

PROMISE VS PRACTICE

*Mapping the Transformative Constitutionalism and the Participation and
Representation of Minorities in South Asia*

Draft I: Not for citation.

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1. Introduction

South Asia, which comprises of India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, Maldives and Afghanistan, has a unique place in the global development and security. It is the most popular region in the world, hosting one fifth of the world's population, and has the highest number of headcount poor. Moreover and more importantly it is the home of large number of minorities, divided into numerous crosscutting and overlapping identified on the basis of religion, language, ethnicity, caste and region. Theorists have argued that the greater heterogeneity (minority groups) in a particular society increase the chances of horizontal inequality, which becomes is a serious threat to the national development and human security. Quelling out his inequality and associated threats demand adherence to a principles and values of democracy, in theory and in practice. While there are various elements of transformative justice in a democracy such as right to life and security, culture and identity, socioeconomic development, and participation? This paper is more interested in right to participation and representation of minorities. The main reason for this is that ensuring each group's desired participation in the political arena and access to power is very critical for enhancing their human capabilities, development and justice, as well as contributing to the sustained peace, security and development of a country (Sen, 1985; Stewart, et al., 2007; Jacob, 2014). Any such exclusion is more likely to alienate group leaders to mobilise people on group lines and wage a war against the state (Ibid, 2007). In recent time this idea of minority political integration has gained more wider currency (Jacob, 2014), because never as much ever before, have this many minorities in the world turned into armed groups and become a threat to the security and development of not only their respective nations, but also to their continents and the global world. The cases are widespread across post-colonial Asian, African and Latin American democracies and recently turned democracies of Middle East. In case of South Asia the origin of the two countries first, Pakistan out of British India and then, Bangladesh out of Pakistan are two of the most unique and earliest cases of non-accommodation of minorities resulting in the creation of a separate nation state.

In every nation the power is located at many levels legislature, executive, judiciary, police and army at the centre, provincial/state and local government, and in both democratic or a non-democratic societies opening the doors for political and public participation to minorities doesn't happen automatically, it has to be build through formal and/or informal processes (Ibid, 2007). Most of the countries in the South Asia emerged from long and discriminatory colonization. In the post colonization period while all of them inherited most of the political, electoral, and institutional features of colonisers, they did so by embracing to democratic polity. As a result of their commitment to the basic values and principles of democracy, all of them reflected some forms of accommodativeness and inclusiveness in their constitutions either in the form of individual and/or group guarantees. However, the scene after more than 60 years of decolonization is that minorities continue to fair poorly in wellbeing and struggle for their basic access and participation. While some bloody wars, with roots

in horizontal inequality, as referred above, have broken in the past, some are at the verge of exposure. This paper tries to reflect on this issue, by comparing the constitutional promises of the participation and representation with their practice outcomes, thereby digs into the challenges, and suggests a possible future constitutional and policy framework. It does so by using a case study of four oldest democratic countries of the sub-continent – India, Pakistan, Sri Lanka and Bangladesh. The paper is one of the initial efforts of mapping constitutional promises and the practice of the participation and representation of minorities at the sub-continental level. The methodology adopted is critical analysis approach based on extensive literature review of the four countries and of the sub-continent.

The paper uses participation and representation as two different concepts with different meaning and weightage. By participation is refers to the numerical presence of minorities in political and public domains of a state, and by representation it means the power of minorities in the decision making process in the political and public domains. The rest of the paper is divided into four sections – first, country case studies of transformative provision and practical outcomes. Second, emerging typology of transformative constitutionalism and the participation and representation of minorities. Third, skewed minority space and majoritarian agenda. Finally, pathways to overcoming hurdles to minority participation and representation in South Asia.

2. Transformative Provisions and Outcomes – Country Cases

INDIA

Constitutional promises

India consists of 6 major ethnic groups, 52 major tribes, 6 major religions, and 6400 castes and sub-castes. When it comes to the minorities, for practical usefulness four major minorities are debate – linguistic, religious, caste and tribal (Weiner, 1989). SCs constitute about 16.2 percent, STs 8.2 and religious minorities about 19 percent with Muslims being the highest 12.4 percent (Census, 2001). The genesis of transformative constitutionalism in the country dates back of 1909 colonial question of minority safeguards. For the accommodation of minorities the colonial state set provisions for special representation in legislature and reservation in government employment (Bajpai, 2011). This created a space for long constituent assembly debates and the emergence of one of the most comprehensive constitution in the South Asian subcontinent.

The transformative nature of Indian constitution starts well in its preamble, which refers *Bharat* (India) as a sovereign, socialist, secular and democratic republic, with social and political justice and equality of opportunity. The constitution recognizes minorities in Article 29 as citizens with distinct language, script and culture, Article 30 as religious and linguistic, and the National Commission for Minorities Act recognizes only six religious groups as minorities such as Muslims, Christians, Sikhs, Buddhists, Parsis and Jains. The constitution doesn't define oppressed castes and tribes

as minorities in either Article 29 or 30, but they are referred under Schedule 4 and 5 as Schedules Castes and Scheduled Tribes (Khan, et al., 2009).

Looking into the promises related to the political and socio-economic participation and representation of minorities, the constitution presents two domains. One, general, which can also be called indirect measures, Part III of the constitution of India guarantees Fundamental Rights to all the citizens of equality before law (Article 14), prohibition of discrimination on grounds of religion, ethnicity, caste, gender, and place of birth (Article 15), political rights without discrimination to all the citizens (Article 14 and 15A), equality of opportunity in matters of public employment and appointment in public offices (Article 16,1,2), freedom of conscience and to practice and propagate (Article 25 1A), freedom of expression and association (Article 19(1)). Further in Part IV – Directive Principles of State Policy it refers to elimination of all forms of inequality. Part 15th provides the right to vote and to contest election and Article 324 provides for an independent election commission. There is also no restriction on access to higher posts of Prime Minister and President.

Two, separate domain or director measures are provisioned for the advancement of so called traditionally socially and educationally excluded classes of citizens – Scheduled castes (SCs) and Scheduled tribes (STs) (Hassan, 2016). While the electoral system is based on first past the post system, with single electorate system, the constitution provides in Article 330 that seats shall be reserved in proportion to their number for SCs and STs in the parliament, state assemblies, municipalities, and local governing institutions. In the Lok Sabha out of 543 constituencies 84 (15.47 percent) are reserved for SCs, and 47 (8.66 percent) for ST/Adivasis. Article 15 (4) and Article 16 (4) also stipulates affirmative action for SCs and STs in education and public employment overcome histories of social injustice and religiously sanctified discriminations. For the safeguard and effective participation of the SCs and STs Article 338 and 338A also provides for the setting up of National Commission for SCs and STs (Khan, et al., 2009). This system was set in place in the constitution of India in 1950, initially for 10 years, but it continues till date. The constitution also provides in Article 350 (b1 and 2) for the appointment of special officer for linguistic minorities. Further, under Article 224 it provides Schedule 5th and 6th, and the Manipur (Hill Areas) District Act, 1971 that grant limited self-governance to certain geographically aggregated tribal groups through the establishment of Tribal Advisory Groups, Autonomous Districts and Autonomous Regions.

Outcomes

When we look at the application of transformative provisions, a good starting point is that constitution recognizes most of the minorities. However, there are limitations to its comprehensiveness when it comes to the definition of minorities. Article 29 and 30 refers to language, religious and cultural minorities, but in reality SC and ST are also minorities, which are listed in non-discriminatory provision of Article 29. However, when it comes to special or direct constitutional measures of economic and political

participation and advancement such as Article 15A, and Article 16A, they are inclusive of SC and STs, but exclusive of religious minorities (Ibid, 2009). As a consequence the right to equality of opportunity and participation in economic and political spheres of state, in case of religious minorities, particularly Muslims, is not explicit and doesn't even have an enforceable legislative backing (Hassan, 2016).

For SCs and STs the constitutional reservation in political structures and public employment has led to an immensurable change compared to pre independent India. Similarly with regard to the ethno-linguistic minorities the provision of federalism, decentralization, and creation of autonomous tribal councils have brought a considerable degree of political autonomy (Lokniti, 2008). Though both of these promises encompass some lacunas, overall they present good cases of successful transformation of constitutional guarantees of participation to minorities.

