

KALASH VALLEYS: A CALL
FOR
INDIGENOUS CULTURAL SURVIVAL

RELIGIOUS HEGEMONY IN RECOGNITION OF INDIGENOUS RIGHTS
IN
THE ISLAMIC REPUBLIC OF PAKISTAN

By
Taj Khan

Submitted to
Central European University
Department of Legal Studies

In partial fulfilment of the requirements for the degree of a Masters of Arts in
Human Rights

Supervisor: Prof. Renáta Uitz

Budapest, Hungary

2009

ABSTRACT

The Ancient Kafirstan “land of infidels” does not exist any more as it succumbed to brutal Islamization at the end of 19th century. However, it left behind a more than 3000-year-old isolated race with its own language, myths, shamanic institution and agro-pastoral ideology. These last Non-Islamic survivors of Ancient Kafirstan are the “Kalasha” of the Hindu Kush Mountains who now live in three remote valleys in the North West Frontier Province of Pakistan. When the Mountain State of Chitral, of which the Kalasha Valleys were a part, ceded to Pakistan in 1947, the customary justice of non-interference into the tranquil isolation of the Kalasha Valleys was encroached. The cultural enclave of the numerically small non-Islamic Kalasha people has become vulnerable to radical Islamist proselytizers, resource exploiters, ethno-tourism and terrorism. The terrible loss of ancient cultural identity and ethnic territory is a result of ethnocide and neglect by the state of Pakistan. Indigenous peoples elsewhere in the world have successfully evoked Art.27 of ICCPR¹ for restitution and restoration of pre-existing rights of cultural survival. The Kalasha are not currently granted similar protection as the State only recognizes religious minorities but on the 50th session of CERD² committee, Pakistan made the dubious confession that the “Kalash were an ethnic and religious minority of only about 3,000 people... believed to be descendants of the Greek soldiers in the army of Alexander the Great, and [Kalash] unique culture was threatened by modernization and tourism.”³ This official statement sets a case study for cultural survival based on the history and cultural differences of the Kalasha people in respect to the vulnerability of their current situation within Pakistan. The thesis also explores protection for the indigenous Kalasha community, which may be sought through legal means.

¹ International Convention of Civil and Political Rights, United Nations.1976.

² International Convention on the Elimination of all Forms of Racial Discrimination.1969.

³ Committee on the Elimination of Racial Discrimination,

Fiftieth session: CERD/C/304/Add.25, Para 12.Palais des Nations, Geneva, 12 March 1997.

Table of contents

<u>Introduction</u>	1
<u>Chapter 1. Introduction to the Kalasha People</u>	6
1.1. <u>Ancestors and Origins</u>	7
1.2. <u>Islamization & Enslavement of the Kalasha</u>	9
1.3. <u>Threat to and vulnerabilities of the Kalasha</u>	11
1.3.1. <u>Loss of Cultural Identity</u>	12
1.3.2. <u>Loss of Ethnic territory</u>	17
1.4. <u>Historical Conditions of Kalasha Cultural Survival</u>	19
<u>Chapter 2. Status of Kalasha in Pakistan</u>	21
2.1 <u>Kalasha Aboriginal Factor</u>	21
2.2 <u>Kalasha Under Indigenous People Rubric</u>	22
2.3 <u>The Creation of Pakistan: The role of Religious Identity</u>	25
2.4 <u>Constitutional History & Religious Hegemony</u>	26
2.5 <u>Ethnic Minority Rights in Pakistan: Exclusion of the Kalasha</u>	29
2.6 <u>Religious Minority Rights in Pakistan: Exclusion of the Kalasha</u>	30
2.7 <u>An Observation: No Protection for the Kalasha</u>	31
<u>Chapter 3. Prospects of Kalasha Cultural Survival</u>	32
3.1 <u>Legal setting of the Kalasha case</u>	32
3.2 <u>International framework on Indigenous Cultural Survival</u>	38
3.3 <u>Genocide: Relevance to Ethnocide</u>	44
3.4 <u>Collective Rights: Relevance to the Kalasha</u>	47
3.5 <u>Land Restitution & Cultural Protection: Prerequisite for Kalasha Survival</u>	49
<u>Conclusion</u>	60
<u>Bibliography/References</u>	63

