by extremists group that Pakistan is on the wrong side of the picture. It was preached in Pakistan that US is an aggressor who invaded Afghanistan and killing innocent people and inflicting atrocities on Afghani Muslims. Pakistan army was blamed for siding with US and the entire campaign of US was termed as un-Islamic and Jihad was declared mandatory against both the entities i.e.US and Pakistan. As a result of these events the extremist narrative made strong appeal in Pakistan. The post 9/11 events are clear manifestation of extremist ideology prevailing in the society. Resultantly this extremist narrative has become an attractive way of explaining the world around them.

Pakistan's Fragile Counter Narrative: Counter narrative can be framed after understanding narrative. In formulating counter narrative first few points should be addressed.

1. To what extent is this narrative based on local grievances?
2. To what extent is this narrative based on global grievances of Muslims?
3. Is grievances religious or secular?
4. Why religious extremists demand Khilafat?

5. What are different channels adopted by religious groups including extremists to achieve their goal?

A more significant impediment facing the CT campaign in Pakistan is the selective application of the notion of terrorism. For example, the proxy war in Kashmir is a declared jihad whereas violence by the Taliban is selectively viewed as terrorism.[5] Unfortunately, the narrative of Pakistan has been remained fragile for most of the time because Pakistan was fighting a war, on the directives of an ally, and it was an ineffective strategic approach which lacked conviction. This raised the spectrum of terrorism in Pakistan. However, with the passage of time Pakistan has adopted various policies to counter terrorism but they all lacked conviction on the part of authorities. Pakistan has demonstrated a semblance of CT—driven mainly through hit and trial strategy—it has lacked structured input and participation by civil society including higher seats of learning. As a result of the absence of a clear.[6]

Pakistan's Counter Terrorism Strategies and Narrative:

Anti-terror Act (ATA) 1997: The first instance of anti-terrorism legislation Pakistan saw was in the form of Anti-terror Act 1997.The act was one of the first such effort in fighting terrorism.

National Internal Security Policy (NISP) 2014: The second instance of anti-terrorism efforts was a 64 point agenda of National Security Policy (NISP) was approved in 2014.It was agreed that Pakistan should construct a national narrative on violent extremism, sectarianism, religious militancy, terrorism and violence to deal with increasing extremism in society.

Pakistan Protection Act (PPA) 2014: The third instance of anti-terrorism efforts was the approval of Pakistan Protection Act in 2014.PPA was completely different to National Internal Security Policy as it enhanced the powers of law enforcement agencies to arrest and probe the defendants.

National Action Plan 2014: The fourth instance of anti-terrorism efforts was NAP.The National Action Plan (NAP) was introduced by the Government of Pakistan after the Peshawar Attack due to immense pressure. As a result of this act, certain reforms were introduced. For instance, the 21st amendment was introduced as a result of this plan. Moreover, around 20 committees were also made initially, that would oversee the implementation of this plan. However, due to certain reasons, mostly grounded in the problems that plague Pakistan , including but not limited to, irresponsible journalism this plan was not implemented properly.

National Internal Security Policy (NISP) 2018-23: The fifth instance of Pakistan's Counter terrorism effort is unveiling of National Internal Security Policy (NISP) 2018-23 in June 2018.The first such report was released in 2014 to construct a national narrative on violent extremism, sectarianism, religious militancy, terrorism and violence to deal with increasing extremism in society. NISP 2018 discussed the efforts made and results achieved in NISP 2014.According to NISP 2018 the top threat to national security of Pakistan is Tehreek-Taliban-Pakistan and Daesh presence in Afghanistan and its possible spillover effect to whole Pakistan. Another threat mentioned was increasing violence and in tolerance in the society and frequent use of hate speech.

Paigham-e-Pakistan - National Narrative 2018: The sixth instance of anti-terrorism efforts was Paigham e Pakistan, a fatwa prepared by International Islamic University Islamabad in 2018 and was ratified and singed by around 1829 religious scholars belonging to all religious sects of Islam. Paigham-e-Pakistan was sought to counter extremism and terrorism. It is a commendable effort on the part of religious leadership of Pakistan. This declaration came with a clear cut view of combating extremism and terrorism. Currently, it is adopted as "National Counter Terrorism Narrative of Pakistan" against rampant wave of terrorism.