However, in case of religious minorities, particularly the majority Muslims, the lack of such special or direct promises have resulted in their continued disproportionately in political and economic participation. The electoral system, which is based on first past the post system, with single electorate system mostly encourages the winner to take all, and it is difficult for a to imagine geographically dispersed Muslims of India to gain a fair share in elected bodies (Hassan, 2016). Since the independence Muslims in India have been disproportionately under-represented (Adeney, 2015; Hassan, 2016). While they constitute 14.2 percent of India's population, their representation in current Lok Sabha is only 2.42 percent, which scores (-) 19.16 percent and is much lower than all other religious groups such as (-) 1.01 percent Christians, (-) 0.25 percent Buddhists, (-) 0.22 percent Jains, and 0.31 percent Sikhs (Livemint, 2016).¹ For the first time also the ruling Bhartiya Janta Party doesn't have a single Muslim MP in the Lok Sabha, and in the most Muslim papules state of Utter Pradesh. The representation in decision-making (cabinet) is also not any different. In the current cabinet there are four members from the religious minorities one Muslim, two Sikhs, and on Zoroastrian but no one is in a senior position. Muslim member of the Cabinet – Minister for Minority Affairs is a member of the upper house (Adeney, 2015). The issue of lack of Muslim representation in the Lok Sabha is long-standing, as during the Nehru's time also, Muslims didn't hold senior positions in the Cabinet (Wilkinson, 2000). In addition to the lack of reservation of seats in the parliament and state assemblies, two other constitutional provisions – right to vote, and representation are also violated when it comes to Muslims. A large number of Muslims are not included into the voter list resulting in they not being able to vote, and the reservation of Muslim dominated constituencies for SCs and STs (Sacher, 2006).

The condition of public employment is not any different. Unlike SC and STs, due to lack of affirmative action policies, their participation and representation is minuscule.

¹ Interestingly out of 282 MPs of current ruling party BJP no one is a Muslim. In the Lok Sabha there are 23. Muslim members out of 543. This representation is lower than 1957.

While a lot of studies have reflected on this issue, two widely recognized reports are of the government – Gopal Singh report (1983) and Sacher Committee Report (2006). The Singh report in 1983 highlighted that Muslims are the poorest of the poor, in the country and their representation in Indian Administrative Services is only 3.2 percent and in Police Services 2.6 percent. Later on in 2006 SCR reported only 4.9 percent of Muslims were employed in Central and State governments, and when these positions are divided into high and low rung jobs, Muslims are more concentrated at lower level compared to higher position such as university jobs, non-teaching and clerk. Only 3 percent were in Indian Civil Services, 1.8 percent in Indian Foreign Services and 4 percent in Indian Police services (Sacher, 2006). Gross violation of constitutional rights of citizenship of Muslims was found in the form of procedural discrimination (unhelpful eligibility criteria), practical discrimination (under representative selection boards), and general discrimination (general sense of discrimination in the selection processes). This prejudice was found even in Class IV jobs, where high qualifications are not required. SCR recommended various policy measures, including the constitutionally guaranteed quotas and affirmative action policies. However, not all the policies are accepted, and/or implemented. It is not only SCR, but a long standing demand on the part of religious minorities that they should be given benefits of affirmative action as stipulated in Articles 15 and 16 of the constitution. However, the government of India is constantly refusing such on the grounds that it will be divisive (Weiner, 1989). After SCR, instead of constitutional guarantee, an informal arrangement was made by encouraging the government department to give special focus on minorities' inclusion, especially, of Muslims. However, the Amithab Kundu Committee, which examined the impact of SCR recommendation found that minority recruitment in public sector has fallen only from 6.39 percent in 2006 to 6.24 percent in 2011, and in case of police and security forces it has reversed from 8.39 percent in 2006 to 6.52 percent in 2011 (GoI, 2014, 123). What has been the political strategy is periodic appointment of Muslims at the positions of visibility such as President, Vice-President, and even Chief Justice to give an impression of equality of participation in public life (Ansari, 1997).

PAKISTAN

Constitutional promises

The Pakistan is a home of three main minority groups – religious, ethnic and linguistic. The religious minorities, which constitute about 3.72 percent of the total population, and consisting of Christians, Hindus, Ahmadis, Parsis, Buddhists and Sikhs, are constitutionally recognized as minorities (Khaliq & Aslam, 2016). However, in case of ethno-linguistic minorities, which consist of Sindis, Pakhtuns, and Baluches, the constitutional position of Pakistan doesn't recognize their existence (Khan, et al., 2009). The country's constitutional journey with regard to the participation and representation of religious minorities in political and public domains has been quite dramatic. At the time of birth of Pakistan assuring security and relief to the religious minorities was a great concern; as a result of this, the rhetoric was around the freedom of religion and the founding father of the nation Quaid-e-Azam

Mohammad Ali Jinnah proclaimed all minorities as equal citizens of the new nation, during his first speech to Legislative Assembly on 11th August 1947 and also wished to declare August 11th as a minority day. However, things didn't proceed as he wished. Since the creation of nation, the constitution making underwent several modifications from being a relatively accommodative to less accommodative. The first constituent assembly Objective Resolution in 1949 fine-tuned the nation being an Islamic state, which will exercise authority within the limit prescribed by Almighty God (Ispanhani, 2016, 41). This opened door for Islamist parties to push further the Islamic content in successive constitutions in order to gain majoritarian legitimacy which slowly compromised the pluralistic character of society and narrowed space for minority rights (PM). The first constitution of 1956 in its preamble (Article 2A) says the state is designed as Islamic Republic of Pakistan where principles of freedom, equality, tolerance and social justice as enunciated by Islam would be fully observed (Zia, 2010). In part III (fundamental rights) the constitution guarantees equality before law and equal protection of law (Article 25), non-discrimination on the basis of religion, race, caste, sex and residence in access to public places and services (Article 26) and in public services appointments (Article 27), discourages racial, sectarian and provincial prejudices (Article 33) and protection of minorities and their due representation in federal and provincial services (Article 36). However, the same constitution also restricts non-Muslims from holding the office of the head of the state – Chief Minister and President. In the successive constitutions, while the fundamental rights, liberties, and liberal principles were duly retained, a parallel set of constitutional reforms was also brought in, that skewed the space for minorities to exercise their rights. In the third constitution in 1973 Islam was made as state religion (Article 2), President, Prime Minister, and provincial governor position was continued to be reserved for Muslims (Article 41 and 91), and Ahmadis were declared as non-Muslims and included in minority list (Article 260), followed by Anti Ahmadi Ordinance of 1983.

In case of electoral participation, like other South Asian countries, the state started with first-past-the-post-system, with a separate electorate for religious minorities (Lijphart, 1977) until the first general election of 1956. After that, it was removed by joint electorate and continued till 1977, when General Zia-ul-Haq introduced it again. There were no provision for reservation of seats for minorities in 1956 and 1962 constitution, and it was in 1975 constitution that religious minorities were given 9 seats in 4 provincial assemblies and 6 in national assembly. After 22 years system of separate electorate was again replaced with proportional representation by General Musharraf under the Devolution of Power Plan in 2000 (Jacob, 2014). The minority seats were to be filled through nomination by political parties, instead of election. The number of reserved seats was increased to 10 in the national assembly and 23 in provincial assemblies, and they were also given freedom to contest election on non-reserved seats (Khan, et al., 2009). A new proposal came up in new bill of 2012 under 23rd Constitutional Amendment, that the number of seats of minorities should be increased as proportionate to their population (Tribune, 2012). If passed by the house

of parliament, it will increase religious minority seats from 33 to 44 in the provincial assemblies and 10 to 15 in national assembly.²

In case of public employment while there are no constitutionally guaranteed reservations, the government has issued a notification in May 2009 for a quota of 5 percent in all federal government jobs (Jacob, 2014). To protect the constitutional guarantees of minorities' Ministry of Minorities was also established in 2004 (Guhathakurta, 2006). With the rise of internal conflict since 2000, a mild move towards the recognition and autonomy of ethno-linguistic minorities have been taken under 18th Amendment of the constitution in 2010. The amendment recognizes the longstanding demand of Pakhtuns to be called as Khyber Pakhtunkhwa, instead of North West Frontier Province and gives them greater provincial control over revenues from natural resources of Baluchistan (Andeney, 2012).

