

LEGAL RECOGNITION OF ETHNO-LINGUISTIC MINORITIES: COMMUNAL CHALLENGES AND ALTERNATIVE FEDERAL ARRANGEMENTS

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ABSTRACT

This article examines the legal recognition afforded to ethnic and linguistic minorities in Pakistan. Using in-depth qualitative interviews, it focuses on two ethno-linguistic communities; the Hazara community of Quetta and the Torwali community of Swat. These ethno-linguistic communities experience unique challenges in their everyday lives, including threats of language extinction and cultural assimilation. These difficulties are documented through a review of the existing scholarship and participatory action research conducted via interviews. This article also analyses the shortcomings of the existing legal framework in its treatment of ethnic and linguistic minorities. To address these challenges, it proposes several solutions, including structural changes through federalism, a more expansive definition of 'minorities' and substantive legal recognition of ethno-linguistic minorities in Pakistan.

KEYWORDS: Ethnic Minorities, Religious Minorities, Nationalism, Constitutional Recognition, Ethno-linguistic, Hazara Community, Torwali.

1. INTRODUCTION

Ethnic minorities are 'groups exhibiting cultural preferences different to those of the majority population, or groups with different cultural and societal origins.'¹ As a diverse country, Pakistan is home to several ethnic minorities. Unfortunately, minorities like the Hazara, Torwali and Meo communities are not granted formal recognition based on ethnicity across the Constitution, legislation and judicial decisions. In this paper, 'recognition' is defined as the

¹ Martin Kahanec, Anzelika Zaiceva & Klaus F. Zimmermann, 'Ethnic Minorities in the European Union: An Overview', in Martin Kahanec & Klaus F. Zimmermann (eds), *Ethnic Diversity in European Labor Markets* (Edward Elgar Publishing, Cheltenham 2011), Ch 1.

constitutional acknowledgement of ethno-linguistic minorities, as well as the preservation of their interests and rights.

Unfortunately, the terms 'minorities' and 'religious minorities' are considered almost interchangeable in Pakistan. Although the Constitution of the Islamic Republic of Pakistan 1973 (Constitution) refers to 'minorities' frequently, there is no express definition of the term or an outline of what kinds of minorities are recognised.² Many jurisdictions share this problem despite international legal attempts to consolidate a single definition. For instance, Pakistan is a party to the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD). In 2009, the CERD Committee stated that Pakistan failed to produce a database of 'race, colour, descent and national or ethnic origin' of its population, which was also missing from the 1998 census.³ While the Government recognised some regional languages (apart from the provincial languages) like Hindko and Brahui, there was 'no link made to the ethnic dimension of the language speakers'.⁴ The lack of acknowledgement of the minority ethnic groups of Pakistan has been observed by NGOs and UN agencies alike. This paper builds on these observations by conducting a substantive analysis of the issue.

2. RESEARCH METHODOLOGY

This essay employs a qualitative and participatory approach to investigate the status of ethno-linguistic minorities in Pakistan, focusing on the Torwali and Hazara communities. The core inquiry explores how these communities experience life in Pakistan as an ethno-linguistic minority and whether they share commonalities in their challenges.

Purposive sampling identified two individuals directly involved with these communities.⁵ In-depth interviews (IDIs), lasting over two hours each, were conducted using pre-developed interview guides. Zubair Torwali, a

² Shaheen Sardar Ali, 'The Rights of Ethnic Minorities in Pakistan: A Legal Analysis' (1999) 6(1) International Journal on Minority and Group Rights 69, 95.

³ Minority Rights Group International, 'Redressing a History of Neglect: Discrimination of Ethnic Groups and Indigenous Peoples of Pakistan' (Shadow NGO Report, MRG CERD, 2009).

⁴ *ibid.*

⁵ Steve Campbell et al., 'Purposive Sampling: Complex or Simple? Research Case Examples' (2020) 25(8) Journal of Research in Nursing 652 <https://doi.org/10.1177/1744987120927206> accessed 23 December 2024.

prominent activist from Swat and founder of the organisation *Idara Baraye Taleem-o-Taraqi*, detailed his efforts to preserve Torwali culture, his experiences with various stakeholders, and his legal petitions for language preservation. Similarly, Rahila Haidar, a schoolteacher and public service officer from the Hazara community living in Quetta, provided insights into her community's political, social, and educational challenges. Both interviews were conducted online due to geographical constraints. The interviews are complemented by references to international reports, existing literature, and legal databases.

3. A COMPARATIVE APPROACH TO ETHNIC MINORITIES

Different jurisdictions have taken a nuanced approach towards ethnic minorities. The Constitution of the United States (US), for example, does not define 'minority', but the US Civil Rights Act 1964 prohibits discrimination on account of 'race, colour, religion, sex, or national origin.'⁶ Similarly, the Voting Rights Act 1965 specifically prohibits the denial of voting rights to anyone based on 'race or colour.'⁷ Interestingly, the US Higher Education Act 1965 is one of the few statutes that defines 'minority'. Title 20 of the Act, in the context of education, defines minorities as:

American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.⁸

Nevertheless, the conceptualisation of 'minority' in American social thought has evolved over time. Back in 1945, Wirth defined minorities as:

a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in

⁶ Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964).

⁷ Voting Rights Act of 1965, 52 U.S.C. § 10301 (1965).

⁸ Higher Education Act of 1965, 20 U.S.C. § 1067k (2020).

which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination.⁹

A collective reading suggests that minorities in the US are historically perceived in terms of their race or ethnicity, considering American history and ethnic pluralism.

The Canadian understanding of minorities has also evolved over time. Section 15(1) of the Canadian Charter of Rights and Freedom 1982 prevents discrimination based on 'race, national or ethnic origin, colour, religion, sex, age or mental or physical disability'.¹⁰ Section 17 protects linguistic minorities by securing a citizen's right to receive education in their preferred language, even if they reside in an area with a different majority language.¹¹ Moreover, the Canadian Multiculturalism Act 1988 explicitly mentions three categories of minorities, 'ethnic, religious, or linguistic', rather than leaving the term vague.¹² Section 5(1)(g) of the Act states that an appointed Minister will help 'ethno-cultural minority communities to conduct activities with a view to overcoming any discriminatory barrier and, in particular, discrimination based on race or national or ethnic origin'.¹³ Apart from these foundational statutes, Canada has defined its 'visible minorities' in terms of colour or race for employment and immigration purposes.¹⁴

Along similar lines, Australia has taken an expansive approach towards multiculturalism. A Multicultural Council was established in 2011, and federated states like New South Wales and Victoria have devised unique educational policies for fostering different cultures.¹⁵ The Australian Special Broadcasting Services also airs shows in different regional languages¹⁶. There

⁹ Louis Wirth, 'The Problem of Minority Groups', in Ralph Linton (ed), *The Science of Man in the World Crisis* (New York 1945) 347-72; reprinted in Louis Wirth, *Community Life and Social Policy: Selected Papers*, eds. Elizabeth Wirth Marvick and Albert J. Reiss (Chicago 1956) 237-60.

¹⁰ Canadian Charter of Rights and Freedoms, RSC 1982, Appendix II, No 44, s 15(1).

¹¹ *ibid* s 17.

¹² Canadian Multiculturalism Act, RSC 1988, c 24 (4th Supp), preamble.

¹³ *ibid* s 5(1)(g).

¹⁴ Employment Equity Act, SC 1995, c 44, s 2.

¹⁵ Australian Government, 'Our Policy History' (Department of Home Affairs) <https://www.homeaffairs.gov.au/about-us/our-portfolios/multicultural-affairs/about-multicultural-affairs/our-policy-history> accessed 18 October 2024.