Introduction

Ancient Kafirstan refers to the territories of pre-Islamic tribes in the Hindu Kush Mountains in Central-East Asia. The invasion of these pre-Islamic inhabited territories and congruently the invasion of pre-Islamic tribal peoples started in the 9th Century A.D. by Arabs and was later continued by central Asian conquerors.⁴ The last of these invasions and forced conversion of “Kafirstan” took place in 1895 by the ruler of Afghanistan.⁵ The very little known pre-Islamic peoples came to be known as the “Kafirs of Hindu Kush” through the colonial administrators who ventured into the area to mark the frontier borders of the territories under the British Empire.⁶ The reports of these military expeditions brought significant insights to the outside world about the nature and origins of the society of Pre-Islamic peoples. The only current-day survivors of ancient Kafirstan are the Kalash Kafirs, located in the former mountain state of Chitral. The majority of these pre-Islamic territories have been incorporated into Afghanistan and Pakistan.

The Kalasha still exist today because of the departure from their Pre-Islamic past, accomplished by accepting the sovereignty of the Muslim invaders and agreeing to pay tributary taxes and giving unrewarded labour. In exchange for these contributions the Kalash were allowed to retain their beliefs, customs and ethnic territory: the Kalasha Valleys. Upon the decolonization of India, the Princely State of Chitral came under the suzerainty of Pakistan and ceded to full control in 1969.⁷ The Kalash became citizens of new nation state and are today identified by their religion, marked, as an “other” religious minority in Pakistan as the Kalash are not Muslims. The Kalash Kafirs in Chitral have faced discrimination and slavery on the basis of their race and religion. This religious persecution and physical elimination of Kalasha people has taken a variety of forms ranging from forced conversions,

⁴ Cacopardo, *Gates of Peristan* (2001), Istituto Italiano per l’Africa el’ Oriente, p.33.

⁵ Afzal Khan, *Chitral and Kafirstan* (1975), Printed Corporation of Frontier Ltd, p.66.

⁶ Robertson, *Kafirs of Hindu Kush* (1896), Oxford University Press, p.26.

slave trade and genocide to contemporary ethnocide in the hands of non-state organizations who have access to the valleys.

Furthermore, the quest for the creation of Pakistan as a nation state was turning the religious identity of Muslims in undivided India into political identity through “two nation theory”.⁸ Pakistan was created when religion, specifically Islam, took the form of political identity through the two-nation theory. The proponents of this theory maintained that religion was the only signifier of national identity of various Muslim ethnic groups in undivided India, thus constituting a different nation. This led to the creation of a separate state, current-day Pakistan, which unified the pre-dominant Muslim populated areas. The original conception, verified in the declarations of its founder Mohammad Ali Jinnah and the works of the First Constituent Assembly, was that of a democratic state where religion would not possess an active political role.⁹ However, since the creation of a separate state, there has been a gradual evolution of the state politics, which has led to the de facto political presence of Islam within Pakistan.

The intended imposition of state homogeneity based on Islam, allowing only for the existence of religious minority and denying ethnic group status, resulted in the exclusion of populations with differentiating self-concepts of identity. These varying self-identified concepts, such as the Kalasha people, were not always able to fall under the official definitions of religions and cultures. In 1973, the Constitution of Pakistan attempted to provide a political base of autonomy, on a federal level, by providing a degree of provincial autonomy to the four main and large ethnic areas namely: Baluchistan, Sind, North West Frontier Province and Punjab.¹⁰ Apart from these four provincial territories of the federal state of Pakistan there are several territories of other ethnic groups, which are recognized as Tribal

⁷ Alauddin (1992), *Kalash the paradise lost*, Progressive Publishers, p.201.