Outcomes

A good point to start with is that the country is a typical of states in this region that reflects a higher degree awareness of religious minority rights, enshrined in law and institutions (Castellino & Redondo, 2006). While the practice of separate electoral system limited the choice of minority voters and led to their exclusion from the mainstream politics (Jacob, 2014), the launch of new reservation system in 2002 has resulted in some divisive effect on their political participation, as the voters have equal standing in the general elections along with reserved representation in the elected bodies for minorities (ibid, 2014). In addition to their reserved seats, they are now able to contest on general a seat, which results in their larger participation in the electoral process (HRCP, 2011). This reservation and participation is not only confined to the parliament and provincial assemblies, but also in local governing bodies (Khan et al, 2009). In 2013 general elections, five Hindus, three Christians, one Parsi, and a minority women were nominated for the parliament from different provinces of the country (Pakistan Christian Post, 2016, national assembly).

While the reserved seats in joint electorates have secured religious minorities participation in the democratic process, encouraged members of minorities to join ranks in mainstream political parties and open up space for their bargaining such as job quotas for minorities (HRCP, 2011; Jacob, 2014), a complete political integration of minorities is still hard to claim. Minority representatives are neither equipped nor empowered to deal with their issues of personal security and socio-economic development. With the exception of job quotas, they have not achieved any

² Reservation was also given in local bodies in 1979 and again 2000, through an ordinance of the government, and not a constitutional. In addition, under the directions of the court Federal and Provincial governments are required to create institutions for monitoring and enforcing laws that are meant to protect minorities such as district minority advisory councils in 1980 and commission on minorities in 1993, and creation of a National Council for Minorities whose terms of reference should include making policy recommendations (Jacob, 2014).

significant legislation.³ As a consequence this political reservation is vivid more as a concession rather than an integration measure (Jacob, 2014). One of the main reasons for this is their lack of their representation in decision-making. In the current parliament out of 10 minority members six belong to the ruling party Pakistan Muslim League-Nawaz. However, with the exception minister of minorities, none of them is in the cabinet (federal ministers or ministers of the state) (Ibid, 2014; Pakistan assembly). Since the independence of country the arrangement of cabinet is non-statutory and there are no constitutional guarantees for participation of minorities in cabinet (Jacob, 2014). The small numerical strength of the minority members also poses a great challenge. Since 1985 while the general seats in national assembly have increased by 31 percent, and in provincial assemblies by 23 to 30 percent, no increase has taken place in the number of minority-reserved seats (Ibid, 2014). Moreover, due to the declaration clause of being non-Muslims, the Ahmadi community continues to remain disenfranchised, and due to constitutional denial, minorities continue to be excluded from top public offices of the country. The Ministry of Minority Affairs is also largely ineffective with main role being confined to giving awards to members of minority community on special occasions (Khaliq & Aslam, 2016). And the delay in the 18th Constitutional Amendment has contributed to the dysfunctional nature of local bodies (Jacob, 2014).

As far as participation in the public employment is concerned, in 1983 Hindus constituted 0.2 percent and the Christians 1.15 percent Civil and Army services (Singh, 2007). While the representation of Christians in Pakistan army was always there, such was not the case with Hindus and Sikhs (Raiz, 2015). The step of quota system in mainstream services, especially judiciary and civil services has been considered very good and political significant (Jacob, 2011). Since 2000, and launch of quota system in 2009 there has been an openness on the part of state to their participation in army. One Sikh and a few Hindus were enrolled in army, and a few Hindus in Navy (Raiz, 2015). However, there are a huge pessimism about its effectiveness due to lack of any regulatory and monitoring authority (Jacob, 2011). Overall what we see in case of religious minorities participation in political and public domain of Pakistan is that while the space has opened up, it still continues to be limited in the sense their control on political decision making is limited and presence in public employment very minuscule (Raiz, 2015).

In case of ethno-linguistic minorities, like India, Pakistan also presents a good case of provincial federalism and decentralized governance (Lokniti, 2008). More importantly, signs of accommodation of ethno-linguistic minorities through 18th constitutional amendment, though out of the desperation to quell the internal conflict,

³ There is also a threat associated standing for sensitive minority issues, as the assassinations of Minister Shahbaz Bhatti and Governor Salman Taseer had relation with their firm stand against the blasphemy law of the country.

is a welcome step towards the political and economic inclusion of historically excluded Khyber Pakhtunkhwa. However, they continue to be constitutionally defined or given recognition. This non-recognition has turned very bitter for Pakistan as a nation as a consequence of which it presents a typical case of secessionist movement and break down of country into two. In the beginning the lack of nationally representative political party and refusal to accept the legitimacy of linguistic claims resulted in delay in the national election. Once held after 23 years of independence in 1970, the refusal of the Western wing to recognize the legitimacy of the Eastern wing led to bloody war and the creation of Bangladesh. The remaining ethno-linguistic minorities continued to hold a very limited space in the parliament, whenever democracy was in place. What we see as the rise of Pakistan Taliban is an outcome of this non-accommodation of ethnic minority rights. There is a dominance of Punjabis who constituted 31 members of Sharif's cabinet in 2013 (Andeney, 2015). The position held by non-Punjabi's are argued to be less important and significant (Hassan, 2014). This dominance of Punjabi evil is even constraining the functioning of 8th constitutional amendment.

SRI LANKA

Constitutional promises

Compared to rest of the South Asian countries Sri Lanka population demonstrates less diversity in terms of ethnicity, religion and language. There is a lot of intersection across religion, ethnicity and language also. Tamils are predominantly Hindu constituting about 15.2 percent, Sinhalese are predominantly Buddhists constituting 74.9 percent and Moor are predominantly Muslims constituting 9.2 percent of the population. Linguistically Sinhala is spoken by 68 percent, Tamil by 9 percent and English by 7 percent of the population. Religiously Hindus, Muslims and Christians constitute minorities with, 12.6 percent, 9.7 percent and 7.4 percent population, respectively (Census 2012). The constitution of Sri Lanka is the oldest in the sub-continent and defines itself as secular. With the exception of Tamil as a minority language, the constitution doesn't define either religious or ethnic minorities. In Part III of fundamental rights it guarantees to all its citizens, right to equality and non-discrimination (Article 12), equality before the law and equality of protection by law (Article 21), non-discrimination against grounds of race, religion, language, caste, sex, political opinion, place of birth (Article 21) and protection of discrimination in public employment (Article,) However, the same constitution in Article 9 says, that the Republic of Sri Lanka shall give its foremost place to Buddhism and accordingly it shall be the duty of the state to protect and foster Buddha Sasana. In Par IV constitution promotes co-operation and mutual confidence among all the section of Sri Lankan people (Article 27) and equality of opportunity, political opinion or occupation (Article 27). The first constitution also proclaimed that the official language of Sri Lanka shall be Sinhala (Article 18-1) and Tamil (Article 18-2) and English as a link language (Article 18-2). However, in 1956, the official Languages Act replaced English and gave no status to Tamil. Owing to increased political pressure, the Tamil Language (Special Provisions) Act was passed in 1958 and

around 1966 it was implemented in Northern and Eastern Sri Lanka. In 1991 Another Official Languages Act re-recognized Tamil as one of the official languages. In 1978 the constitution also dissolved the first-past-the-post electoral system with proportional representation system, along with preferential voting (Uyangoda, 2015). In 1987, 13th constitutional amendment was made to create provincial council in order to devolve some powers among the nine provinces thereby increase their avenues of political participation (Fonseka & Sarita, 2016).

Outcomes

A starting point in case of all Sri Lankan minorities is that they are not constitutionally defined, however there are two constitutional measures – 13th amendment for devolution of powers, and proportional representation system which are brought in place to create an atmosphere of equality of political participation and distribution of power, because the issue of minority rights in Sri Lanka is mainly related to the question of access to and the sharing of state power (Uyangoda, 2010). When we look at the outcomes of both these measures, they have enhanced the participation of minorities in the political process, with more Tamils and Muslims in provincial administration as well as in parliament. However, they are starved of power to decide about their wellbeing, with their demands and claims being not addressed.