These measures combined with military operations against terrorism led to a remarkable improvement in internal security, indicated by a marked decline in incidents of terrorism throughout the country.

Evaluating NACTA

NACTA was established as an administrative unit under Ministry of Interior in 2008.However, it started functioning in 2013 as national institution to counter terrorism. It was formed to act as a focal national institution and unify state response to counter extremism and terrorism by combining the efforts of law enforcement & intelligence agencies and by formulating and implementing policies & action plans through continuous research, adaptive innovation and ancillary mechanisms. The implementation of National Security policy comes under the domain of NACTA which is an independent body answerable directly to the Prime Minister of Pakistan.

Table 1: NACTA's Functions

• **To receive, collate and disseminate intelligence among all relevant stakeholder, share threat assessments**
• **Prepare National CT & CE policies and strategies**
• **Develop action plans for CT & CE and periodically review Implementation**
• **Carry out research on relevant topics**
• **Liaise with international entities for facilitating cooperation**
• **Review relevant laws and suggest amendments to Federal Government**

According to mandate given to NACTA,it was supposed to be the most vibrant body to coordinate and collaborate with various institutions and to design a national counter terrorism policy. It was also the in charge of coordination and collaborative strategy design as well as implementation via information sharing, research and data collection or appointing committees to carry out particular facets of the agendas when and if essential.

NACTA'S Response and Initiatives to Tackle Extremism and Terrorism

NACTA since its formation has achieved noticeable results and prepared the following policy guidelines and initiatives.

- National Counter Extremism Policy Guidelines
- National Narrative to counter extremism and terrorism
- Tackling Terrorism Financing
- Implementation of FATF Action Plan
- Madaris Mainstreaming
- Dealing with online hate speech & hate material
- Revamping Criminal Justice System (RCJS)
- Youth Engagement Initiatives
- National Task Force on Foreign Terrorist Fighters
- International Cooperation: Islamabad International
- Counter Terrorism Forum and CT authorities Expert Group
- Research Initiatives

Findings:

The main findings of the data collected through interviews of relevant officials is as under:

1. A comprehensive National Narrative against extremism and terrorism is direly needed. NACTA will prepare a national narrative which encompasses all aspects of Pakistani society and its values as a holistic and implementable document with these themes Religious harmony, Political stability, National and regional security, Education for tolerance and peace, Culture for peace and social harmony, Inclusive economic development, Responsible Media, de-radicalization, Rehabilitation and reconciliation.
2. After the incident of 9/11 the world realized that terrorism has become an existential threat and traditional security apparatuses were less reliable to fight the ongoing extremism. In order to tackle this problem Counter Terrorism departments were established in the states facing the menace of terrorism. World realized this problem soon after 9/11 but it took almost a decade to Pakistan to formulate a department which can design policies to counter terrorism.
3. The main problem with NACTA is that it has no operational role as per its mandate under the Act while the expectation is that NACTA should be able to deal with all sorts of terrorist attacks and threats.

4. Another finding is that there is absence of comprehensive criminal, prisoner, terrorist database including data on terrorism financing which is available with other agencies.
5. There is absence of security specialists, data analysts, CFT specialists who are capable of developing threat pictures and perform data analysis and various tasks.
6. NACTA is receiving low quality of intelligence and resultantly it's unable to share information and collaborate.
7. NACTA is devoided of legal powers to seek cooperation of provinces in Counter Terrorism Departments.
8. It was established under NACTA Act 2013 that Prime Minister is the head of Board of Governors. Only one meeting of BoG has been held since 2013.There is lack of political will and support by the Prime Minister Secretariat.
9. Another problem is hierarchical issue.NACTA was established under Prime Minister but it functions under Interior Ministry.
10. Other organizations those working on counter terrorism has database on terrorism financing but there is no availability of terrorist database and a comprehensive record of criminals and prisoners with NACTA.

Conclusion

With regards to the counter terrorism, there is a dire need to carry out comprehensive review of our internal security policies and strategies to fight terrorism. Pakistan needs to come out with a strong narrative and that narrative should be in cognizance with the values of Islam and values of our culture It should actually be done by NACTA which is not effective yet. Therefore, either we should activate and make NACTA effective or else Government should form a high level panel for this purpose including experts from relevant departments and institutions. The earlier we do, this better it is.