¹⁶ SBS, 'FAQs' (SBS, 2024) <https://www.sbs.com.au/aboutus/contact-us/faqs/> accessed 3 December 2024.

has been an overall effort to accommodate different linguistic and ethnic communities through exemptions from uniform dress codes, representation in media, and the availability of various legal departments for this purpose.¹⁷ Despite these frameworks, Australia has received global criticism for its discriminatory treatment of indigenous people, refugees, and asylum seekers.¹⁸ This divide between the legislative framework and practical realities is common in Pakistan, too, especially with regard to religious minorities.

Some States have implemented ethnic quotas for their minorities. For example, Taiwan has separate reserved indigenous districts that participate in multi-party electoral democracy, even though the 16 recognised indigenous groups make up only 2.73% of the Taiwanese population. Likewise, Singapore has reserved ethnic quotas for Malays, Indians, and other ethnic minority groups.¹⁹ These ethnic quotas ‘strengthen representational links, create positive attitudes towards government, and encourage political participation’ of ethnic minorities.²⁰

Internationally, organisations have adopted a comprehensive attitude towards minorities. Article 1 of the UN Minorities Declaration refers to minorities as ‘based on national or ethnic, cultural, religious, and linguistic identity’.²¹ Similarly, Francesco Capotorti, the UN Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, defined a minority as:

a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only

¹⁷ *ibid.*

¹⁸ Human Rights Watch, ‘Australia’ (*World Report 2024*, 2024) <https://www.hrw.org/world-report/2024/country-chapters/australia> accessed 18 October 2024.

¹⁹ Netina Tan and Cassandra Preece, ‘Ethnic Quotas, Political Representation and Equity in Asia Pacific’ (2022) 58 *Journal of Representative Democracy* 1-25.

²⁰ *ibid.*

²¹ United Nations General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135, (3 February 1992), art 1.

implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.²²

In sum, ethnicity is globally recognised as a basis for the recognition of a minority. Unfortunately, there are no parallel provisions in Pakistan; the meagre protection afforded to minorities in Pakistan is largely for religious minorities. This leads to various legal, social and cultural challenges faced by these communities in their daily existence. This article shall further demonstrate how constitutional provisions and judicial interpretations exacerbate their challenges.

4. WHY ARE ETHNIC MINORITIES NOT RECOGNISED IN PAKISTAN?

Although Pakistan's provinces are divided along ethnic lines, this framework has not effectively promoted tolerance between different communities. Theoretically, an ethnic federation with provincial autonomy may be a source of pride for larger communities. However, this experience is not shared by ethnic minorities. Even within larger ethnic groups, the economic, institutional, and political dominance of Punjab has been a source of grievance.²³ Especially after 1971, many communities felt that Punjab's 'demographic density became democratic density' at the expense of other provinces.²⁴ It became more apparent since Punjab's dominance significantly increased after the separation of East Pakistan. Besides, 'region-based political groups in Pakistan have been historically mobilised for political power largely around their ethnic and linguistic identities', marginalising smaller communities by amplifying ethnonationalism.²⁵

The constant tussle for power among dominant ethnic groups means that the interests of smaller communities are often overshadowed. This can result in ethnic violence. In Karachi alone, there have been several cases of target

²² Francesco Capotorti, 'Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities' (UN Doc E/CN.4/Sub.2/384/Rev.1, 1979).

²³ Moonis Ahmer, 'The Challenge of National Integration' *Dawn* (23 March 2019) www.dawn.com/news/1471231 accessed 16 October 2023.

²⁴ Murtaza DN, 'Punjab Dominance' (DAWN.COM, 11 September 2017) <https://www.dawn.com/news/1357045> accessed 18 October 2024.

²⁵ Maryam S Khan, 'Ethnic Federalism in Pakistan: Federal Design, Construction of Ethno-Linguistic Identity & Group Conflict' (2014) 30 *Harvard Journal on Racial & Ethnic Justice* <https://ideaspak.org/images/Publications/Social-Exclusion-and-Marginalisation/Ethnic-Federalism-in-Pakistan.pdf>.

killings on ethnic grounds and goons that attack local businesses run by Pashtuns.²⁶ Many social movements, like the demands for a Saraikistan within Punjab, Sindhudesh in Sindh, and Baluchi separatism, feed on the same ethnicity-based angst which fosters nationhood, or a sense of national identity based on ethnicity. This competition for resources, autonomy, and recognition does not yield positive results for ethno-linguistic minorities who already lack adequate representation.

Such problems originated at the time of the conceptualisation of Pakistan when the founding fathers placed ‘an unnecessarily high premium on the Islamic charter’ of the new State.²⁷ The Two-Nation theory illustrated this divide, but soon after Partition, many realised that ‘religion was not a bedrock of a [timeless] identity but simply a political resource instrumentalised by the elite groups’.²⁸ Several ethnic movements emerged, casting doubts on whether religion was an effective adhesive force between different ethnic groups.

The case of Bangladesh is a poignant illustration of ethnonationalism in Pakistan. The stigmatisation of the Bengali language and the political oppression faced by the Bengali community highlighted that religious unity alone did not guarantee cultural unity.²⁹ When the Bengalis, who were deeply attached to their language and literature, protested against the forced endorsement of Urdu in the region, the State responded with violence.³⁰ Despite the East Bengal Assembly’s unequivocal demand for Bengali as the national language, Jinnah remained adamant on Urdu as the only State language, deepening the feelings of neglect.³¹ Demands for ethnic nationalism challenged the notion that the country ‘should be governed according to the ideology of Islam rather than language, ethnicity, or place of origin’.³² By

²⁶ Immigration and Refugee Board of Canada, Pakistan, *Criminal activity and violence in Karachi perpetrated or directed by political, ethnic or religious groups, including the state's response* (Ottawa, 7 December 2011) Ref. No. PAK103866.E <https://www.refworld.org/docid/5072ca722.html> accessed 16 October 2023.

²⁷ Shaheen Sardar Ali (n 2), 193.

²⁸ Christophe Jafferlot and Rasul Bakhsh Rais, ‘Interpreting Ethnic Movements in Pakistan [with Comments]’ (1998) 37 *The Pakistan Development Review* 153-179.

²⁹ Moonis Ahmer (n 23).

³⁰ Farooq Tirmizi, ‘The Sad History of International Mother Tongue Day’, *The Express Tribune* (21 February 2011) <https://tribune.com.pk/story/121515/the-sad-history-of-international-mother-tongue-day> accessed 16 October 2023.

³¹ Tahir Kamran, ‘Pakistan’s First Decade’ (2016) in H. Kumarasingham (ed), *Constitution-Making in Asia* (Cambridge: Cambridge University Press) Chapter 5.

³² Moonis Ahmer (n 23).

branding these incidents as political conflicts, the West Pakistan-dominated State dismissed their ethno-linguistic root causes and subsequent implications for ethno-linguistic recognition.

5. ARGUMENTS REGARDING THE LACK OF RECOGNITION

To reiterate, ‘recognition’ in this article includes recognition along constitutional terms but also goes beyond it. Article 27 of the International Covenant on Civil and Political Rights 1966 (ICCPR) mandates that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.³³

Inferred from this provision, ‘legal recognition’ refers to formal acknowledgement and guarantees by a State of the rights of a minority to practice their distinct cultures, languages, and religions without any discrimination. Thus, a national framework that ensures the integration and protection of a community is essential.