The changed language policy in 1960 and 1970 and the state-sponsored settlement policy of Sinhalese in Tamil areas led to ethnic groups to move towards extremes, and demand for separate state under the banner of Tamil United Liberation Front (TULF). This was followed by 1983 riots, which resulted in killing of several hundred Tamils by Sinhalese, and consequently the breakdown conflict between Tamils, represented by Liberation Tigers of Tamil Eelam (LTTE) and state favored Sinhalese (Serena, 1997). This ethnic conflict of the denial of minority space (Khan et al, 2009) lasted for more than two decades and came to an end in 2009, not through any diplomatic solution, but a massive army action by Sri Lankan government. While the pre-civil war claim was for federalism and autonomy, the conflict shifted discourse towards secession and self-determination. Moreover, gave rise to multi-layered power sharing demands to include the aspiration of minorities within minorities, such as Muslims and Tamil Ceylon workers (Uyangoda, 2010). In 1980s when Muslims felt excluded by the state, as well as no space in authoritarian LTTE led Tamil nationalism, they formed their first political party – Sri Lanka Muslim Congress (SMC) to negotiate with Sinhalese state for the creation of separate administrative entities/units in the north and east of Sri Lanka, combining administrative division with Muslim Majority population (Uyangoda, 2010; Haniffa, 2010). Similarly, Plantation Tamil Community, who were restricted of citizenship under Citizenship Acts of 1948-9 as migrants from India, after getting complete citizenship in 2000, formed Ceylon Workers Congress (CWC) to negotiate with Sinhalese leadership for political space and power (Uyangoda, 2010). The launch of both these constitutional measures was to quell these rising secessionist, self-determination, and autonomy claims of minorities,

rather than genuinely addressing their issues of political participation and power of minorities (Ibid, 2010).

The 13th constitutional amendment, since its enactment, is widely seen as an unsuccessful and frustrating attempt, too far to satisfy Tamil aspirations or Muslims (Ibid, 2010; Haniffa, 2010). Especially it has not worked in the Northern and Eastern where it was needed the most. Similarly, while the first-past-the post system was disadvantageous to non-territorial minorities to secure seats, and the promotional system has created possibilities for them to maximise their number of seats (Uyangoda, 2015), it is still seen as a partial measure. While some argue about its key role in the politics of country, with CWC and SLMC being in a position to make and break governments in the recent past, as well as negotiate on their policy concerns by key ministerial portfolios (Minority Rights Group, 2011). Other are highly critical of it not being able to give reservation of seats in the parliament or provincial assemblies and cabinets, especially with regard to Muslims (Haniffa, 2010). The majority nationalist parties have not relied much on them and used them as filler as and when needed (Ibid, 2010). The history of underrepresentation and marginalization of Muslim claims is evident in three types of leadership. One, those who got the good portfolios, before proportional system, but embraced the principle of ethnic blindness, because a lot of them were dependent on the constituencies other than that of Muslims. Two, those MPs who represented Muslim interests, but were not given positions in cabinet, thereby struggled to articulate the Muslim issues. They were called up to trust the state to look after their interests, but the state has no history of doing so (Ibid, 2010). Finally, post 1980s winning MPs leaving the SLMC and joining the nationalist parties on individual basis, with no commitment to Muslim cause (Ibid, 2010). In the previous parliament, only on Tamil was included in 67-member cabinet of Rajapaksa who held the position of Traditional Industries and Small Enterprises Development, which is hardly any major portfolio (Francis, 2013). A shift is seen with new government of Sirisena who won with massive vote of minorities (Hanifa, 2015). While the parliament is still not proportional as against 34 Tamil MPs there are only 28 and against 20 Muslim MPs there are only 18, and overall against 25 percent, the minority representation is only 20 percent. Cabinet show their better representation as, out of 43 member announced there were three Tamils with portfolios of Estate Infrastructure, Community Development, and National Dialogue, and four Muslims with portfolios of Industry and Commerce, Urban Development & Water Supply, Public Enterprise Development and Postal Service & Muslim Affairs. However, the issue with this cabinet is that no Tamil from the East or North is appointed for the development of any of these regions. Moreover, under proposed 20th constitutional amendment there is a move towards strengthening of first past the post system, which is argued to be disadvantaged to geographically dispersed minorities (second lady). And the demand for constitutionally guaranteed representational rights for minorities in assemblies of governance – parliament, provincial councils and local government bodies continues to stand as the main issues in Sri Lankan state (Uyangoda, 2010).

In case of public employment, when constitution doesn't define minorities, it also doesn't specify any group rights of affirmative action in public employment. Hence, both the Tamils and Muslims are not well represented in the public sector, even in the areas of their concentrated (LST Review, 2011). They are facing a glass ceiling in all kinds of employment (MR). Tamil representation in university admissions is similar to their population (about 18 per cent). However, in Tier 2 public sector this falls to under 6 percent (16:1 ratio in favor of Sinhalese over Tamils), and in Tier 1 it is 3 percent (almost 32:1 ratio in favor of Sinhalese over Tamils). In case of muslims the representation ratio gap between Sinhalese and Muslims in university admissions is 8:1 and in both Tier 1 and Tier 2 of the public sector the ration of Sinhala to Muslim workers is over 30 to one, which means a Sinhala is three times more likely to climb to the top two tiers (Verite Research, 2013).

Due to politicization, the employment policies have become very discriminatory and created frustration and unrest among the youth in the North and the East (Thangarajah, 2002). The discriminatory practice of Sinhala being the primary language in public sector, in all government receipts and documents poses further restrictions to the entry (Fonseka & Sarita, 2016; Perera, 1999). Though these discriminations fall under the violation of human rights, minorities are not getting judicial redresser for this rights violation (Uyangoda, 2010). The most intriguing is that even after 25 years of the separatist civil war, Sri Lanka doesn't has equal opportunity legislation. Such opportunity arose in 1997, but was abandoned by the government, due to resistance from Sinhalese nationalist groups. Since its formation, SMC has been agitating for a quota system for appointments in the public services; however, their claim has been struck down by the supreme court and they continue to be sandwiched by victimization on the part of Sinhalies as well as Tamils (Haniffa, 2010). Overall in both public discourse as well as political practice, minority in Sri Lanka has not been a neutral, but analytical or descriptive concept (Uyangoda, 2010).

BANGLADESH

Constitutional promises

The birth of Bangladesh, as mentioned earlier, is an outcome of non-accommodation of ethno-linguistic minority participation and representation by Pakistan. As a consequence, the country is the most homogenous in the world. However, despite having highest percentage of social homogeneity there are religious, ethnic and linguistic minorities (Khan, et al, 2009). The constitution of Bangladesh does not recognize any minorities and therefore doesn't allow any special protection or promotion for them (Mandal, 2007). Beyond constitutional framework, it recognizes the existence of religious minorities, which consist of about 10.3 percent of population, including Hindus, Buddhists and Christians and also ethnic groups, which constitute about 1.13 percent of its population. However, in case of linguistic minorities, this recognition is also an issue of controversy (Ibid, 2007). The ethno-

linguistic groups consist of Tribes of Chittagong Hill Tracts (CHTs) who have different cultures and speak different languages and Biharis who are the migrants from India and Pakistan (Khan et al, 2009).

The first constitution of 1972 was based on the principles of secularism, plural parliamentary democracy and equality. Under article 12 the constitution guarantees freedom of religion in which it grants political status in favour of all religions and eliminates the abuse of religion for political purposes (Amin, et al., 2016). In part III (fundamental rights) the constitution also guarantees every citizen equality before law (Article 27), safeguard against discrimination on grounds of religion, race, caste, sex or place of birth (Article 28), equality of opportunity in public employment (Article 29), and freedom of association (Article 38). However, in 1977 constitutional reform, the provision of secularism was substituted with the principle of absolute trust and faith in the Almighty Allah (Article 8). In 1988 constitutional amendment Islam (majority religion) was declared as state religion, with additional guarantees for other religions (Article 2A), Bengali as a national language (Article 3), all citizens be known as Bengalis (Article 6) and the nature of state as unitary. These provisions gave further rise to the issues and identity of religious (Hindus, Buddhists and Christians), ethnic (hill tribes) and lingual (*Biharis*) minorities. In 2011 through a constitutional amendment, though the removal of secularism was reversed, Islam has retained its designation as the state religion, and the legal challenge filed against it first in 1988, and then in 2016 by secularists was rejected in March 2016. This amendment also referred to Ethnic minorities as tribes. This amendment also referred to Ethnic minorities as tribes, ‘minor races’ and ‘sects and communities, but not as indigenous people, which would strengthen their land rights (MRG, 2016).⁴

Outcomes:

Since the constitution doesn't mention the existence of the indigenous cultural and ethnic minorities and also doesn't define any minority groups, it also doesn't guarantee any constitutional reservation of seats in political leadership or quotas in public employment to minorities (Amin, et al., 2016).⁵ The country follows the first-past-the-post electoral system, which along with state of polarized politics and the absence of any affirmative action leaves hardly any scope for a meaningful representation of minorities in the parliament. This system requires only 30 to 35 percent votes to win a seat, and 40 percent votes can easily translate into 50-60 percent legislative seats. The minorities constitute only 11 percent of electorate, and are in majority in only 20 percent parliament constituencies. While these 20 percent constituencies have potential to creating a representative system where minorities

⁴ The government even issued circulars warning against use of indigenous word to describe ethno-religious (MGR, 2016).