⁸ Ali, S.S & Rehman, *Indigenous Peoples and ethnic minorities of Pakistan*, Surrey: Curzon Press, 2001, p.1.

⁹ Dr. Iftikhar H. Malik, *Religious Minorities in Pakistan*, Minority Rights Group Report, p.6.

¹⁰ See *surpa* note 8, p.20.

Areas and Northern Areas¹¹. Some of these tribal areas are federally administrated while others are provincially administrated.¹² This regulation is a step forward in protecting the interests of larger and more powerful ethnic groups, with regards to their territory, recourses, population and legislation. However, this regulation simultaneously neglects to offer the same protection for similar issues to smaller ethnic groups.

The significance of the numerical strength of ethnic groups and religious minorities is that the numerical population of an ethnic group affects that group's potential for political participation within the bounds of the state. This is particularly important to the smaller ethnic groups and religious minorities, and is also an interesting correlation, which should be further, explored when aiming to ensure broader protection for small ethnic groups. Likewise, the emerging norm of "indigenous rights" has further enhanced the cultural survival of numerically small indigenous people. Moreover, the presence of religious minority rights and indigenous peoples rights, as established by international conventions and overseen by human rights instruments, is an important frame of reference in the case of the Kalasha people, even though they fall under the criteria for both categories. It is their inherent right of the Kalasha people to invoke the status of an indigenous group in order to ensure that they receive broader protection for any individual member and the collective tribe as a whole under international conventions. The recommendations of the HR committees and the rulings of international courts in similar situations are considerable addition to the attempted setting of a case for the recognition of indigenous status and attempts to define the spectrum of implementation of those principles.¹³

¹¹ Constitution of Islamic Republic of Pakistan (1973): Chp.3, part 4, p.44.

¹² Id.

¹³ Henkin quoted in Dixon, M. & McCorquodale, R. *"Cases and Materials on International Law"*. New York: Oxford University Press, 1991. pp. 3-4

'The consistent practice of the United Nations shows that there is no minimum figure for population to qualify for the right to self determination: it suffices to cite the case of St. Helena... with about 4000 people whose right to self determination has been consistently upheld.'

A distinct area of concern for the cultural survival of the Kalasha people is their plural and polytheistic nature of beliefs and customs. Religion and culture are synonymous entities for the Kalasha in a sense that spatial ritual practice, rites and ceremonial cycles are embedded in the landscape and pastoral ideology and are not limited or centred around a temple and a people-centred religious hierarchy.¹⁴ Therefore, it is necessary to evaluate if the constitutional provisions and the institutional safeguards are adequate to protect the Kalasha belief system and its practice in Pakistan, within the Kalash's specific geographic location and environment.

The main issues pertaining to the Kalasha people are the loss of their ethnic identity, language, culture and religion with controversial conversion to Islam and loss of their territory to non-Kalasha settlers. These issues relate to existing legislation at the national level and a lack of protective intervention. The historical conditions of Kalasha cultural survival, prior to the succession of Chitral to Pakistan, affirm a protective ethnic territorial status that has been breached. This phenomenon raises two important considerations: whether the Kalasha people fall under the rubric of indigenous rights, in which case their "threatened culture" would be afforded a special status for protection within the legal framework of the Pakistani state and international human rights law, secondly whether the status of indigenous people serve as sufficient legal basis for the application of the cultural self-determination principle expressed as enhanced administrative autonomy.