While it is surprising to reflect that ethnic minorities were never recognised as a distinct category in Pakistan, there are three possible reasons for this. Firstly, recognition along ethnic terms would only breed more demands of nationalism. Secondly, recognition in itself is not a solution, as demonstrated by the plight of religious minorities, but rather a means to substantive equality. Finally, the Constitution already entails provisions for the protection of cultures and languages of all communities, making the additional demand for recognition redundant.³⁴ However, this article addresses these arguments to establish otherwise.

A historical analysis of Bangladesh and Balochistan negates the view that ethnic recognition can amplify the demand for nationhood. In fact, demands

³³ United Nations General Assembly, International Covenant on Civil and Political Rights, UN Doc A/RES/2200(XXI) (1966) (‘ICCPR’), art 27.

³⁴ Constitution of the Islamic Republic of Pakistan 1973, arts 2A, 33, 36 (‘Constitution of Pakistan 1973’).

for self-determination can become stronger by a lack of substantive recognition. To this end, many ethnic groups complain that the State remains apathetic towards their unique struggles. Zubair Torwali, a Dardic language activist who runs an organisation working to preserve the Torwali language, shed further light on this issue.³⁵ He shared that during his organisation's work and engagement with institutions like the media, security forces, and the government,³⁶ he found the local government to be the most apathetic stakeholder.³⁷ This perspective stems from his experience of receiving no governmental support for his language preservation efforts. Thus, the lack of consideration afforded to distinct communities does not necessarily stiffen separatist movements. Rather, it generates feelings of resentment among communities.

Regarding the second argument, recognition has to be substantive and not merely declaratory. Although religious minorities have been recognised constitutionally, they still face challenges regarding national integration. Nevertheless, constitutional recognition of their separate status has – at the very least – provided a basis for the protection of their rights. For example, the Sindh Department of Minority Affairs has an annual endowment fund scholarship reserved for students belonging to the Christian, Hindu, Parsi, and Sikh communities.³⁸ Educational initiatives like scholarships and quotas can also be extended to people from ethnic minorities if they are entitled to constitutional and legal recognition.

Besides, constitutional recognition is foundationally important for reform because the Constitution offers a framework for governance, and its provisions cannot be overridden by ordinary legislation. Making specific provisions for ethno-linguistic minorities creates a framework for the enforcement of their unique interests as a matter of the protection of their fundamental rights. This is especially important because the current safeguards available to these communities are subject to judicial

³⁵ Interview with Zubair Torwali, Language Activist, Founder of Idara Baraye Taleem-o-Taraki (Bahrain, Swat District, Pakistan, 5 December 2023).

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ Government of Sindh, 'Minorities Affairs Department, Government of Sindh' (*Minorities Affairs Department*, nd) <https://minorityaffairs.sindh.gov.pk/> accessed 23 December 2024 .

pronouncements and subjective interpretations – as demonstrated by a later section of this paper.

Lastly, the challenges faced by religious minorities should not hinder the progress of other minorities. Rather, they can serve as a critical lesson and inform the development of strategies that are cognisant of the unique needs of the community. The crux is that the right to comprehensive (both declaratory and substantive) recognition in the national landscape should be argued for as a fundamental right of ethnically and linguistically diverse communities.

6. CHALLENGES FACED BY ETHNO-LINGUISTIC MINORITIES

While arguing for the recognition of ethno-linguistic minorities, it is essential to delve deeper into the challenges they face. This section explores their shared adversities while also highlighting the unique challenges faced by the Hazara and Torwali communities discovered through primary research.

6.1. Lack of Recognition in Census

In 2009, a shadow report by Minority Rights Group International analysed the results of Pakistan's 1998 census.³⁹ It notes the composition of various ethnic groups in Pakistan based on their mother tongues. While well-known communities like the Seraiki make up 10.53% of the national population and the Muhajirs make up 7%, lesser-known ethno-linguistic groups like the Hindko and Brahvi people make up 2.43% and 1.21% of the total population respectively.⁴⁰ The 2.81% of the remaining population and the languages they speak are classified as the 'Other'.⁴¹ The Annex to the 1981 census shows that the 'Other' category does account for languages like Torwali, Hazaragi, and over fifty other minority languages.⁴² However, this textual otherisation has far-reaching consequences because it mirrors the legal isolation found in

³⁹ MRG Report 2009 (n 3).

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² Tahir Rehman, 'Language, Power and Ideology' (2002) 37(44) *Economic and Political Weekly* <https://www.jstor.org/stable/4412816> accessed 18 October 2024.

public attitudes, judicial interpretation, and administrative mistreatment of smaller minorities.

Thus, minority communities require the inclusion of their language as a ‘mother tongue’ option in the census form rather than as an ‘Other’ category. The last census that attempted to screen people based on ethnicity was held in 1961, and no similar efforts have been made thus far.⁴³ Indeed, in the 2017 census, only nine languages were officially part of the data collection forms – Urdu, Sindhi, Punjabi, Pashto, Balochi, Kashmiri, Saraiki, Hindko and Brahui. In the 2023 census, five new languages were included – Shina, Balti, Mewati, Kalasha, and Kohistani.⁴⁴ The fact that these five languages made it out of the ‘Other’ category in the 2023 census shows that the demand from communities to make their language an official part of the census has some impetus.

This first step towards legal recognition would prevent minority languages from cultural erasure where ‘Torwali’ is currently misunderstood as simply being a dialect of Kohistani.⁴⁵ The lack of acknowledgement in the official census is a core problem of these communities since it hampers any additional measures that can be taken to protect their interests, such as their political representation and preservation of their languages.

6.2. Public Discrimination

Discrimination and marginalisation are often reported by people belonging to non-mainstream ethnicities. This includes stereotypes about their right to land, literacy level, and culture from the moment they begin schooling. Zubair Torwali elaborated on the struggles of his community that has been living in the Swat Valley for decades. He shared that Torwali-speaking children are subjected to ridicule and mockery in public schools.⁴⁶ Besides, if an adult community member has to interact with local agencies for work purposes, the officials regard them as inferior or label them ‘*wehshi*’ and ‘*jaabil*’

⁴³ Pakistan Bureau of Statistics.

⁴⁴ Pakistani Bureau of Statistics (2023 Census form)

<https://census.pbs.gov.pk/questionnaire/#1643951222396-e656c8ec-d459> accessed 18 October 2024.

⁴⁵ Zubair Torwali Interview (n 35).

⁴⁶ Zubair Torwali Interview (n 35).

(uncivilised and illiterate) due to their unique language.⁴⁷ This stereotyping is also identifiable in Appadurai's definition of minorities, which recognises that the existence of groups whose culture, language, or religion is different from the mainstream practices centrally makes majorities 'uncomfortable'.⁴⁸ It results in otherisation, leading to further contempt and intolerance towards the minority group.

This, in turn, negatively impacts the socio-economic opportunities afforded to members of ethnic minorities. According to Rahila Haider, there are identifiable discriminatory trends within workplaces in public sector jobs in Balochistan.⁴⁹ Her colleagues believe that due to political manipulation, Pashtun members are preferred for promotions and higher ranks in Quetta. Regarding education and employment, she highlighted that although a significant portion of Hazara youth attends the Balochistan University of Information Technology, Engineering and Management Sciences (BUIITEMS), they do so with the belief that it will not guarantee them employment within the country.⁵⁰ She claimed that '[E]ver since the target killings, these bright minds want to leave for Australia and Europe right away', indicating that this phenomenon contributes to 'brain drain' in Pakistan.⁵¹ Thus, workplace discrimination and a lack of employment opportunities for the community are some of the challenges faced by members of ethnic minorities.

