

## **PAKISTAN – A SECULAR STATE**

**By**

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The partition of India in 1947 was based on Two-Nation Theory which was recognized and accepted by the Indian Independence Act of 1947. The formulae evolved for the division of the Sub-continent by the parties concerned i.e. British, Congress Party of India and Muslim League Party of India was that the contiguous territories of Muslim majority would form the State of Pakistan while contiguous territories of Hindu majority shall constitute Bharat (India). Even beyond the contiguous territories, the spirit of the Indian Independence Act of 1947 was that the territories containing majority of Muslims will constitute State of Pakistan while areas of Hindu majority will constitute State of India. It is clear from the aforesaid, that the objective of creation of a new homeland/state of Pakistan was to have a place where majority of Muslims could freely live in accordance with the Injunctions of Islam, however, ensuring protection of minorities i.e. people other than Muslims in the State of Pakistan. It can be clearly seen from the history that the very emergence of Pakistan was based on the concept of a country where Muslims could exercise their rights freely without dominance of Hindu majority in the undivided greater India. Since the inception of Pakistan, Islam has prevailed in making of the Constitution as well as other laws.

### **Preamble of the Constitution of the Islamic Republic of Pakistan:**

Sovereignty over the entire “**Universe**” belonging to Allah alone, no question of fact and / or law can be raised as to the territorial jurisdiction of Allah irrespective of the place of cause of action.

The authority to be exercised by the people of Pakistan has to be: -

- (a). Within limits prescribed by Allah.
- (b). The sovereignty vesting with Allah, the authority to be exercised by the people of Pakistan through chosen representatives as a “**sacred trust**”.

It means that the admitted sovereignty of Allah over the “Universe” being much wider and larger in its scope, territory wise and otherwise, the scope of the Constitution is limited as it relates only to the “Order of life of the Muslim people of Pakistan” to the exclusion of all that which does not fall within “the order of life of Muslims”. In other words, we cannot over stretch the scope of the Constitution i.e. beyond the “order of life Pakistan Muslims (discussion about non-Muslims is out of scope of this article).

Therefore all the different creeds of Muslims, and different cultures, traditions and customs etc. existing in various parts of

Pakistan including the tribal customs of Balochistan, Sindh, N.W.F.P, FATA & PATA are to be regulated as “order of life of the Muslim people of Pakistan” as the territorial jurisdiction of the Constitution under Art 246 & 247 extends to all the aforesaid areas.

The interpretative concepts of Ijtehad, Ijma, Qiyas are conspicuously absent from the preamble of the Constitution which relates to the “order of life of Pakistan, Muslim, Muslims” which should squarely fit within the teachings of and requirements of The Greater Constitution which is the Holy Quran.

A great misconception exists in the Western World as to whether Pakistan is a secular state or not. In spite of, clear vision of the founders of Pakistan Muhammad Ali Jinnah & Alama Muhammad Iqbal, who wanted it to be a multicultural, tolerant, democratic and progressive state, Pakistan is wrongfully being labeled as a fundamentalist muslim state.

In this context, it is imperative to understand the true meaning of the word “Secular”. The common and prevalent meaning of the word secular in the dictionaries of all major languages of Muslims – Urdu, Arabic, Turkish and Persian – laadeenia, ghair mazhabee, or irreligious and against religion. In contrast, none of the western dictionaries of English, French, Spanish and Russian, etc. give this meaning to the word secular. They all give the following meanings: -<sup>1</sup>

- (1) of or relating to the world or temporal as distinguished from spiritual,
- (2) of or relating to the state as distinguished from the Church and
- (3) not formally related or controlled by a religious body.

Having said this, we see three main features of western secularism:

- (1) freedom of religion, i.e., no compulsion of beliefs;
- (2) equal status for all religions;
- (3) no interference by the state in religious matters or by the church in the affairs of the state, in other words separation of the state and the church.

As regards the first point, the Quran says in no uncertain terms that there is no compulsion in religion (Al-Baqra 2: 256) and tell the non-believers “to you by your religion, and to me by my religion” (Surah Al-Kafroon 109).

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<sup>1</sup> According to the Concise Oxford Dictionary, 7<sup>th</sup> ed. Printed in U.K secular = concerned with the affairs of this world; not sacred or monastic or ecclesiastical.

Caliph Umar declined to pray in the Church of Sepulcher, though asked to do so by the Archbishop of Jerusalem, on the ground that later Muslims may turn it into a mosque.<sup>2</sup> Thus Islam is the first and perhaps the only religion to preach and practice secularism during the lifetime of the Prophet and Khulfa-e-rashedin when it was at the height of its power and could have forced itself on the people of other religions.

As stated earlier, in the scheme of things of an Islamic state, there is a Greater, Super Constitution, which is Quran and then there is man made Constitution, which is subservient to the greater Constitution under the doctrine of limited delegated authority and endowed upon man. Article 2 of the Constitution of Islamic Republic of Pakistan, 1973, hereinafter called “the Constitution”, states that Islam is to be the State religion. Article 2-A has been inserted in 1985 by making the “objective resolution” a substantive part of the Constitution. Chapter 1 of the Constitution pertains to the western style fundamental rights, which are put on a higher pedestal as the same is treated as fundamental fabric structure of the Constitution, which cannot be changed by any amendment. Amongst the fundamental rights, security of life and liberty of a person, safeguards against arrest and detention, prohibition of slavery, forced labor etc., protection against retrospective punishment, protection against double punishment and self-incrimination, inviolability of dignity of man etc., freedom of movement, freedom of assembly, freedom of association, freedom of trade business or profession and freedom of speech etc. are comprehensively provided for.

**Article 7 provides the definition of State, which may not be found definitionally in Quran and Hadith but it is not un-Islamic to have this definition or any other secular definition. The speech of Mr. Muhammad Ali Jinnah dated August 11<sup>th</sup>, 1947 in which he tried to expound a secular interpretation of Pakistani statehood cannot be deviated.**

Finally, the history of Christianity and our own history should leave us in no doubt that only secularism will help us get rid of sectarian and communal strife which has played a major role in making Islam weak and ineffective as it is today. *See, Mehmood Khan Achakzai Vs. Federation of Pakistan cited as PLD 1997 SC 426.*

The relevant articles of the Constitution of Islamic Republic of Pakistan pertaining to freedom of religion are reproduced below:-

**Article-20**

*“Freedom to profess religion and to manage religious institutions. – Subject to law, public order and morality –*

*(a) every citizen shall have the right to profess, practice and propagate his religion; and*

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<sup>2</sup> Karen Armstrong, “The Battle for God”.

- (b) *every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.*

**Article-21**

*“Safeguard against taxation for purposes of any particular religion. – No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.*

**Article-22**

*“Safeguard as to educational institutions in respect of religion, etc. –*

(1) *No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.*

(2) *In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.*

(3) *Subject to law.*

(a) *no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and*

(b) *no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.*

(4) *Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.*

To be Continued....