The aim of this research is to identify the issues that affect the survival and the prosperity of the Kalasha people, which mainly involves the maintenance of their linguistic, religious traditions, their customary way of life and overall cultural heritage. The focal point of this research, both legal and cultural, is threefold; it is constructed on a regional, national

¹⁴ See Peter Parkes (1987), *Livestock Symbolism and Pastoral ideology Among the Kafirs of the Hindu Kush*, Man, New Series, Vol. 22, No. 4. Royal Anthropological Institute of Great Britain, 1987, pp. 637-660. <http://www.jstor.org/stable/2803356>, Accessed: 20/09/2009

and international axis as a basis for argumentation. The legal aspect primarily refers to political participation, legal recognition and legislative protection; the cultural autonomy parameter introduces an additional impetus for safeguarding the indigenous lands and the restitution of traditional properties. As a result the analysis will attempt to justify the incorporation of the collective rights of the Kalasha people, in addition to the individual rights of a Pakistani national citizen, in the form of indigenous status recognition. This claim will be constructed by challenging the limited protection envisioned by state law, furthering the context of group rights in Pakistan and incorporating ethnic status, as well as invoking the relevant provisions of customary international law and human rights treaty law. The latter argument will be strengthened by a detailed historical overview of the existence of a Kalasha valleys protected status of the Kalasha Valleys thus verifying a claim of continuity establishing precedent of customary law.

CHAPTER 1: INTRODUCTION TO KALASHA PEOPLE

The Kalasha are the last surviving non-Islamic ancient inhabitants of North Pakistan, living at an elevation of 2800 meters in the wilderness of the Hindu Kush range in the South-West of Chitral District of the North-West Frontier Province. The Kalasha who maintain ancient racial lineage, language, religion and culture number no more than 4000 people today, in the three Kalasha Valleys: Mumuret (Bumborate), Rukmu (Rumbur), and Biriw (Birir).¹⁵

The Kalasha laid claim to these three Valleys as their Aboriginal and Ancestral Homeland for centuries, ranging back to an undeterminable era. , These lands include three channels between Afghanistan and the province of Chitral, through which torrents of waters which open onto the small administrative town of Chitral, some 20 kilometres to the south, pour. Since 1947, when the Kingdom of Chitral was attached to the newly formed Islamic Republic of Pakistan, the Kalasha have been citizens of Pakistan.¹⁶

In the natural amphitheatre of the Hindu Kush Mountains the historical memory of the Kalasha people is recollected and passed around the fireside through story telling. On one such occasion the man with thousand tales, Khosh Nawaz, the ‘bringer of happiness’ recalled that;

‘In the golden age, divine beings, spirits, men, animals and plants could understand each other’s language and then some thing happened... and we lost the contact with each other, the mountain spirits and the animals only spoke to selected people dehars¹⁷ through trance, dance, and dreams. We [Kalasha] must keep the connection through rituals and offerings to affirm that we are thankful for the food the trees and fields give us for the milk and cheese we take from animals and the abundance and labour we must share with all Kalashasum and mountain spirits for protecting our continued existence, if we impure the ritual connection we insult nature, the nature will let us perish’¹⁸

¹⁵ Talim Khan, *How many are we*, International Conference on Language documentation & Tradition, Aristotle University, Thessaloniki, November 2008.

¹⁶ Loude, Jean-Yves and Lièvre, Viviane. 1984. *Kalash Solstice*. Lok Versa Islamabad, p.6.

¹⁷ Kalasha word for Shaman

¹⁸ Personal communication with Khazi Khosh Nawaz, Summer 2006

1.1 Ancestors and Origins

The Kalasha people have no written records about their ancestors and origins but their oral history bears the marks of admixture with soldiers of Alexander the Great.