⁵ The exception is women, out of 300-member parliament, 15 seats were reserved for women in 1972. In the second parliament 1979 the number was increased to 30, and further increased to 45 (ibid, 2016). Their actual participation has also been very marginal. In 1973 one, in 1986 one, 1991 one, 1996 three, 2008 one (Ibid, 2016).

could exercise their rights. Due to lack of a formal arrangement, the electoral democracy of the country has become an instrument of persecution and oppression for these minorities. They are looked as numbers, a vote bank, instead of human beings. Their participation in the parliament has always been far below their proportion in total population. In 1973 3.8 percent, 1979, 2.48 percent, 1986, 2.18 percent, 1988 1.28 percent, 1991, 3.38 percent, 1996 1.28 percent, 2001 2.67 percent and 2008 4.67 percent. Currently there are 14 Hindus, one Christian, 2 Buddhists, constituting the highest (4 percent) level of representation in country's history (Ferdous, 2016). Since 1991 the country has been holding election on regular basis, and no person other than Bengali Muslims have become head of the state. The participation in the cabinet in 1991 was one out of 48 members, in 1996 three out of 51, in 2001 two out of 63, in 2009 three out of 35 (Ibid, 2016).

In public employment, during the British India minority representation was much higher in Bangladesh, which has now reserved (Dasgupta, et al., 2011). This historic underrepresentation in the public institutions is an important dimension of their difficulty in securing justice (MGR, 2016). What we see is a limited space for minorities (Khan et al, 2009). The government service sector has experienced what is called as silent discrimination with lock-offs starting at the entry level. There are no provisions for having minority representation in the selection boards; as a consequence the selection-boards often lack minority representation (Amin, et al, 2016). Moreover, there are issues of non-Muslim candidates facing uncomfortable questions, rude behaviour and their personal integrity and sense of patriotism being challenged. There is also a customary practice of unwritten laws, that the religious minorities could not be given sensitive positions like head of state, chief of armed forces, governor of Bangladesh Bank, home, foreign affairs, and finance (Shaha, 1998, pp. 5). Gauging their current levels of representation is problematic due to a lack of reliable or accessible recent data (Islam, 2014). During 1993 their representation in governmental officers and employees was 5.3 percent (350 out of 6500). The religious minorities in defense service was 1.62 (62 out of 3807) and in police service was 2.5 percent (2000 out of 80000) (BHBCUC, 1993a). In 27th BSC (in 2008) out of 940 candidates in general cadre, only 68 (65 Hindus and three Buddhists) and in out of 1477 candidates in health carder, only 90 (81 Hindus, three Christians, and six Buddhists) were from religious minorities. The foreign and army services for which date is more updated and widely available, both are considered as sensitive assignments for minorities. A recent study found only two members in foreign services, and a few commanders in Bangladesh army, that also of low rank (Ibid, 2016). A Para-Military group namely *Jatiyo Rakkhi Bahini* with substantial number of Hindu community was formed in 1970 and dismantled in 1975 and integrated into different other Para-Military groups (Ibid, 2016). The 5 percent quota system, which is put in place 1975, covers mainly two categories – women and freedom fighters and is mainly under the control of majority Bengali community (Nuzhat, 2010).). The needs of the most excluded, especially Dalit women are not

taken in to account. An executive order of 40 percent reservation for Dalits in 4th class jobs is more of an unfavourable inclusion, because it reinforces the caste based shame.

While the ethnic and linguistic minorities are victims of similar discriminatory policies (Islam, 2006), one of the major and longstanding concerns in the country has been the erosion of the autonomy of CHTs living in southeastern corner of Bangladesh bordering India and Myanmar (Khan et al., 2009). Since 1881 and particularly from 1900 under Chittagong Hill Tracts Regulation, these tribes were given special status of an autonomously administered district. After the independence of Bangladesh, a delegate from CHT headed by the only elected MP from the CHT – Monobendra Narayan Larma met the President and demanded autonomy of CHT with its own legislature, constitutional protection of the 1900 regulation, continuation of Tribal Chiefs Office and ban on the influx of non-tribal into area. In return the President rejected all these demands, and asked them to forget about their identity (Haq & and Haque, 1990). This resulted in Larma forming an agitation movement, which later turned into full-fledged armed struggle along Maoist lines (Nandy, 1983). The state response was military action along with forced settlement policy, which increased the non-tribal Bengalis population from 10 percent in 1947 to 50 percent in 1991 (Khan et al, 2009).⁶ Through numerous efforts, finally an executive order of a peace accord – Chittagong Hill Tracts Peace Accord was signed in 1997 (Ibid, 2009). It was a three tiers administrative framework with CHT Regional Council having a central role in general administration, law and order and development. While the accord led disarmament of the Shanti Bahini (Ferdous, 2016), after the accord Chittagong Hill Tracts Regional Council Act was passed in 1998, which curtailed many aspects of promised autonomy (Khan et al, 2009). It is argues that after more than 18 years, the accord still remains to make any progress in granting tribal effective local governance control to ensure their land and other indigenous rights (KFO, 2015). While one faction of tribes are demanding the full applicability of peace accord, another, United People's Democratic Front (UPDF), which contested in 2001 election and didn't won a single seat, is demanding for full autonomy.⁷ It is also very hard for CHTs to put forward their demands, as their representation in parliament is very small as currently there is only one indigenous representative. These issues continue with a threat of continued violence, and potential reverting to armed conflict (Khan et al, 2009).

Another concern is of linguistic minorities – *Biharis*, who, because of their active anti-liberation role, became widespread victims of political persecution during and after 1971. Became of their immigrant status, most of them had crisis with their citizenship rights until recent time. While they are now constitutionally recognized as

⁶ Bangladesh also didn't observe the 1994, as a year of the Indigenous Peoples as was declared by the United Nations.

⁷ Meaning all matter except taxation, currency, foreign policy, defence and heavy industry shall remain with the CHT administration.

citizens of Bangladesh, they continue to be victims of exclusion and severe discrimination in every aspect of life – education, employment, business, development and access to justice (Khan et al., 2009).

3. Emerging Typologies of Transformative Constitutionalism

From the above discussion what we take away is four-pronged typology of transformative constitutionalism and the participation and representation of minorities in South Asia, each having a relatively different consciences. An idea type model is one in which a state's constitution recognizes and defines all its minorities, as well as fosters individual and group specific transformative provisions for their participation and representation in political and public spheres. Then in practice shows political will and commitment in transforming those constitutional guarantees into action, so that minorities feel fully wedded into the national process, and there are no signs of their exclusion or extinction and threat to the development and security of state.

<i>Typology of the transformative constitutionalism and the participation of minorities in South Asian States</i>			
Country	Constitutional Promise	Practice	Consequence
India	Recognitive-cum-partially transformative	Considerably Accommodative	Selective Extinctionalism
Pakistan	Partially recognitive-cum-partially transformative	Partially Accommodative	Widespread Extinctionalism
Sri Lanka	Narrowly recognitive-cum-partially transformative	Partially - Accommodative	Widespread Extinctionalism
Bangladesh	Narrowly recognitive-cum-narrowly transformative	Narrowly-Accommodative	Complete Extinctionalism
Ideal model	Recognitive-cum-transformative	Completely-Accommodative	Non-Extinctionalism

While all the countries in South Asia are far from this ideal type, the closest from the typology appears to be India. As reflected earlier the constitution *recognizes and defines all its minorities*, through not through one provision (Article 19). However, it is *partially transformative*. While the constitution guarantees individual rights through fundamental rights and directive principles to all its citizens, the group specific provisions of affirmative action and political reservation are only given to SCs, STs, and partial political autonomy to some geographically concentrated ethno-linguistic minorities. These group specific direct protection, as mentioned earlier, have led to *considerable accommodation* through proportional representation of SC and STs in politics at all levels, as well as their increased participation in the public

employment. The main demand of the right to autonomy, of most of the tribes, has been dealt through two political - administrative solutions – the creation of autonomous districts, and regional councils and the formation of separate states. While some of the tribes are not happy with these solutions and continue to fight for their aspiration and struggle for self-rule, these measures overall, have led to a lot of stability in the caste and tribal groups they have eliminated the threat to national security and national development. However, not having similar group specific guarantees for religious minorities is a hindrance to its complete accommodation of minorities. As a consequence of which these religious minorities, particularly, have been continuously roasted and pushed towards extinction from political and public participation.