The worst cases of discrimination result in isolation and violence against ethnic communities like the Hazara people, who are targeted for their ethnicity, religion and – in some instances – language.⁵² An Office of the United Nations High Commissioner for Refugees (UNHCR) study recognises that many people from minority groups are either displaced internally or externally as refugees. This rate of displacement is a powerful

⁴⁷ Zubair Torwali Interview (n 35).

⁴⁸ Arjun Appadurai, *Fear of Small Numbers: An Essay on the Geography of Anger* (New York, USA: Duke University Press 2006) 8.

⁴⁹ Interview with Rahila Haider, Public Commissioned Officer and Teacher (Quetta, Balochistan, Pakistan, 22 November 2023).

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² IRIN, Minorities under pressure in Pakistan, 17 October 2013
<https://www.refworld.org/docid/5261065b4.html>.

illustration of the lack of protection they face within their home country.⁵³ The Internal Displacement Monitoring Centre records particularly high internal displacement rates in the northwest regions of Pakistan, including Khyber Pakhtunkhwa and the Federally Administered Tribal Areas (FATA).⁵⁴ Approximately 5 million people who were displaced by sectarian violence and human rights abuses since 2008 have been unable to cross national borders.⁵⁵ Like asylum seekers abroad, internally displaced persons (IDPs) also experience threats to their integrity, restrictions on their freedom of movement, and a lack of access to basic amenities.⁵⁶ Indeed, the common inclination or pressure within Hazara and Torwali communities (and other ethnic minorities) to leave their hometowns speaks volumes about their plight.

6.3. The Problem of Political Representation

Ethnic minorities often lack a voice in local and national politics. Article 51(2A) of the Constitution specifies that, in addition to the provincial allocation of seats in the National Assembly, there will be ‘ten seats reserved for non-Muslims’. Similarly, Article 106(3) reserves seats for religious minorities in the provincial legislature.⁵⁷ However, there are no parallel provisions for ethnic minorities in either the federal or provincial legislatures.

Furthermore, the explanation clause of Article 51(2A) states that if no seat has been allocated to a ‘minority in a province for being very small in number’, the seat jointly allocated to non-Muslims will be deemed to include them.⁵⁸ This interesting addition can enable ethnic minorities that are also religious minorities, such as Parsis, to secure political representation. However, it cannot extend to ethnic minorities that are Muslims, like those from Mawat, Hazara, or Swat. It echoes the question raised by change seekers: ‘Why is it that all references to minorities in the Constitution of Pakistan always focus

⁵³ UNHCR Report ‘Minority Rights: International Standards and Guidance for Implementation’ (2010).

⁵⁴ Internal Displacement Monitoring Centre (IDMC) (2013) ‘Pakistan: Massive New Displacement and Falling Returns Require Rights-Based Response’ [online].

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ Constitution of Pakistan 1973 (n 34), Article 106 (3).

⁵⁸ Constitution of Pakistan 1973 (n 34), Article 51 (2A).

on religious minorities, and not ethnic, linguistic, or racial ones?’⁵⁹ It also goes to the heart of the problem of interpretation of the term ‘minority,’ as discussed earlier.

Rare ethno-linguistic minorities that find some representation through local elections face further hurdles. Most of the Hazara population in Balochistan resides either in Mari Abad within the eastern suburbs of Quetta city or in Hazara Town within the western outskirts of the city.⁶⁰ In the past elections, two ministers of Hazara origins were elected to the Provincial Assembly of Balochistan.⁶¹ Mr Abdul Khaliq Hazara, from the Hazara Democratic Party, became a member of the Provincial Assembly in 2018.⁶² Despite some representation in the political landscape, which other ethnic minorities (like the Meo community) see little of, the ground reality is quite different.

This view was affirmed by Rahila Haider, who shared that the ministers who make it through are often detached from their own communities ‘in hopes of pleasing the political party and elites that brought them to power.’⁶³ The community reports that the elected members refrain from bringing their genuine issues to the forefront, prioritising their own political benefits and alluding towards a worse sense of isolation in the people. Political scientists have emphasised the need for ‘substantive representation’ of ethnic groups, which can only occur when the minority representatives are able to ‘substantively represent, advocate and defend the interests of their communities.’⁶⁴ Through this lens, many ethnic minorities like Hazaras are only descriptively, and not substantively, represented.

⁵⁹ Shaheen Sardar Ali and Javaid Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives* (1st edn, Routledge, London, 2001) 23.

⁶⁰ Saadia Zahra, ‘Hazaras of Quetta: From a Thriving Tribe to an Enclaved Community’ *The Geopolitics* (Quetta, 1 March 2024) <https://thegeopolitics.com/hazaras-of-quetta-from-a-thriving-tribe-to-an-enclaved-community/#:~:text=Furthermore%2C%20The%20Hazara%20People%20predominantly,to%20the%20ongoing%20security%20situation> accessed 13 October 2024

⁶¹ Rahila Haider Interview (n 49).

⁶² Member Profile 2018 (The Provincial Assembly of Balochistan 2018) <https://www.pabalochistan.gov.pk/member-profile/2> accessed 13 October 2024.

⁶³ Rahila Haider Interview (n 49).

⁶⁴ Netina Tan and Cassandra Preece (n 19).

6.4. Neglect Towards Minority Languages

Languages of ethnic minorities are often the conduits of their identity and are directly linked with their self-esteem; however, they do not receive their due regard.⁶⁵ Fang, in her research on Chinese minorities, identifies three means through which a minority language can be maintained: educational use, legal and administrative support, and use in places of worship or public news outlets.⁶⁶

In Pakistan, none of the languages of ethnic minorities are taught in schools. Some of these languages are not even passed down to newer generations, meaning they are on the verge of extinction. The endangerment of local languages is a pressing concern in Pakistan. Approximately 25 languages fall under the definition of ‘endangered’ as provided by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), which regards languages as ‘vehicles of value systems and cultural expressions’ and ‘an essential component of the living heritage of humanity.’⁶⁷ The indigenous languages from the northern areas of Pakistan, particularly Torwali, Gawri, Palula, Kalasha, Dumaki, Brushaski, Ushojo, and Balti, are classified as endangered since native speakers of the languages are either dead, have migrated to other places, or switched to other languages.⁶⁸ The creation of new dialects after mixing various local languages has also been reported.⁶⁹

The language of the Hazara people, Hazaragi, is a mix of Dari, Urdu and Pashto. Haider disclosed that the new generation cannot write or understand the script and barely manages to speak it with their family.⁷⁰ The State also does not recognise these languages as a possible medium of instruction in the education system. She shared the personal anecdotes of her daughter, who was baffled by many Hazaragi words for common objects, and added that, as a teacher, she senses the same unease with their language among young

⁶⁵ Tingting Fang, ‘How to Maintain a Minority Language through Education’ (2017) 6 Chinese Studies 1-11.

⁶⁶ *ibid.*

⁶⁷ Stephen Wurm, ‘Atlas of the World’s Languages in Danger of Disappearing’ (2001) UNESCO Digital Library.

⁶⁸ Zubair Torwali, et al., ‘Challenges to the Linguistic Diversity of North Pakistan’ (2017) Lokaratna [www.academia.edu/32881846/Challenges to the linguistic diversity of North Pakistan](http://www.academia.edu/32881846/Challenges_to_the_linguistic_diversity_of_North_Pakistan).

⁶⁹ *ibid.*

⁷⁰ Rahila Haider Interview (n 49).