Kazi Khosh Nawaz reconstitutes this memory;

Long long ago, before the days of Islam, Sikandar e Aazem came to India. The Two Horned one whom you British people call Alexander the Great. He conquered the world, and was a great man, brave and dauntless and generous to his followers. When he left to go back to Greece, some of his men did not wish to go back with him but preferred to stay here. Their leader was general called Shalac shah. With some of his officers and men, he came to these valleys and took local women, and here they stayed.¹⁹

Gail Trial in her paper *Tsyam revisited: a study of Kalasha origins* has proposed that the Kalasha are not directly descendants of Alexander the Great's armies but rather descendents of his general, Seleucus Nicator.²⁰ The general, according to Gail, returned around 309 BC to re-conquer and resettle in the area after Alexander's death. The general Seleucus Nicator is identifiable with the above oral history, told by Khosh Nawaz, as Shalac Shah. The term 'Shah' in the Kalasha language and Persian languages means 'King' which indicates a link. Also, Shalac and Seleucus are phonetically similar. A much earlier work, *The Route By Which Alexander Entered India* (1884) by Frederic Pincott, is of the opinion that Alexander the Great passed into Chitral following the Kunar²¹ River and describes the making of an encampment. This work states, "struggle here was particularly severe, for the people were stoutest warriors in the neighbourhood."²²

The invasion of Asia by Alexander the Great is dated back to 334 - 324 B.C. Aristotle, the tutor of Alexander the Great, in line with Greek geographical understanding of that time considered the mighty Hindu Kush peaks as the "rooftop of the world" and said that on its

¹⁹ Nawaz quoted in Michael Wood, *In the Footsteps of Alexander the Great*, BBC Books, p. 8.

²⁰ Proceedings of the Second International Hindu Kush Cultural Conference, *Tsyam Revisited: a study of Kalasha origins*, p. 21.

²¹ Main river of Chitral that enters in Afghanistan at Birkot Valley, Arandu boarder in Hind Kush

²² Frederic Pincott(1884), *The Route by which Alexander Entered India*, Journal of the Royal Asiatic Society of Great Britain Ireland, p. 7.

peaks it would be possible to see the ends of the Earth.²³ According to Michael Wood, when Alexander stood on the slopes in the spring of 327 B.C the end of world was nowhere to be seen.²⁴ Alexander's desire to see the end of the world - along with his soldiers over the most inaccessibly harsh terrain in the world - certainly would have taken time to plan for new invasions given that, at this time of year, the Hindu Kush is still covered with snow and passes are closed. The possibility of Macedonian heritage, mixed with native local women creating the existence, as a distinct group in the early third century BC is not completely implausible. The reinvasion of the Area by General Seleucus Nicator reinforces the claim of Macedonian origins.

Professor J. Morgenstierne from the *Institute for Comparative Research in Human Culture* (1924-1929) was the pioneering researcher of the Hindu Kush region to provide another theory about the origins of the Kalasha based on the archaic language, religion and physical features. According to him the "Kafirs of the Hindu Kush are Aryan tribes as they are the only Indo-Europeans who have preserved an illiterate paganism, relatively uninfluenced by higher religions ...anthropologically they vary much, more or less 'Nordic' types occur but also Alpine and among the Kalasha, Australoid types."²⁵ Lt. Col. Khan also makes similar observations about the physical traits of the Kalasha in his book *Chitral and Kafirstan*. He states how he was "struck on more than one occasion on finding a village where tall men, with fair hair or light brown hair, and often with pale blue eyes, and shorter types with black hair and olive skin, existed side by side."²⁶

The terms Australoid²⁷, Caucasoid, Negroid and Mongoloid belong to system of human classification developed by 19th century anthropologists and physiologists and relate to outdated notions of race that have largely been abandoned. From the research on the origins

²³ Michael Wood, *In the Footsteps of Alexander the Great*, BCC Books, p.170.

²⁴ Ibid.

²⁵ J. Morgenstierne, *The Kafirs of Hindu Kush*, Proceedings of Societies, School of oriental Studies, p. 3.