Pakistan is second in line after India, which highlights that partial recognition of minorities, and partial transformative nature of constitution can lead to partial accommodation in practice, and create possibilities of widespread extinctionism. First, the *partial definition and recognition* emerges from the fact that Pakistan's constitution recognizes only religious minorities, while see the rest of ethno-linguistic minorities as a homogeneous group. Second, this non-recognition has led it to being *partially transformative* in the sense. On one hand, while its guarantees individual rights of equal participation to all citizens in public and private life under part II of its constitution, the same constitution rejects the participations of non-Muslims to country's highest public office of President and Prime Minister. On the other, while constitution guarantees group specific political reservations and affirmative action policies in public employment for religious minorities, it excludes the ethno-linguistic minorities from the same. This, in practice, makes minorities in Pakistan much dicey and state as *partially accommodative*. This *partial accommodation* has consequently led to some big security and developmental challenges for the country. The non-accommodation of the claims and rights of ethno-linguistic minorities has led to the worst form of extinctionism, as mentioned earlier, first with the partition of country in 1971 and now the deepest tribal conflict with the rise of Pakistan Taliban. The accommodation of religious minorities is also limited in practice, while they are given reservation of seats; there is no formal arrangement for their representation in cabinet. Even in public employment, after the launch of quotas system they still fair poorly.

The third type is Sri Lanka, which is very close to Pakistan but still little distant from it. The country's constitution *narrowly defines and recognizes* minorities, in the sense, that it doesn't classify any ethnic and/or religious group, but refers to Tamil being an official language just at ones. Further, its constitution is *partially transformative*, in the sense that, while it doesn't guarantee any group specific protections to minority Tamils and Muslims, its incorporation of proportional electoral system, and administrative council power devolution have led to what can be called as *partial accommodation* of minorities in Sri Lankan politics. Partial because both these policies do not meet the wishes and claims of minorities to a large extent,

and are centrally controlled with no additional measure to avail equal control of minorities in decision making either at central or provincial cabinets. Further, the participation of minorities in public employment is very narrow because it is not back by any group specific affirmative action. With such an approach, the state has been fostering a *widespread extictionalism* of minorities, earlier through fueling of ethnic conflict and ethnic cleansing, and in post-civil war period through a move towards altering the existing provisions and elimination of whatever transformative guarantees (Uyangoda, 2010).

Finally unlike other countries, what Bangladesh case tells us is that, a narrow constitutional definition and recognition and narrow transformative agenda can, in practice, create more incentives for majority for non-accommodation of minorities, thereby possibilities of their complete extinction from the public and political domains of the state. The minuscule participation of minorities in political and public employment domain is *de fact* rather than *de juri*, or accidental instead of intentional. With the exception of some executive orders, there is no constitutionally guaranteed group specific space available for either religious, or ethno-linguistic minorities. This consequently, creates possibilities of *complete extinction* of minority groups from the political and public domain, which have much greater chances of leaning to violence and armed conflict. In fact such is already the experience which state has done through in the form of non-accommodation led armed struggle of CHT, and states continued response in armed action with impunity.

4. Skewed Minority Space a Majoritarian Agenda:

While there are some legal vacuums, especially with regard to group guarantees, when we look at given individual guarantees the case of minorities is not very weak. What is weak is the enforcement system, lack of political will and continued obstructions (MRG, 2016), which create this culture of narrow and inadequate constitutional recognition/definition of minorities, narrow and partial transformative provisions, and inadequate, marrow and non-accommodation of minorities in political and public domain. All these blockages directly or indirectly have their roots in the supremacy of majoritarianism which is growing wider and faster over the last few decades in the Sub-Content, leaving minorities' with limited scope to wed into national process (Hassan, 2016). It is both the idea of nation state, and the practice of state held in South Asia, which holds a deep-rooted commitment to majoritarianism. In normative sense the democratic idea of nationalism permits recognition of diversity, contributing to building pluralism. However, in South Asian case, the assimilation and homogenizing tendency of nationalism and state formation leads to suppression of diversities (Lokniti, 2008; Mohsin, 1997). The dominant idea of nation state in South Asian is that the territorial bounders of the state must coincide with the homogenous cultural community, or building a sovereign nation state while foregrounding common citizenry (Ibid, 2008). This in practice has reduced the open-ended political and imaginative space available for negotiation with diversities, and

given rise to two political expressions, on the one hand assimilative and aggressive nationalism, and on the other, secessionist and separatist movements (ibid, 2008). The majoritarianism has become the language of the state either de-facto or de-jury as the state religions, languages, citizenship, nationality all are defined based on the will of majority (Hassan, 2016). Because of this majoritarian rule the existing guarantees of citizenship and equality have not taken roots and their access is contingent on people's aspirative identities (ibid, 2016). And any new attempt of constitutional guarantee for their participation and representation is subjugated by the national elites, by using arguments such as order, national interest, unity and majority will, which frustrates the aspirations of the minorities (Lokniti, 2008).

In case of India, while the constitution preaches secularism with no state language or religion and puts no restriction on minorities to hold apex offices, there are strong, what can be called de-fact restriction on access. The case of Muslims is interesting who have been pushed into the peripheries of public and political domain since the onset of independent Indian constitution. Muslims collective demand for right to separate electorates, reservation of seats in legislature, quotas in civil services, universities started in 1906 when Sir Aga Khan led deputation presented this memorial in front of viceroy. After several negotiations the government of British India agreed on the proposal and put affirmative action and political reservation in place for Muslims being a minority (Adeney, 2016). Before the partition, in initial constitutional drafting and deliberation the political safeguards of legislative reservation, employment quotas, reservation in cabinet, and creation of administrative machinery to supervise and protect minority rights were included in the first draft of the India constitution published in 1948 (Bajpai, 2000). However, a large surprise was that after long constituent assembly debate it was completely reversed in the final draft for religious minorities, and continued only for SCs and STs (Ibid, 2000; Hassan, 2016; Adeney, 2016). The reasons being that the majoritarian Indian National Congress became hardened and felt Muslims represented by communal interests. Since the partition had taken place by that time, it became easy for them because there were no power Muslim conciliate to face and a few checks and balances were pushing its agenda through. The backwardness of the group was taken as ground for group preferences, however, equally backward, but with a different cultural identity were excluded (Ibid, 2000). In post independent India, the first-past-the-post-system continued to be accompanied by the rise of majoritarian politics, communal polarization and Hindu backlashes thereby coming in the way of Muslim representation in the political and electoral system. The majoritarian parties see limited incentive to field minority candidates in elections as a means to greater minority representation and participation (Hassan & Khair, 2016). While this issue is historical (Ibid, 2016), in current Modi regime, the template of majoritarianism is running very strongly with almost complete extinction of Muslims (Hasan, 2014). Even in the Muslim majority state – J&K, whatever debates and policy discussion take place in the assembly are controlled by the Hindutva framework dictated from the centre, instead of the local needs and aspirations of people.

Even in the public employment, the majoritarianism plays very strongly thereby leads to the exclusion of Muslims and other religious minorities. As mentioned earlier, Muslims mainly face three kinds discriminations – procedural (unhelpful eligibility criteria), practice (under representative selection boards) and general (sense of discrimination in the selection processes) (Sacher, 2006). Some of the key recommendations put forward by SCR to overcome these discriminations were not implemented at all. The recommendations related to legal backing of quotas and affirmative action, were not given such status, with reasons being that legally guaranteed political reservations and affirmative actions on religious grounds are against the constitutional norms. The recommendation that were implemented became the victims of current majoritarian rule, which rolled back a lot of policies of the previous government, reportedly the ones, related to the position of Muslims in India (Heptulla, 2014).