Way Forward

1. An electronic database of proven terrorists needs to be maintained by the relevant authorities through coordination so that the process of arresting terrorists can be facilitated.
2. Joint training of civil law enforcement agencies with the army for instance the Special Branch of the Police should take place so that the militancy situation throughout the country, especially in the cities where the army can't step in, is controlled effectively.
3. Coordination between military and civilian agencies should be ensured so that the internal security policy can be strengthened. There should be a separate part of the defence budget that is allocated for this purpose
4. A comprehensive definition of "hate speech" and "armed militias" that is acceptable to all the institutions ideally should be formulated by the Parliament.
5. Increased coordination through the apex committee should be ensured in all the provinces so that is easier to implement the counter terrorism strategy.
6. As a long term strategy, the curriculum in public schools and private schools should be revised to promote the level of tolerance and the concept of citizenship should be taught to the youth. Moreover, the madrassah curriculum should be revised to ensure that the graduate have practical skills. "Some scholars argue that the state's Islamic ideology and its so-called strategic discourse does not [or cannot] complement anti-extremism narratives; on the contrary, it favors extremism."[7]
7. To cater to the problem of the funding of madrassahs by terrorist organizations, a sufficient part of the budget should be given to these madrassahs and their curriculum should be monitored.
8. NACTA should work on streamlining the flow of information from various agencies in Pakistan to assist Armed Forces especially Police in Intelligence Based Operations.
9. Law enforcement agencies should monitor the publicity channels of armed militia to weaken their support.
10. The process of registration of madrassahs should be a priority so that the curriculum can be regulated eventually.
11. Strong political will and genuine commitment to the cause of eradicating terrorism is needed. To address this the government need to provide effective governance and support to community.

12. Research institutions on terrorism should be established which can work on addressing the root causes of terrorism and new models and strategies should be formed to address this menace.
13. State should counter the militant ideology and that undermine the development of tolerant society.
14. NACTA was set up as an organization to cater militant ideology and to disseminate a counter narrative but it's still not effective in its functioning.
15. State should address the socio political and socio economic factors that breed militancy and terrorism in the society.
16. There are anti-terrorism laws, state should strictly enforce those already existing laws to curtail militant ideologies.
17. Rreligious scholars, intellectuals and all institutions of the state must be vigilant and apart from individual efforts, should collectively work with mutual consensus to safeguard the nation against divisiveness[8].

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THE HUMAN RIGHTS CRISIS IN INDIAN-HELD KASHMIR: A PATTERN OF GENOCIDE WITH IMPUNITY

Sabah Mushtaq[*]

Abstract: *The valley of Kashmir has been the site of a vicious conflict between the security forces of India and the Muslim freedom fighters demanding independence. The inception of this conflict can be considered a clamorous event that defined the terms of this crisis in its later years. In order to crush the freedom struggles of the people of Kashmir, Indian security forces have been involved in massive violations of human rights such as genocide against humanity, extrajudicial killings, torture, rape and deliberate attacks on health care workers. Human rights condition was further worsened in late 1992 and early 1993, when Indian security forces embarked upon a 'Catch and Kill' campaign against those who demanded freedom or Kashmir's accession to Pakistan. Since then, the numbers of executions of detainees by Indian security forces have increased sharply, many detainees died as a result of torture and their conditions of detention. Security legislation authorized security forces to kill people and to destroy civilian property, which directly led to the protection of security forces from prosecution for human rights violations. It is contended that international human rights and humanitarian law have been systematically violated by Indian security forces and such violations are carried out as a matter of policy. More than any other phenomenon, the magnitude of the human rights crisis in Kashmir is revealed by the executions of hundreds of detainees. Therefore, it is concluded that the features of democracy claimed by India are absent in Kashmir.*