Hazara students.⁷¹ The students especially join coaching centres to learn English due to its increased popularity and utility in the public sphere. Speakers of Torwali, Gawri, Ushojo and Gujar in the Swat Valley, where Pashto is the main language, also face similar issues.

Secondly, there have been identifiable displacement and migration patterns among ethnic communities in recent years. A Torwali speaker shared that in 2015, 30% of their people moved to urban centres for better opportunities.⁷² While the older generation in Swat is somewhat connected to the culture and language, the same cannot be said about the newer generation that lives in metropolitan areas. Some efforts for the revival of music, poetry, and other art forms in local tongues have been made by members of the ethnic community itself. For example, Zubair Torwali, along with representatives of the Gawri and Gujar community, filed a petition in the Peshawar High Court for the recognition of three indigenous languages in the future census.⁷³ The Presiding Judge eventually accepted this 2022 petition in March 2023, but Torwali reports that the execution of the decree is a further challenge as government organs like the National Database & Registration Authority (NADRA) are not as cooperative.⁷⁴ Even in the recent 2023 census, Torwali was listed under the 'Other' category of languages among sixty others in the Annexure rather than as an option under the 'Mother Tongue' category in the form itself.⁷⁵

While such efforts of language preservation from within the community are commendable, the lack of efforts from the State should not go unnoticed because 'institutional support generally makes the difference between success and failure in maintaining a minority group language.'⁷⁶ Besides, the threat of

⁷¹ Rahila Haider Interview (n 49).

⁷² Zubair Torwali, 'The Ignored Dardic Culture of Swat' (2015) 6 *Journal of Languages and Culture* pp. 30-38.

⁷³ Unreported Judgement, but mentioned in the following article: Zubair Torwali, 'How to ignore a language' (14 January 2023) Sabah <https://sabahnews.net/english/news/24918/> accessed 13 October 2024.

⁷⁴ Zubair Torwali Interview (n 35).

⁷⁵ Pakistan Bureau of Statistics (2023 Census result) https://www.pbs.gov.pk/sites/default/files/population/2023/tables/kp/dcr/table_11.pdf accessed 18 October 2024.

⁷⁶ Tingting Fang (n 65).

extinction continues to linger for languages of other ethnic minorities that do not have as much internal activism.

6.4.1. Threats of Cultural Erasure

Ethnic minorities of Pakistan also deal with issues regarding their cultures, values, and traditions. The Kalash people from the Chitral valleys, for example, have often been cited as a ‘remarkable story’ of cultural survival since they have maintained their unique language and polytheistic faith.⁷⁷ However, even their cultural identity is not immune to external pressures, as the National Commission for Human Rights (NCHR) reported that many community members convert to Islam to feel secure.⁷⁸ The number of natives that still practice the Kalash customs and cultural practices has been decreasing over time.

Likewise, the Torwali community reports that their traditional dance, *thiz* (similar to the Kalash community’s dance), is no longer practised by the people.⁷⁹ Instead of their folk music, wedding ceremonies now play either Pashtun music or Bollywood songs, further threatening their cultural capital.⁸⁰ Along similar lines, male members of the Hazara community residing in Quetta are often dressed in *shalwar kameez* in an effort to blend in with the rest of the population rather than their cultural robes.⁸¹ Thus, identity markers of these communities also face threats of extinction.

Economic disparity and poverty are familiar realities for these communities as they grapple with a lack of developmental opportunities. A lack of formal acknowledgement of their challenges means that their access to justice and legal protection is also impaired. A UN report captures the hazards of allowing the situation to worsen, suggesting that the ‘lack of respect for, lack of protection and lack of fulfilment of the rights of minorities may be at least a contributing factor, if not the primary cause, of displacement and may—in

⁷⁷ Minority Rights Group, Pakistan, <https://minorityrights.org/country/pakistan/>.

⁷⁸ National Commission for Human Rights, *Saga of Survival: The Kalash Report* (2023) <https://nchr.gov.pk/wp-content/uploads/2023/09/Saga-of-Survival-Kalash-Report.pdf>.

⁷⁹ Zubair Torwali Interview (n 35).

⁸⁰ Zubair Torwali Interview (n 35).

⁸¹ Rahila Haider Interview (n 49).

the worst cases—even lead to the extinction of such communities.⁸² Hence, legal safeguards alongside social reform are essential to ameliorate the threats faced by these ethno-linguistic groups.

7. LEGAL FRAMEWORK FOR THE PROTECTION OF ETHNO-LINGUISTIC MINORITIES IN PAKISTAN

It is important to analyse why the existing legal framework has failed to guard the interests of these groups. This section provides an overview of Pakistan's inadequate constitutional and statutory protections for ethno-linguistic minorities and how the judicial system also falls short in interpreting these provisions.

7.1. Constitutional Guarantees

In 1949, Prime Minister (at the time) Liaquat Ali Khan passed the Objectives Resolution, which provided that the rights and freedoms of minorities should be protected.⁸³ This document became the Preamble to the Constitution and then a substantive part of it under Article 2A.⁸⁴ The Objectives Resolution emphasises that 'adequate provisions shall be made for the minorities freely to profess and practise their religions and develop their cultures'; hence, all future provisions should reflect this aspiration.⁸⁵ Therefore, Article 2A could be read as a positive step towards formalising constitutional recognition and protection of minority rights within Pakistan's legal framework.

However, scholars argue that the Objectives Resolution fails to acknowledge the existence of ethnic or cultural minorities while acknowledging the rights of 'members of religious minorities to further develop their religion and culture.'⁸⁶ The rest of the Constitution also makes frequent references to religious minorities and the textual freedoms afforded to them; however, there is no direct acknowledgement of ethnic minorities. For example, petitions under Article 26 (discrimination in access to public places) and Article 27 (discrimination in services) cannot be filed by members of ethno-

⁸² UNHCR Report (n 53).

⁸³ Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: OUP, 2017).

⁸⁴ Constitution of Pakistan 1973 (n 34), art 2A.

⁸⁵ *ibid.*

⁸⁶ Shaheen Sardar Ali and Javaid Rehman (n 59).

linguistic minorities because an ‘ethnic’ or ‘linguistic’ minority is not recognised under Article 26 and 27 (which is limited to race, religion, caste, sex, residence and place of birth).⁸⁷

Furthermore, Article 28 of the Constitution allows ‘any section of citizens’ to preserve their language and culture. However, it is ‘subject to Article 251’, which envisions the promotion of Urdu and ‘provincial languages.’⁸⁸ The phrase ‘language and script’ could potentially include Torwali, Hazaragi and other languages besides the major provincial languages. However, the scope of Article 251 is unlikely to be alternatively construed because the Constitution leaves promotion, teaching, and use of languages up to provincial governments, which are more likely to devote resources to preserve majority regional languages, pushing minority languages to the periphery.

Given the loopholes that exist in constitutional provisions, one could turn to statutory protections that might exist for ethno-linguistic minorities. While the legislative assembly of any ethnic federation should be concerned with passing statutes that protect minorities, Pakistan proves to be an anomaly in that regard.

7.2. Statutory Protection

The state of minority protection in the national and provincial assemblies is deeply concerning. Minority protection bills were proposed at both the national and provincial levels between 2016 and 2021.⁸⁹ However, these bills remain unpassed, and even if they are passed, their actual efficacy for safeguarding ethno-linguistic minorities is questionable.⁹⁰ These proposed bills do not define the term ‘minority’, and like the Constitution, they run the risk of being judicially construed in religious rather than ethnic terms.

⁸⁷ Constitution of Pakistan 1973 (n 34), arts 26 and 27.