Pakistan is an open form of majoritarian rule, where constitution says, that Islam is the state religion, Urdu is the national language and no minorities except religious are recognized but are restricted from holding apex public office. Over the period of time, while on the one hand, constitution has incorporated group rights in the form of proportional representation, reservation of seats, and affirmative action policies for religious minorities, as well as some devolution of power to Pakhtuns. On the other, it has become an increasingly closing space for minorities (Hassan, 2016) because the Objective Resolutions passed over the period of time incorporated more Islamic provisions (Shahla, 2010). In case of religious minorities, through proportional representation system and reservation of seats at all level of government, while the religious minorities have achieved political presence, their role in decision-making is still very limited. One of the main reasons is that the majoritarian political parties of Pakistan such as Pakistan Peoples Party and Pakistan Muslim League do not ensure adequate representation of minorities (UPI, 2013 in Andeney, 2015). Further, level of majoritarianism is embedded in the constitution which restricts the access of non-Muslims to the office of PM and President. After the speech of Quaid-e-Azam on 11th august 1947 the government had subsequently declared August 11th as a minority day. However, it took more than 50 years to get it officially recognized in 2009, and the Minority Minister under whose leadership this happened was murdered in 2011 by Tehreek-e-Taliban (Khaliq and Aslam, 2016). In case of ethno-linguistic minorities, as mentioned earlier the refusal of majority West to accept the ethnic legitimacy of minority East led to division of country into two. In recent past, the poor accommodation of the political and economic claims of Pakhtuns by the Punjabi dominant parliament has resulted in the creation of Pakistan Taliban and another bloody civil war. While the political parties, especially ruling parties are personalistic and dynastic across the South Asia; Pakistan reflects a more open version of it (Adeney, 2015). About 44 percent of the seats in the outgoing national and provincial assemblies of 2013 were occupied by the individuals who or whose relatives had occupied seats in the previous assemblies (Kohari, 2013). It is argued that even

though the 18th amendment recognised Pakhtuns as Khyber Pakhtunkhwa and gave them greater control on their revenues from natural resources, the “evil Punjabi empire” continues to perpetuate its dominance over the region and other minorities (Andeney, 2012). This non-recognition of some minorities and inequitable representation at all levels of administration and national politics is becoming a hot bed in the country, and fuelling back in the form of form of increased violence and internal conflict.

Sri Lanka's stand on foremost place to Buddhism alone implies majoritarian model and the marginalization of other religious minorities to a position of subordination (Prera, 1999). The constitutionalism and minority rights are marked by minority anxieties regarding majority dominance through representative democracy, and the majority community's absolute lack of sympathy or sensitivity to such anxieties (Haniffa, 2010). While the state preaches secularism, in practice it has never allowed any candidates from non-majoritarian groups to hold its apex office. There has been what can be called as emergence and re-emergence of majoritarianism through inclusion and exclusion of minority provisions and policies. The country is the longest and consistent democracy in the sub-continent. However, the two main parties always played an uneven role in democratic development of the country, with both having roots in Sinhalese ethnic majority – United National Party, and Sri Lankan Freedom Party (Andeney, 2015). With the adoption of majoritarian democracy the Tamils and Muslims have been frozen out of power position. After Independence they were partially-recognized and then non-recognized, which resulted in the break of secessionist conflict in 1983 (Andeney, 2015). After the conflict, the devolution of provincial administrative control under 13th constitutional amendment has made them frustrated, instead of autonomous, because of its excessively centralized control (Uyangoda, 2019; Haniffa, 2010). Such as dissolution of the elected provincial council in 1990, and running of provincial administration through a governor appointed by the president, supreme court decision of demerging the two provinces in 2006, against the long standing demand of Tamils (Ibid, 2010). Further, after the weakening of the LTTE in 2009, the nature as well as the terms of the political solution to the ethnic conflict are undergoing a major alteration (Ibid, 2010). Muslims in particular, are the victims of double majoritarianism – Sinhala and Tamil (Ibid, 2010). The dominant Sri Lanka's debate on power sharing and federalism does not account for the rights of Muslim minorities who are small, and the Tamil nationalism no longer considers them as their own part (Ibid, 2010). There is also what can be called as multi-layered majoritarianism, which often leads to their representational deception, in the sense the positions promised are not allowed once won. After the liberation of eastern province, in local election in 2007, the government had promised Muslims for chief ministerial position if they win. However, although Muslim parties claim to have won the largest number of seats, the government gave position to former LTTE based party Tamil *Makkal Viduthalai Paligal* (Haniffa, 2010). This non-recognition runs the risk of they becoming oppressed minorities under territorialised devolution and federalism (Ibid, 2010). Because of this continued

dominance of Sinhalese the country continues to be described as an authoritarian regime (UN Human Rights Commission, 2013).⁸

In Bangladesh, the constitutional tempering of self-interest based elites in both the democratic and authoritarian regimes, by inserting and re-inserting clauses has ensured political and cultural dominance of Bangalees within the state (Mohsin, 1997; Ahmed, 1997). Over the period of time the majoritarian language has moved Bangalee nationalism, Bangladeshi nationalism to Islamic nationalism (Mohsin, 1997, pp. 92). Because of being a victim of majoritarian politics started with a secular country and relatively more accommodative behaviour. However, over the period of time it has turned into fundamentalism with the recognition of Islam as the state religion thereby excluding about 10 percent of other religious communities, and Bengali as national language thereby excluding about 45 percent of culturally and ethnically non-Bengalis. While its constitution, like other South Asian countries, provides fundamental right of equality of opportunity, the prevalence of the institution of majoritarian democracy does not leave much scope for minorities participation or representation. As mentioned earlier, that no person other than majoritarian Bengali Muslim and majoritarian political parties like Bangladesh Nationalist Party and Bangladesh Awami League, has ever become a head of the state. Similar to India Political parties do not shoulder and come forward for the cause of the minorities, because there is not much incentive in it (Shaha, 1998, pp.5). The claim of United Council of Minorities for 60 seats in the parliament is against the over time majoritarian atrocities, as a consequence of which the minority population has decreased from 21 percent in 1971 to 10.3 percent in 2001 (P114). Which the current proportion is only 10.3 percent they want parliament seats with 1971 as the base year. Moreover, the un-accommodative and discriminatory practices in public employment such as non-representation of minorities in the selection committees, asking sensitive questions and lack of trust on religious minorities in army and foreign services is also majoritarian project. With this theory and practice of increasing fundamentalism, what Bangladesh as a country is actually doing, is reproducing majoritarianism, of which it was a victim, and against which it fought the liberation war (ref).

5. Pathways to Overcoming Hurdles to Minority Participation:

In case of South Asia, unlike some other developing countries, there is a basic common commitment to the idea of democracy, democratic rights and also constitutional definition and recognition of some minorities and some transformative measures (varying across countries) (Hassan, 2016). However, there is also a common gap (though varying across countries), with regard to translation of democratic commitment including transformative measures into balanced and equitable participation and representation of minorities (Andeney, 2015). A complete wedding

⁸ During the president Rajapaksa's rule in 2014 it ranked at 165 positions of 180 countries on the press freedom index (Francis, 2013).

of these heterogeneous minority groups in the national process (Hassan, 2016) demands each state to reach to the level, defined as ideal type model in the aforementioned typology – completely recognitive and transformative constitution, completely accommodative, and non- extincionalism. For this there is a need of adhere to the democratic principles in latter and spirit, which ask for deepening of democracy (though more in the states in lower rank of typology compared to the higher). Compared to the western democracies, the nature of South Asian countries demand much deeper commitment to democracy, socialism, and secularism, because they are extremely heterogeneous.

There are various measures suggested for the integration of minorities in every aspect of public life, however, an ideal way is considered to be through indirect and informal means, which do not increase the salience of a particular minority group (Steward et. at, 2007). However, in case of South Asian, with regard to the participation and representation in political leadership and public employment, such measures, as reflected earlier, present a typical failure. Hence, there is a need of both indirect as well as direct constitutional measures. First, by re-working around the practice of individual rights of citizenship and equality of opportunity, second, by widening the theory and practice of group guarantees, and third, through setting of independent institutional systems and civil society.

I. Re-working around the practice of individual rights

The individual fundamental rights of the equality of citizenship and participation, as guaranteed by all the countries, in practice, mean, equal treatment for all individuals as members of different communities. While this is going against the existing ideal of the nation state of majoritarianism, this mindset change is critical to the realization of these individual transformative rights. Moreover, there realization also demands strengthening of system to check differential treatments such a establishing rule of law, entrenching an independent judiciary, strengthening anti-discrimination laws, strong mechanisms for protection human rights and promoting diversity and multiculturalism (Hassan, 2016).