Keywords: Kashmir; Human Rights; India; Security Forces

Introduction

Under the British rule, the Jammu and Kashmir valley prior to 1947 was considered to be one of the largest princely states in India. As per the India Independence Act of 1947, the princely states were given the right to choose whether they want to remain independent or to be a part of Indian or Pakistan. Initially, Hari singh, the ruler of Muslim majority Kashmir at that time had chosen to remain as an independent princely state. On 26 October 1947, however, under pressure due to the invasion of *Pashtun* forces, He decided to sign the Instrument of Accession to India.[1] And this was the time when conflict started between Indian and Pakistan. On January 1, 1948, the issue was brought to the United Nations Security Council's attention. Two weeks later, concerns were raised by Pakistan on the same matter. 33. On 20 January 1948, the United Nations Commission was established by the Security Council for India and Pakistan in order to investigate the allegations that have been made by the Indian and Pakistani governments against each other, and to mediating the dispute. 8 On 21 April 1948, the Security Council Resolution mandated it to facilitate a "free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan." But there is no getting away from the hard fact that Kashmiri people were not given option to be independent by this resolution, although they were asked to choose their accession through right of self determination. Since 1989, the Kashmiri people have been tortured, killed humiliated, and injured. Due to prevalent violence in the valley of Jumma & Kashmir, thousands of Kashmiris were brutally in the valley of Jammu & Kashmir. They suffered injuries and thousands of them got disabled. Thousands of the people got injuries and they became disabled to work. Many people lost their wives, children, husbands who were the only source for them. Due to turmoil situations, thousands of the shops and houses were burnt due to such situation in the valley.

The issue of immunity has been made a great challenge by the state terrorism and militancy in the valley of Jammu and Kashmir. 700,000 military as well as paramilitary personals have been stationed so far by the Indian government in this state which mean one soldier for seventeen citizens. Indian government, Indian army, and Indian security forces have been accused of human rights violation in Kashmir. . There is no getting away from the hard fact that brutal acts by Indian Security forces have been unpunished, unchecked, legitimised by the Indian government in a polarised society's environment since the starting of this conflict, the question of self-determination has never been answered by the world yet.[2] Just because of some hard-line policies followed

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by India, only few of the cases have been brought to justice, whereas most of the cases are not taken into consideration by giving state-centric justifications.[3] Human rights violation in Kashmir includes enforced disappearances, extra judicial killings, mass murder, and rape. Atrocities committed by Indian armed forces have been extensively documented by many human rights organizations such as Human Rights Organisations such as People's Union for Civil Liberties (PUCL) and Human Rights Watch. 94,323 total killings have been told by Kashmir media in Indian Occupied Kashmir (IOK) from the year 1989 to 2016, out of which custodial killings were 7, 046. Indian forces have arrested 133,387 civilians and destroyed 106,055 buildings, and 94,323 total killings from 1989-2016 have been told by Kashmir media. A about 22,810 women were widowed and 10, 175 were raped. As far as the response of Delhi is concerned, it can be called unsympathetic and cold. There are thousands of unmarked graves in Jammu & Kashmir that have been mentioned by media. The Armed Forces Special Powers Act (AFSPA)[4] provides total impunity to Indian armed forces to commit atrocities in the Jammu & Kashmir where people are killed and tortured without any warrant.

According to Section 7 of the Armed Forces Special Powers Act (AFSPA), they have been permitted to fire at anything they consider unlawful.[5] In July 2008, a resolution was passed by the European Parliament through which the Indian government was urged to investigate the issue of unmarked graves and sudden disappearances of the Kashmiri people but on this resolution no action has been taken so far' According to United Nations, AFSPA has been greatly criticized by mentioning that in democracy such atrocities have no place. In 2015, 58 victim family's interviews in Jammu and Kashmir were conducted by International human rights watch, in this report, AFSPA was considered illegitimate as it justifies atrocities being committed by Indian armed forces. According to this report, any military prosecutor can't be accountable to any Indian court to his false actions in the valley. The Kashmir issue started as a political crisis in 1947 but this political crisis led to humanitarian crisis in Kashmir in 1989 when a brutal crackdown was launched by Indian army against militants and those who were suspected to have any connection with militants. From the outset, that crackdown was followed by atrocities against those demanding freedom, indiscriminate attacks on civilians and detainees' summary execution.[6]

It has been reported by *Aljazeera* that on January 21, 1990, 51 people were killed in Gawakadal during the protests against the killings of Kashmiri people due to early raids by Indian armed forces. On 25 January 1990, 25 people more were killed by Indian Armed forces during the protest against Gawakadal massacre. In 1992 alone, the killing of 2000 people was reported, Due to insurgency in the Valley, protests started all over the valley.[7] Different operations were launched by Indian armed forces to tackle insurgency which led to send of alienation among the people of Kashmir.