⁸⁸ *ibid* arts 28 and 251.

⁸⁹ Naeem Asgher Tarar, ‘In new laws, silver lining for minorities of Sindh’ *Express Tribune* (2 December 2016) <https://tribune.com.pk/story/1251107/new-laws-silver-lining-minorities-sindh> accessed 18 Oct 2024.

⁹⁰ Baseer Qalander, ‘Law for protection of minorities in K-P to be enacted soon, says minister’ *express tribune* (24 April 2015) <https://tribune.com.pk/story/875241/law-for-protection-of-minorities-in-k-p-to-be-enacted-soon-says-minister> accessed 18 Oct 2024.

Some statutes and specific provisions in general laws could be interpreted to protect ethno-linguistic minorities. For example, Sections 153-A and 505 of the Pakistan Penal Code 1860 (PPC) punish people who promote enmity or incite hatred between different ‘groups’ with fines and imprisonment extending up to 5 and 7 years, respectively. In these provisions, ‘groups’ refers to religious, racial, language, and regionality categories.⁹¹ Language and regionality could apply to ethno-linguistic minorities, but it is again subject to judicial interpretation. Moreover, the Sindh Provincial Assembly passed the Sindh Language Authority Act 1972⁹² and the Teaching, Promotion and Use of Sindhi Language Act 1990⁹³ for the protection and promotion of the Sindhi language in schools and public spaces. While this is a positive step, it again shows how identity-oriented provinces (like Sindh and KP) will preserve languages for the ethno-linguistic majority in the province. Therefore, the preservation of minorities within minorities remains a challenge.

7.3. Judicial Interpretation

In *Mst. Zabra v. Ministry of Interior*,⁹⁴ the Balochistan High Court condemned NADRA personnel for refusing to issue CNICs to members of the ‘ethnic Hazara community’. Likewise, in a 2018 Suo Moto case, Justice Saqib Nisar recognised the Hazaras as an ethnic minority when he labelled a communal attack as an attempt at ‘ethnic cleansing’.⁹⁵ Despite such recognition, these judgements only cite Principles of Policy like Articles 33 and 36, which discourage tribal prejudice and protect minorities, respectively. Article 30(2) clarifies that State action that is not in accordance with the Principles of Policy cannot be valid grounds for seeking a legal remedy, implying their unenforceable nature.⁹⁶ Had these judgements cited Fundamental Rights provisions dealing with discrimination of minorities, as was done in the case of religious and sectarian conflict related to employment,⁹⁷ it would have dispelled the assumption that constitutional protections for minorities are

⁹¹ Pakistan Penal Code, s. 153-A and s. 505.

⁹² Sindh Language Authority Act 1972.

⁹³ Teaching, Promotion and Use of Sindhi Language Act 1990.

⁹⁴ *Mst. Zabra v. Ministry of Interior* (PLD 2013 Balochistan 133).

⁹⁵ Muhammad Zafar, ‘CJP calls killing of Hazaras ethnic cleansing’ *Tribune* (Quetta, 11 May 2018) <https://tribune.com.pk/story/1707695/hazara-killings-tantamount-ethnic-cleansing-cjp> accessed 16 October 2023.

⁹⁶ The Constitution of Pakistan 1973 (n 34), art 30(2).

⁹⁷ *Mubashar Nadeem v. Member Board Revenue* (2018 CLC 702).

only used to solve religious communities' challenges and not those of ethno-linguistic communities.

Judicial interpretation also reveals a tendency to neglect less spoken languages. In 2017, the Supreme Court recognised the importance of major legal statutes being translated into the national and provincial languages so that people could refer to the law with expediency.⁹⁸ However, reference to provincial languages only included principal vernacular languages within the provinces, i.e., Punjabi, Sindhi, Pashto and Baluchi. Hence, even the Supreme Court has a narrow interpretation of Article 28 and may not widen its scope to include minority languages like Torwali or Hazaragi. Moreover, the Court leaves translation to the discretion of the provincial governments.⁹⁹ While the decision to delegate translation responsibilities may appear logical due to the assumed proximity between provincial governments and minority communities, it overlooks the potential for provincial bias in favour of majority languages. Due to this bias, provincial governments may be more likely to ignore the preservation and production of minority languages than the Federal Government for the sake of upholding the linguistic status quo within the province.

In *Ameen Masih v. Federation of Pakistan*,¹⁰⁰ the Lahore High Court emphasised that minority rights are not simply fundamental rights enshrined in the Constitution but also those mentioned in the Principles of Policy, international conventions and judicial precedents. Although this is a case concerning Christian family law, it has implications for all kinds of minorities. Hence, if the judiciary starts expanding the scope of 'minority' to include religious as well as ethno-linguistic minorities, it may also shift legislative and public attitudes to the treatment of these communities.

8. FEDERALISM AND ALTERNATIVE MODES OF EXISTENCE

The daily challenges faced by the Torwali and Hazara communities show why immediate constitutional recognition of smaller minorities and change in judicial attitudes is important. However, these alone would not be enough

⁹⁸ 2017 *Suo Moto case* (PLD 2017 SC 257).

⁹⁹ The Constitution of Pakistan 1973 (n 34), art 251 (3).

¹⁰⁰ *Ameen Masih v. Federation of Pakistan* (PLD 2017 Lahore 610).

without executive restructuring, which amends the larger system of federal governance. These macro-level disruptions may range from creating new federating units to vesting more power with local constituencies. Accordingly, the following sections investigate whether horizontal and vertical separation is effective in Pakistan by looking at the Indian model in terms of creating more provinces and the *panchayat raj* (village-level devolution) system.

8.1. The Effectiveness of Horizontal Separation: Creating New Federating Units

Federalism is a governance system that divides and shares power between the centre and regional units. The 18th Amendment to the Constitution in 2010 transferred power from the Federal Government to the provincial governments by abolishing the Concurrent Legislative List.¹⁰¹ The current federal system endangers ethno-linguistic minorities because proportional representation in provincial assemblies allows the majority group to dominate while minority concerns go unheard. Therefore, exploring alternative federal arrangements and different power-sharing structures could possibly mean that ethno-linguistic minorities' concerns are addressed more effectively.

Historically, Pakistan has experimented with its federal design. The 1956 Constitution recommended the One-Unit Scheme, which merged West Pakistan into one province to break up the perceived East Pakistani dominance.¹⁰² However, while East Pakistan was already a homogenous unit due to its Bengali majority, the merger of ethnicities in the Western wing was marked by Sindhi dissent against Punjabi dominance.¹⁰³ The One-Unit Scheme revealed that in an ethnically divided society, a smaller number of provinces can cause federal instability.¹⁰⁴

India is the only comparable model to Pakistan due to their shared colonial legacy and geographical location. After the language movements, India passed the States Reorganisation Act in 1956. This altered the territorial boundaries

¹⁰¹ Constitution (Eighteenth Amendment) Act 2010.

¹⁰² Abdul Shakoor Chandio, 'One Unit Scheme in the Federation of Pakistan: A Case Study of Sindh' (2021) 12(11) International Journal of Scientific & Engineering Research 297.

¹⁰³ *ibid.*

¹⁰⁴ Katharine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan* (Palgrave Macmillan 2007) 172.

of some provinces so that they existed along linguistic lines, leading to the creation of twenty-eight states and union-territories.¹⁰⁵ Due to a greater number of political units within the federation along linguistic lines, India does not demonstrate the same tendency of federal instability that ails Pakistan. However, the creation of Sikkim in 1992 and the subsequent recognition of Nepali as a language in the Eighth Schedule to the Indian Constitution showed that demands for constitutional recognition of language alone do not suffice.¹⁰⁶ The language being spoken by the ethno-linguistic minority also needs to have a corresponding geographically recognisable territory.