II. Widening the theory and practice of group guarantees

i. Political participation

Second, what our study reflected above is that the individual rights guaranteed to minorities under fundamental rights, in the condition of weak rule of law and state of majoritarianism, do not create much space for them in political and public domains, as well as other aspects of human wellbeing. Hence, the framing of minority rights can no longer be made on the plane of individual rights or in relation to civil and political rights and language alone (Uyangoda, 2010). Instead, what we have seen is that, in similar conditions, constitutionally guaranteed group rights, alone or along with individual rights are making some substantial progress? Such as political reservations in case of SCs and STs in India, religious minorities in Pakistan, and to some extent proportional representation in Sri Lanka. Quotas in public employment in case of SCs

and STs in India and religious minorities in Pakistan. Partial devolution of power to linguistic minorities in Northeast India and Pashto's in Pakistan.⁹ Hence, there is a strong case for group specific constitutional guarantees for all minorities, along with individual guarantees, as a way-out to their equitable participation and representation. However, having a group rights discourse demands for a radical restricting of the state (Uyangoda, 2010). A starting point would be constitutionally guaranteeing or extending (in countries which already have such guarantees for some minorities) promotional policies of political reservation and affirmative action of job quotas.

As reflected earlier, for South Asia in general, and particularly, for those minorities who are not given a political reservation, democracy under first-past-the-post electoral system is just a number game (Andeney, 2015). Like most of the other post-colonial countries this is inherited from the colonial rule, and instead of accommodation, is resulting in marginalization of minorities in political life (Reynolds, 2002). What democracy really means is more than just a political system that allows for regular elections to choose those who govern ... it is very much about minority rights and about individual rights (Andan, 2014). The electoral system in a democracy is a skeleton on which the body of a society grows, its nature, to a large extent, determines the inclusion of minorities in a particular polity, and has implication on the number of minority candidates elected as well as on the nature in which majority parties will appeal to or marginalize minority voters and leaders (Reynolds, 2002). Hence, the sub-continent definitely needs an overhaul of its existing electoral system in order to move away from number game democracy. The first, move in this direction would be replication of the existing sub-continental *promotional policy* measures to all the minorities – single electorate with reservation of seats as proportion to their population (Islam, 2016). The proportional electoral system has the potential to ensure that all groups are represented broadly as proportion to their population (Steward et al, 2007). This would be especially beneficial to disaggregated minorities like Muslims of India and Hindus of Bangladesh (Sarher, 2006, 241; Dasgupta et al., 2011).¹⁰ This system of participation has shown its power in reducing the minorities' exclusion from the provincial and state assemblies. However, it has not guaranteed them political power due to non-power sharing in the executive level (Steward et al, 2007). As reflected earlier, in case of India and Pakistan where some minorities are a part of promotional systems, they end-up being used as fillers by majoritarian national parties as and when needed or remain excluded from cabinets, which are the actual

⁹ Such cases are not limited to just these south Asian countries, but some other post-colonial countries such as Malaysia, Indonesia, South Africa, even non-colonial Lebanon have been quite successful in generating equality of participation in political and public employment through such constitutional guarantees (Steward et al, 2007).

¹⁰ In the East Pakistan the Hindu leaders obtained 72 seats out of 309 in the 1954 state elections due to the religious communities separate electorates, with seats reserved for religious communities according to the ratio of their population, more than 23 percent of the seats belonged to the Hindu community (Kabir, 1980). Hindus wanted more secular elections, and they enforced a combined election for all, as a consequence since then their participation and representation in the parliament has been very marginal. The number in the parliament since the liberation are 1973 (3.8), 1979 (2.4), 1986 (2.12), 1988 (0.01), 1991 (3.33), 1996 (4.24), 2001 (2) (Dasgupta et al., 2011).

spaces of state decision making. This demands for a second move away from the informal system of cabinet sharing dominated by the mood of ruling party, to a formal arrangement of proportional cabinet sharing. One such noteworthy example is from Lebanon where president position is reserved for Christians, Prime Minister for Sunni Muslims, and the speaker for Shi'a Muslim (Steward et al, 2007). Such system is imperative for overall minority wellbeing, because in developing democracies, including South Asia, it is found that the groups who dominate the executive tend to favour policies towards their own members (Langer, 2005).

For geographically concentrated ethno-linguistic minority group claims of self-rule, autonomy, or secessionism such as CHT in Bangladesh, Tamils in Sri Lanka, Pashtuns and other provinces in Pakistan and Northeast India, most of the countries have initiated some form of constitutional devolution of power, with the exception of Bangladesh which has an executive order based peace deal with CHT's. However, with the exception of India, where the devolution of power has met the aspirations of ethno-linguistic Northastern to a greater extent, all other countries have either forged what they promised (Sri Lanka and Bangladesh) or didn't meet most of the claims of minorities or/and are highly centralized (Sri Lanka, Bangladesh and pakistan). As a consequence, regionalism affiliated ethnicity and/or linguistics continues to be a threat for nation states resulting in inequitable power distribution and control on the power distribution system (Lokniti, 2008). Hence, the weaknesses in these models of devolution need to be addressed by sharing more areas of decision making by giving due consideration to their claims. This will enhance their participation and empower them (Steward et al., 2007).

ii. Public Employment

The question of power sharing doesn't hold importance only at the political level. Especially in countries like South Asia, where government sector is still a large service provider, government jobs are dominant, and the participation in government and army is highly detrimental in determining the access to services and development. This system of power sharing has to be followed in the bureaucracy and security who are front line service delivery people and have more direct contact with the people. There are about 40 percent parliaments in the world have such power sharing arrangements for minorities in place (Jacob, 2014). What we saw earlier, with the exception of SCs and STs in India and religious minorities in Pakistan (though their presence is not well documented yet), no other South Asian countries have group specific constitutional guarantees to equalise minority participation and representation in public employment. Though individual guarantees are there, like political sphere, there are no set criteria for measuring there outcomes in practice as most of the measures of accommodation are informal (Andeney, 2015). This continues to lead the exclusion, particularly of Muslims in India, ethno-linguistic minorities in Pakistan and religious and ethno-linguistic minorities in Bangladesh and Sri Lanka. The framework of *proportional employment quotas* is already in place in case of SCs and STs in Indian, even for Muslims in few South Indian states like Tamil Nadu, Kerala and

Telangana and religious minorities in Pakistan.¹¹ Similar group rights need to be extended to all the minorities in the sub-continent, in order to assure their equal and balanced participation in public sector (Steward et al, 2007).

While the group quotas will enhance the minority participation, there is still an environment of discrimination of separating minorities as second-class citizens at all levels of public life (MRG, 2016). Without addition Measures of educational programmes, public awareness-raising campaigns, media initiatives, online campaigns and cultural platforms to celebrate the contribution of religious minorities to the country such prejudice and social stigmatization cannot be controlled (Jacob, 2014).

iii. Setting minority commissions, and space for CSOs

A longstanding demand of minorities in South Asia has been setting of Minority Commission (Uyangoda, 2010; Sacher, 2006 Hassan, 2016). However, this demand, though crucial in transforming their constitutional guarantees into practice, as well as putting checks and balances on the system, has not been met. As reflected earlier, some countries have Ministry of Minority affairs or Linguistic Commissions at central as well as provincial levels, but they lack transparency, accountability and inclusive consultation and are controlled by majoritarian politics.¹² Hence, there is a serious need for setting-up minority commission as a tribunal in according to the Paris principles with branches at central, provincial and local level (Uyangoda, 2010; Sacher, 2006; Hassan, 2016; Jacob, 2014). It will act as an autonomous body to safeguard the interests of minorities which in particular includes monitoring the implementation of aforementioned constitutional guarantees, widening of non-constitutional measures, facilitating independent research on minorities, develop equal opportunity index, systematic reporting and up-to-date data on minority participation and representation. Once, established, these institutions should pursue an inclusive, transparent, and accountable process in order to maintain a climate of confidence (Drzewicki, 2005).

Finally, the most prominent group of people, who risk their lives to work for the wellbeing of minorities, and have a commitment to measuring their progress are activists, NGOs and lawyers. There is a need for their more vibrant organization across the sub-continent, and also a responsibility on the part of state to allow them to enjoy the freedom to work and investigate without fear and intimidation or violence by extremists (MRG, 2016).

¹¹ Outside the sub-continent, post-colonial states such as Nigeria and Ethiopia have also done fairly well with constitutional provisions of ethnic proportionality at each level of government (Ibid, 2007).

¹² In case of India the current Minister of Minority Affairs, through a Muslim by name is member of BJP, a Hindutva ideology party. His commitment to the party instead of position is eroding rather than advancing the religious minority cause at the central level.

On face value, and at the backdrop of growing wave of majoritarianism in the sub-continent, some of these measures might sound radical, too sensitive and unaccomplishable as reported by some of the respondents in India in Salter (2011) study. However, these challenges can be overcome through changed political attitude of state towards minorities and political will to mobilise public and come with such reforms.

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