Operation Tiger

In August 1992, a new offence was launched by the Indian government forces against the militants named Operation Tiger, It was decided by Indian armed forces to launch surprise raids campaign in order to capture and kill militants and terrorize those who were suspected to have connections with those insurgents. During the operation, indiscriminate attacks on civilians as well as detainees' summary execution happened, which was later followed by another operation by the Indian armed forces, named Operation Shiva.[8] These operations led to the killings of many thousands of Kashmiri people over the next several months. By mid-1993, it was reported by human rights groups as well as journalists in Kashmir that hundreds of detainees were killed during this operation due to torture of Indian armed forces. One of them was a Constable of Jammu and Kashmir police, named Riaz Ahmed. On April 20, 1993, he was taken into custody by the Indian army and died on the same day because of the torture..[9] His killing by the Indian armed forces sparked a revolt by Jammu and Kashmir police force. Ashok Patel, the commander in-chief of Indian forces, was transferred out. On October, the Asia Watch team visited Kashmir and travelled throughout the valley of Kashmir. They took interviews and examined patients who had been the victim of indiscriminate assaults or shootings by the Indian armed forces. Before this report was published, details on all the cases were provided by Asia Watch to the government of India.

An Indian newspaper, *Hindustan Times,* reported: "The name Ashok Patel still excites fear — and grudging respect — in Kashmir. His men broke the back of the JKLF on August 6, 1990, and put paid to most of the militant groups by the end of 1992. The catch-and-kill methods Patel used in 1992 (Operation Eagle, Operation Tiger) were extra-legal, but those operations were sharply targeted and he did not arm undisciplined mercenaries with State authority."[10]

The Pattern of Impunity

In Indian-held Jammu & Kashmir, lack of access to justice as well as Impunity for human rights violations can be considered key human rights challenges in the Indian state of Jammu and Kashmir. Many special laws were made applicable in the Kashmir valley such as the Armed Forces Special Powers Act 1990 (AFSPA) as well as the Jammu and Kashmir Public Safety Act 1978 (PSA)[11], both acts have been responsible for depriving the people of Kashmir form their fundamental rights.[12] Due to these acts, Indian army doesn't consider itself accountable for all the atrocities committed in the valley of Kashmir. In response to human watch report, the government came up with the contend that , "Wherever there is transgression, action has been taken. By now, over the last two years, action has been taken against over 100 personnel of the security forces, and this has involved punishments including imprisonment ranging from less than a month to seven years and various forms of departmental action including suspension pending enquiry in a number of cases."[13]

Again another statement was issued by the Indian government, "[W]e do not hesitate to take action against security force personnel where deliberate acts of excesses and cases of gross negligence and over-reaction etc., come to notice. The swift and firm response in the recent unfortunate incident in Sopore would bring this out clearly."[14] Queries raised by Asia Watch were never addressed by Indian government and such atrocities were considered to be the sign of punishment by them. Moreover, the authorities have completely failed to come up with policies that cab be helpful in preventing insurgency in Kashmir.[15] As far as the Section 7 of AFSPA is concerned, it has completely prohibited the security forces personnel's persecution unless the special permission is granted by Indian government grants to prosecute. Due to this, security forces have virtual immunity against prosecution for violation any human right. IIt can be seen that this brutal law has been in force in Kashmir since 28 years, and there is no evidence of a single prosecution of any military man for violating human rights in Kashmir. In relation to this, it has been claimed by the Indian authorities that a policy of "zero tolerance against human rights violations"[16] has been followed so far, and all allegations of human rights violations are being appropriately handled by the military courts. As far as Section 4 of AFSPA is concerned, it permits any armed forces personnel to use fire to not only for self defence but also against those who violation laws and orders "prohibiting the assembly of five or more persons".[17]