Yet, in 1992, Konkani was also recognised in India,¹⁰⁷ despite Konkani speakers being dispersed throughout Maharashtra rather than geographically concentrated. Konkani recognition suggests that languages with dispersed populations (like Torwali or Hazaragi) can gain recognition without creating new provinces. Article 239(4) of the Pakistani Constitution requires two-thirds of the vote of the total membership in provincial assemblies to alter provincial boundaries, making new federating units nearly impossible.¹⁰⁸ provincial assemblies, often dominated by regional majorities, are unlikely to support geographical fragmentation due to concerns over cultural and linguistic homogeneity, power-sharing, and resource allocation. Where there are existing historical grievances between the minority and provincial majority, like the Hazara-Pashtun debate in Khyber Pakhtunkhwa (KP), there may be even more reluctance to grant any form of autonomy to the group. Hence, while Article 239(4) arguably serves an essential purpose by ensuring that provincial governments retain control of their defined boundaries, it overlooks existing ethnic hierarchies within provinces, subjecting minorities to the will of the provincial majorities and creating a constitutional barrier.

The movement to create a separate Hazara province gained traction when the 18th Amendment changed the name of the North-Western Frontier Province

¹⁰⁵ States Reorganisation Act 1956.

¹⁰⁶ Nilamber Chhetri, 'From Jat-Jati to Janjati: Demands for Recognition as Scheduled Tribe and Claims of Indigeneity in Darjeeling' (2017) 66 Sociological Bulletin 75, 90.

¹⁰⁷ 71st Amendment to the Indian Constitution 1992, 8th Schedule.

¹⁰⁸ Constitution of Pakistan 1973 (n 34), art 293(4).

to ‘Khyber Pakhtunkhwa’.¹⁰⁹ The Hazaras felt that this change denied their distinct identity because it only acknowledged the Pashtun community. Even though demands for a Hazara province have waned, the creation of a separate province was impossible to begin with under the current legal framework. Hazaras are concentrated in parts of KP and Balochistan, with others dispersed across Pakistan in search of economic opportunities. Altering the boundaries of one province under Article 239(4) would be a considerable feat; altering two would be virtually impossible. In the event that a province is carved out in KP (since six districts are populated with Hazara majority), it would give reason to geographically dispersed Hazaras to migrate to that new province. It would also put economic pressure on a nascent federal unit that would not be able to handle the incoming population, possibly increasing unemployment and political competition within the province.

As a result, the creation of separate federal units along ethno-linguistic lines would not suit a politically fragile state like Pakistan, where resource distribution under the National Finance Commission Award is already contested. Additionally, provincial governments are plagued by poor governance and institutional issues, such as corruption, which means the budget is seldom allocated effectively for economic development. Haider also acknowledged that while the creation of a Hazara province would help the minority politically and legally, focusing on practical steps like adding Hazaragi to the provincial or national curriculum would mitigate linguistic erasure more effectively.¹¹⁰ For example, Sindh has made teaching Sindhi mandatory alongside Urdu in private and public schools.¹¹¹ It should be acknowledged that the case of Sindhi is also one of a majority language, and challenges faced by languages like Torwali and Hazaragi are unique due to their smaller speaker bases and lack of political representation in the province. Nevertheless, these examples demonstrate State efforts to preserve minority languages could reduce the risk of assimilation for ethno-linguistic minorities.

¹⁰⁹ Sultan Mahmood, ‘Ethnic Mobilization and Effort to Establish New Provinces in Pakistan: Case Study of the Movement for a Hazara Province’ In Ryan Brasher (eds), *The Politics of Ethnicity and Federalism in Pakistan: Local, National and Comparative Perspectives* (Oxford University Press 2020).

¹¹⁰ Rahila Haider Interview (n 49).

¹¹¹ Hafeez Tunio, ‘Cambridge Schools Asked to Include Sindhi as Compulsory Subject’ *The Express Tribune* (19 August 2022) <https://tribune.com.pk/story/2371919/cambridge-schools-asked-to-include-sindhi-as-compulsory-subject> accessed 16 October 2023.

In India, the twenty-eight federal units have official languages, but the minorities-within-minorities problem persists. While constitutional provisions such as Articles 29 and 30 mandate that state governments allow children to be educated in schools in their mother tongue, and Article 351 appoints Special Officers for linguistic minorities to safeguard their social and cultural rights, several challenges remain.¹¹² Pressure to assimilate and instances of discriminatory treatment continue to undermine these protections.¹¹³ If, across the border, linguistic minorities face the danger of erasure despite having such constitutional protections, it raises even graver concerns for such minorities in Pakistan, where linguistic constitutional protections are almost non-existent.

Global examples suggest that in order to prevent the tyranny of the majority, the dominant group should be subdivided into smaller groups so that more federal units attain ethnic homogeneity. Indeed, the Germans in Switzerland were divided into a separate federating unit to break German dominance and retain their self-determination.¹¹⁴ Nigeria was also divided into four regional units (like the One-Unit Scheme) before the Biafra War, which led to political and legal restructuring and the creation of thirty-six provinces.¹¹⁵ Hence, creating more federal units often breaks up the power of the dominant majority.

However, the applicability of these examples is marred by the assumption that relations between ethno-linguistic minorities and the majority are identical across countries. This solution does not take cognizance of the fact that creating new provinces might be legally impossible and may lead to violence in its aftermath. As demonstrated by the Hazara case, the argument for creating more federal units along ethno-linguistic lines in Pakistan faces logistical and legal hurdles that come with migration, which are exacerbated if State officials are corrupt.

¹¹² The Constitution of India 1950, arts 29, 30 and 351.

¹¹³ David Stuligross and Ashutosh Varshney, 'Ethnic Diversities, Constitutional Designs, and Public Policies in India' (2003) in Andrew Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, Oxford Studies in Democratisation.

¹¹⁴ Ivo Duchacek, *Comparative Federalism: The Territorial Dimension of Politics* (University Press of America 1991) 31.

¹¹⁵ *ibid.*

8.2. The Effectiveness of Vertical Separation: Local Devolution and the Indian Example

Pakistan's federal instability, marked by attempts to create new provinces like Seraikistan,¹¹⁶ calls for a more streamlined federal structure with fewer federating units and more efficient division of power across more tiers of government. The Pakistani Constitution recognises three tiers of government: centre, provincial, and 'local'.¹¹⁷ However, local governments face two issues: unclear power demarcation and provincial control over their formation. provincial assemblies, often dominated by ethno-linguistic majorities due to proportional representation, tend to hoard power and hinder the formation of effective local governments.

Given Pakistan's political constraints, the most viable federal arrangement for protecting smaller ethno-linguistic minorities would involve defining 'local' in Article 140A by constitutionally mandating four tiers of local government: city, district, *tehsil*, and Union Council. These divisions already exist in provincial legislation, but their effectiveness is questionable due to the unfair allocation of fiscal, political and administrative power across these lower tiers.¹¹⁸ From an ethnic minority protection framework, constitutional delineation of district governments is especially important. This is because the geographical arrangement of ethno-linguistic minorities is such that they already form majorities in districts and neighbourhoods across the country. For instance, Hazaras are concentrated in six districts of KP (including Kohistan, Batagaram, and Charikkas)¹¹⁹ and in Quetta's Mari Abad and Hazara Town. Similarly, 70% of Torwali speakers live in the Bahrain and Chail areas of the Swat district.¹²⁰ Furthermore, granting more power to grassroots representation at the district level (that has an identifiable ethno-linguistic majority) should ideally ensure that communal concerns are at least being discussed at local governance forums, as such issues currently remain

¹¹⁶ Omair Zeeshan, 'Seraikistan is our right' *The Express Tribune* (2012) <https://tribune.com.pk/article/9919/seraikistan-is-our-right?amp=1> accessed 4 December 2024.