It can be contended that contended that this provision is completely opposite to various standards on the use of force For instance, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by armed forces that firearms can be used by them only as the last resort, and there is no permission of using them with a lethal intent "strictly unavoidable in order to protect life".[18] Section 4 has openly granted permission to a soldier to use fire against anyone. Such atrocities have never come under investigation by Indian law. While the Indian Supreme Court of upheld the AFSPA's constitutional validity in 1997, as it has challenged the section 7 for prohibiting military personnel accountable for violating human rights. In July 2017, the Central Bureau of Investigation was added by the Supreme Court in order to investigate extrajudicial killings by Indian armed forces in Manipur. However, no such initiative has been recorded in the case of Jammu & Kashmir. In 2005, a committee in order to review AFSPA was appointed by Indian Supreme Court. According to the committee, the law has become "a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness".[19] Whereas no official position on the recommendations of committee can be seen. It was claimed by media in December 2015 that the Union Ministry of Home Affairs had completely rejected the proposal of committee.[20]

In 2012, Indian government has established a committee in order to review different laws against sexual violence, It was recommended by this committee that AFSPA should be amended and all those military persecutors involved in sexual abuse should be made accountable for their misdeeds.[21] However, no implementation of these recommendations was seen. In 2012, India's National Human Rights Commission revealed that AFSPA "remains in force in Jammu and Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights".[22] India's vice president, Hamid Ansari, in November 2014, recognized that there were so many complaints against this law and "this reflected poorly on the State and its agents".[23]

Many international human rights organizations have called for the amendment in AFSPA. It has been noted by The Human Rights Committee that there is high need to sanctions prosecutions against those involved in human rights violations by Central government "contributes to a climate of impunity and deprives people of remedies,"[24] and it was also recommended that AFSPA should "be abolished and that it be left to the courts to

decide whether proceedings are vexatious or abusive". It was urged by the committee that "judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Inquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel." During UPR of India in 2008[27], 2012[28] as well as in 2017[29] many recommendations were given by several many UN Member States that AFSPA should be revised.

It has been admitted by Indian government that that many states have raised their concerns with reference to AFSPA and there has been an "on-going and vibrant political debate" about whether "AFSPA should be repealed or the provision for sanctions should continue".[30] However, Union Minister of State for Home Affairs, Hansraj Gangaram Ahir, in March 2018 told the Parliament that AFSPA would not be revised in Jammu and Kashmir because there is no proposal for that. He further added: "[H]owever, a proposal is under consideration to make the Armed Forces (Special Powers) Act, 1958 more operationally effective and humane". [31]It has been acknowledged by the India's National Human Rights Commission that the Protection of Human Rights Act, 1993's section 9 has severely restricted or minimized its powers to investigate those incidents which involve Indian armed forces. It was also observed by the Human Rights Committee that the Indian National Human Rights Commission has no power to directly investigate about complaints made against Indian armed forces, which also prevents investigation of human rights violations in the past. As far as the recommendations of the committee are concerned, it stated that all the restrictions should be removed and it is highly necessary to authorise the Commission in order to investigate all allegations of human rights violations by the State's agents.

Conclusion

To sum up in a nutshell, it can be concluded that there is a non-congenial environment for the fundamental rights in the Indian-held Jammu & Kashmir. For spin doctors, the circumstances are really very hard to fall back on the old claim of the involvement of Pakistan. Everything has been done by Indian government in order to subvert, misrepresent, restrain, discredit, intimidate interpret, purchase, humiliate, disgrace or simply execute the Kashmiri people and their right to self-determination. The silence of the people of Kashmir cannot be taken as acquiescence. AFSPA and many other laws implemented in Jammu & Kashmir should be revised as they are not more than the instruments to violations human rights in Jummu & Kashmir. Machiavelli's saying is being followed by the Indian State when it comes to the issue of Kashmir ' It's better to be feared rather than to be loved' Even 'Pick and Choose' approach of *Real politik* with reference to IOK has not been successful so far, and it is not likely to be successful in the future as well. The Western powers' deep reluctance to criticise India for economic, geopolitical as well strategic reasons have played their role in further aggravating the situation.

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Concluding Session

CONCLUDING NOTE

Prof. Dr. Khalid Manzoor Butt
Chairperson, Department of Political Science
Director, Centre of Excellence China Studies
GC University Lahore, Pakistan.

Bismillah Hir Rahman Nir Raheem

Respected Raja Yasir Humayun, Minister of Higher Education, Govt. of the Punjab, Dr. Samar Mubarakmand, National Hero and eminent scientist of Pakistan, Dr. Hassan Amir Shah, Vice Chancellor, GCU, delegates, faculty members, guests, and dear students, Assalam o Alaikum…

I extend my gratitude to Minister Sb, for gracing the concluding session of the Conference as the Chief Guest. We are thankful to Dr. Samar Mubarak, the Guest of Honor for sparing time for the ceremony. Ladies & Gentlemen this is the sixth international conference since 2013, we have successfully organized. We are really thankful to HEC and PHEC and all sponsors.

Indeed, the conference topic was thought provoking and have attracted big number of scholars from abroad and Pakistan to speak on. I am glad and satisfied that in all ten sessions of the conference which had different themes, the academicians have presented very quality research papers. It goes without saying that some researchers were exceptionally outstanding and raised very pertinent questions and gave food for thoughts for academicians and stakeholders. After the each session, lively Question-Answer session took place in which our students have spiritedly participated and some interesting questions were raised by them.

Off course policy dialogue was icing on the cake in which the paper presenters and faculty participated came up with logical and productive arguments for the concerned quarters.

The main purpose of the conference is not only to gather the scholars from different institutions to contribute intellectually but also to provide a platform to the students for their academic exposure and learning. In all the sessions of the conference presence and participation of our students was very enthusiastic.

Indeed, participation of scholars and presentation of quality research papers have made this conference successful and memorable. Please give a big round of applause to all paper presenters.

I assure all the paper presenters, that we will keep our tradition alive and will publish conference proceedings within two months and dispatch its copy very soon. Actually proceedings of the conference put everything on record for reference and materialize the efforts of the organizers and contributions of the paper presenters.

In this conference, there was a unique combination of seasoned academics and some budding researchers. So, young academics got a good opportunity to learn from the seniors which is the hall mark of the conference.

On this occasion, I wish to give credit of organizing this conference to Mr. Manzoor Elahi, the Coordinator, our faculty members and his team --- Please put your hands together and appreciate their flawless efforts. I am also thankful to the Vice Chancellor for his all-out support and other administration staff of the university like Directorate Facilities, Protocol office, Public Relationing office and, Security office.

I thank Minister Sb. and Dr. Samar Mubarakmand (our alumni), who has come all the way from Islamabad for the concluding ceremony. Once again, I extend my gratitude to all paper presenters who have come from different parts of the world and Pakistan for the conference and made it a success. And I hope that they will keep coming. I also look forward for their academic cooperation and collaboration with us in future.

Thank you very much Ladies and Gentlemen.

VICE CHANCELLOR'S SPEECH

Prof. Dr. Hassan Amir Shah (SI)
Vice Chancellor
GC University, Lahore, Pakistan.

Good Evening and *Asslam-o-Alaikum.*

This is conference season in GC University. This international conference will be followed by conferences in Urdu, Mathematics, and Biology and so on. I am also glad to see young and dynamic provincial minister of higher education, Raja Humayoun Yasir, for Concluding Session. He has busy schedule and I am thankful to him that he took some time out to be a part of this academic gathering.

In addition, Dr. Samar Mubarikmand, also graced the occasion with his presence. He is a national hero and our alumni. Everybody in Pakistan knows him. I think, many people who came from abroad would have heard his fame also. He is a nuclear scientist but you know he is much more than that he served the planning commission and in many other important jobs and portfolios. I would like to thank both of them for being here.

I would like to thank all of you especially our delegates who came from Pakistan and from different corners of the world. It's a pleasure to have you here and we hope that we will welcome you again and I am sure that Department of Political Science will be working on plans very soon for a conference next year. They have been regularly organizing international conferences on different themes since 2013. This is the 6th international conference as Dr. Khalid Manzoor Butt has told us. I am sure that another exciting theme will be worked out by the coming year.

The conference is only successful when we have scholars from global and national institutes. Such huge academic gathering is especially very beneficial to our students. It gives us a chance to exchange ideas with you and may be open up avenues of academic and research collaboration between our and foreign institutes.

So once again let me thank you for being here. I hope you shall enjoy tomorrow also. Once again we thank you very much for coming.

GUEST OF HONOUR'S SPEECH

Dr. Samar Mubarakmand (SI, HI, NI)
Nuclear Physicist
Pakistan Atomic Energy Commission, Pakistan.