¹¹⁷ The Constitution of Pakistan 1973 (n 34), art 140-A.

¹¹⁸ Jinnah Institution, 'Devolution: Provincial Autonomy and the 18th Amendment' (Report Jinnah Institute Publications 2014).

¹¹⁹ Ivo Duchacek (n 114), 152.

¹²⁰ Hermann Kreutzmann, 'Linguistic diversity in space and time: A survey in the eastern Hindu Kush and Karakoram' (2005) 4 *Himalayan Linguistics* (Center for Developmental Studies, Free University of Berlin).

absent from the national agenda and are not treated as a priority at the state level.

India's *panchayat raj* system exemplifies a vertical governance model where districts gain more power within the federal structure. Established by the 73rd Amendment to the Indian Constitution in 1992,¹²¹ the *panchayat raj* system decentralised administrative and decision-making authority to village-level units, bringing governance closer to the citizenry.¹²² Using '*panchayat*' in the name does not refer to the judicial nature of the village council – rather, it was used to indicate the possibility of self-government at the lowest administrative level. Therefore, after executive power was divided across central, provincial, and city-level governments, the *panchayat raj* system introduced three more tiers of government: *gram panchayats* (village level), *panchayat samitis* (block level), and *zila parishads* (district level).¹²³ *Gram panchayats* manage village-level issues like sanitation, education, and health, while *panchayat samitis* coordinate development projects across blocks and act as intermediaries between villages and districts.¹²⁴ *Zila parishads* oversee and align district-wide policies, linking state-level planning with local governance, thereby ensuring decentralised decision-making closer to the citizenry.¹²⁵

A similar system in Pakistan would ensure that smaller ethno-linguistic minorities like Torwalis and Hazaras are at least being heard at some level because the issue in Pakistan is one of basic legal recognition; development becomes secondary when the State fails to acknowledge a community's existence. Multiple tiers within district governments would ensure that even if a smaller minority populates a particular neighbourhood in a larger district, it will still get political recognition by having self-governing institutions like *gram panchayats* or *samitis*. However, assessing the benefits and drawbacks of India's *panchayat raj* system is essential to evaluate its viability in Pakistan.

¹²¹ 73rd Amendment to the Indian Constitution 1992.

¹²² Kieth Miller, 'Advantages and Disadvantages of Local Government Decentralization' (2002) Caribbean Conference on Local Government and Decentralization 4.

¹²³ *ibid.*

¹²⁴ Participatory Research in Asia, 'Functioning of the Gram Panchayat' (PRIA, March 1997) https://www.pria.org/knowledge_resource/1556527209_Functioning%20of%20the%20Gram%20Panchayat.pdf accessed 23 December 2024.

¹²⁵ *ibid.*

The *panchayat raj* system's grassroots decentralisation offers several benefits. Village and district councils address specific community needs through effective development initiatives. Direct elections for *gram panchayats*, *samitis*, and *zila parishads* enable participatory governance, while reserved seats for marginalised groups promote social inclusivity and political representation.¹²⁶ Financial devolution to *gram panchayats* supports local development projects. If Pakistan mandates provincial governments to allocate funds to district governments, ethno-linguistic minorities could fund cultural preservation projects. For example, KP transferring funds to Swat, and then to Chail and Bahrain, would allow the Torwali community to create language classes, develop educational material in Torwali, and run cultural festivals, thus preserving their language without relying on personal finances. This fiscal decentralisation would acknowledge community existence, eliminating the need for legal petitions. Lastly, the *panchayat raj* system fosters community ownership of local issues, motivating minorities to ensure their survival within a multi-tiered federal structure.

However, decentralisation has its limitations. Firstly, *panchayats'* capacities vary due to resource variation across regions, assuming no bias in fiscal devolution.¹²⁷ Corruption in the executive branch in Pakistan presents significant challenges to ensuring transparent financial decentralisation, making it a difficult goal to achieve. Secondly, the task of narrowing down factors that determine fund allocation (like cultural engagement or community size) may lie beyond the technical expertise of village councils.¹²⁸ Lastly, *panchayats* lack autonomy as they rely on higher government levels for funds and resources, restricting independent policymaking. Similarly, district governments in Pakistan would depend on local governments to launch language preservation or cultural projects, which could withhold funds for personal gain. It has been over two decades, and India has not been able to sort out structural issues in the devolution of power to the *panchayat raj* in all

¹²⁶ J.S. Sodhi and M. S. Ramanujam, 'Panchayati Raj System: A Study in Five States of India' (2006) 42 *Indian Journal of Industrial Relations* 25.

¹²⁷ Roy Bahl, et al, 'Fiscal Decentralization to Rural Local Governments in India: A Case Study of West Bengal State' (2010) 40 *Publius* 312–331 <http://www.jstor.org/stable/40608380> accessed 23 December 2024.

¹²⁸ Rahul Banerjee, 'What Ails Panchayati Raj?' (2013) 48 *Economic and Political Weekly* 173–176.

of its states.¹²⁹ Therefore, it is difficult to see how Pakistan will be able to avoid corruption in fiscal decentralisation, marginalisation of intersectional minorities, and limitations to capacity building if it starts creating multiple tiers within a federal structure.

In Pakistan, the problem is exacerbated because district governments will essentially represent an ethno-linguistic minority, but under the 18th Amendment, provincial governments represent the ethno-linguistic majorities, which control resources and funds. Thus, it is unlikely that their policies will be free of bias against the minority. Unless the devolution of powers is explicitly mandated by the Pakistani Constitution, it is unlikely that any future decentralisation and vertical division of power will be transparent and free from majoritarian political will.

9. CONCLUSION

This article critiques the State's narrow religious interpretation of 'minority,' focusing on the Torwali and Hazara communities' struggles with discrimination, administrative neglect, and cultural marginalisation. It advocates for decentralisation by vesting more power at the district level rather than creating new federating units, enabling local governance that represents ethno-linguistic minorities. It is important for the Constitution to mandate such a federal structure by explicitly mentioning district governments. Additionally, Zubair Torwali also suggested that ethno-linguistic minorities could have 'indigenous' status under the Constitution.¹³⁰ Judicial reinterpretation of existing fundamental rights is required to expand their scope beyond 'religious' minorities.

To preserve their language effectively, ethno-linguistic minorities could benefit from policies aimed at promoting multiculturalism, as observed in Canadian and Australian jurisdiction in the introduction. These frameworks can make State funds available for increasing minority language visibility in mainstream literature and media. Other reforms can include equitable access

¹²⁹ *ibid.*

¹³⁰ Zubair Torwali interview (n 35).

to public sector positions in secondary schools and universities at the Union Council level, as suggested by Torwali.¹³¹

Lastly, civil society should continue working towards altering their attitudes to create a more inclusive society for ethno-linguistic minorities, who enrich Pakistan's history and diverse cultural heritage. It is important to understand how political and legal reforms can better protect and promote the rights of ethno-linguistic minorities to then offer solutions that inform both policy and future advocacy efforts to improve Pakistan's approach to ethno-linguistic inclusivity.

¹³¹ *ibid.*