Minister Sahib, the Vice Chancellor, the Chairman of the department, foreign delegates and, conference participants, Good Evening and *Asslam-o-Alaikum.*

It is a pleasure for me to be here and speaking to you today. Everyone is wondering that what a scientist is doing at human rights conference. Why I am talking about this because human rights effects all of us whether we are scientists, technical or non-technical people, business community or from any sector of society. We all have human rights as citizens of the country.

We have seen that things have been improving gradually since the inception of Pakistan. The situation of human rights is also improving day by day. The literacy rate has also increased from 28% in 1947 to 65% today. The social conditions are also improving. We have observed that the politics of Pakistan has passed through recurrent democratic and dictatorial governments. The governments strived to ensure protection and promotion of human rights despite political instabilities at domestic and regional levels.

Today, talking about the rights of children is a sign of developmental approach. I am very glad to see the topic of rights of transgender. They are very significant part of society and have been given identity in the society. The rights of women are ensured by Islam approximately 1400 years ago. But the Western society till 1900 could not grant the right of property to their women and still their salaries are much less than the salaries of men. People now are aware of the rights of women. Women are getting participation in social, political and economic fields of society. They have protection in the cities but the situation in villages is very severe where a 10 year girl is forced to get marry with 60 year old man just to follow the societal taboos.

I had the opportunity to travel deeply into the rural areas of Pakistan i.e., Chagi and Thar. You will be astonished to see how human rights are being violated by the elites of that society. More efforts and trainings are required to acquaint them of human rights.

I am glad that the Department of Political Science of GCU is playing a leading role to spread awareness about human rights and I hope that the day will come when there would not be a single case of human rights violation in our society. The suggestions and recommendations at the end of the conference could be of great interest for policy makers of the country.

I again, extend my gratitude to all the delegates and participants in the conference who came across the globe and made their research contributions for the magnanimous cause of human rights. I hope that you are feeling comfortable in this beautiful weather of Lahore.

Thank you very much.

CHIEF GUEST'S ADDRESS

Raja Yasir Humayun Sarfraz
Minister of Higher Education
Government of Punjab, Pakistan.

Honorable, Prof. Dr. Hassan Amir Shah, Vice Chancellor, Honorable, Dr. Samar Mubarakmand, Respected Chair, Prof. Dr. Khalid Manzoor Butt, Foreign and National scholars, and Ladies and Gentlemen *Assalam-o-Alaikum* and good evening.

First of all, I congratulate GC University, Lahore, and especially Department of Political Science and Centre of Excellence China Studies for organizing a very successful conference at this high time. I really believe that organizing such conferences could enlighten your students, make them think about new dimensions; make them better human beings, better students and, better citizens.

The subject of human rights has been championed by the west and especially in the postmodern era they are now talking about animal rights. We must not forget that the first State ever grant any charter to human beings about their rights was of the state of the Madina, founded by our Prophet (PBUH). The last sermon of the Prophet (PBUH) was the first official document which very clearly elaborates the human rights and make them equal in all respects.

If you look at ancient civilizations of Rome and India. There, they had human rights but not equal human rights. The Romans had different rights and their subjects had different rights. People were treated differently. Fortunately or unfortunately, we belong to the region which is one of the oldest civilization in the world but in this area equal rights were not granted. Manu's cast system divided the society into four different classes. No concept of equal rights was there which had very negative effects on our society. Even today, the imprints of class difference can be easily traced out in the Indian sub-continent.

Unlike, one can talk about Great Baba Guru Nanak Dev Ji, my Sikh friend sitting in front of me, and I must recognize that his teachings are guiding force for human rights in the Indian subcontinent. Apart from this, we can also talk about the teachings of Mahtama Budhha in furnishing the concept of human rights.
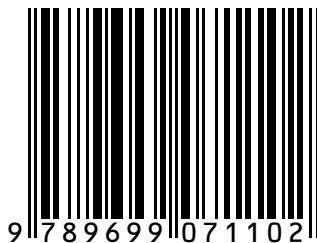
Most of the people over there think that we have to follow the west which you don't have to. We have enough ideas in our own religion in our own region to follow. Some of the research work has already been done but there is a dire need to do more research on the champions of human rights in our own area, in our own Punjab and in our own Indian subcontinent.

I think conference like this really motivates our students to do more research work. I really feel privileged that I was being invited as Chief Guest on this occasion and thank you so much the Chair, the VC and all the students.

Thank you so much and so kind of you.

LabourRights
MinorityRights
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