²⁶ Lt. Col. M. Afzal Khan, *Chitral and Kafirstan*, Printed Corporation of Frontier Ltd, p. 67.

of Kalash, which was mentioned above, it appears that the Kalasha are aboriginals to the Hindu Kush with genetic contributions from Aryans and then Macedonian invaders in the region. Similarly the term “kafir” which means heathen or Pagan, came into usage after the arrival of Islam in the region, as Kafir is an Arabic term which means non-believer in Allah and Prophet Muhammad. However the term is typically designated for the pre-Islamic tribes in the Hindu Kush and not to Hindus in the Indian subcontinent who are also non-believers of a Judaic God.²⁸

1.2 The Islamization and Enslavement of the Kalasha

Islam originated in Saudi Arabia in the 7th century and within the folds of a century it grew out of its borders, extending to central Asia.²⁹ According to Muslim rulers’ historiography, ‘Nai Tarikhi-i-Chitral’, “Islam was brought to Chitral in 7th century AD by an Arab army that defeated a local King called Bahman Kohistani”.³⁰ However, the chronology of events surrounding the arrival of Islam presents a gap of five centuries until Rais invaders conquered Kalasha in 1320 AD. The Rais originate from Turkestan and were the first people in the Hindu Kush area to have converted to Islam³¹. Prof. Cacopardo member of *Istituto Italiano per l’Africa el’ Oriente, Rome* has conducted extensive research on pre-Islamic peoples of the Hindu Kush claims that the authors of ‘Nai Tarikhi-i-Chitral’ were intentionally tracing the earlier advent of Islam into Chitral in order to “legitimate Kator rule by anticipating as much as possible”³². The earliest Islamic invaders moved north and the Islamisation of Chitral occurred around 14th Century AD if not earlier.³³

²⁷ See New Oxford American Dictionary 2009.

²⁸ See *surpa* note 8, p. 154.

²⁹ Hambley 1970: 60-69 quoted in *Gates of Persitan*, Cacopardo, p. 32.

³⁰ Fazil Beg, *Introduction to history and nations of Chitral*, Rebul Printer Peshawar, 1996, p.34.

³¹ See *supra* not 4, p. 33.

³² *ibid.*

³³ *ibid.*

The British arrived in Chitral in 1885 and signed a treaty with the current ruler that accepted the suzerainty of the British Empire and guaranteed his allegiance of this ruler in case of a Russian advance to the Indian subcontinent³⁴. The mehtar, however, feared an invasion from Afghanistan by his rival, the Afghan King Abdur Rehman. In 1893 Abdur Rehman signed the Durand line agreement in Kabul. It was this border agreement with the British that created an opportunity for the ruthless Afghan King to declare a “holy war” and invade the “infidel country” of ‘Kafirstan’.³⁵ The pre-Islamic Bashgal tribes named “*Red Kafirs*” in their independent Kafirstan territory were massacred, made slaves and forcefully converted to Islam.³⁶ Kafirstan, known for its fearless warrior tribes that had prevented foreign entry into the homeland, stood no chance against the modern weaponry of the time provided to Abdur Rehman by the British. After the ethnic cleansing of pre-Islamic tribes, the area was named Nuristan, “land of the enlightened”³⁷. Today Nuristan today is a province of Afghanistan and stands as a stronghold of the Taliban due to its difficult and inaccessible terrain.

The Kalasha were the only Pre-Islamic tribe to have survived immediate extermination in the Hindu Kush territory. The primary reason is that they had long lost their political independence to the Muslim ruler of Chitral and had become his subjects. The rulers protected the Kalasha from proselytizing raids yet concurrently sold them into slavery. Military histories of this period have called the Kator Rulers *Human farmers* as this excerpt shows from the report on Gilgit and Chitral: “The rulers, professing Sunniism, have ever since the introduction of Islamism into Central Asia, been carrying on the singularly horrid practice of selling their own subjects into slavery”.³⁸ It was estimated that 500 slaves were exported

³⁴ Ibid.

³⁵ Ibid.

³⁶ See *supra* note 5 pg. 66-68.

³⁷ ‘Nur’ means light in Persian and Arabic Languages.

³⁸ Munphool M. Moonshee, *On Gilgit and Chitral*, Proceedings of the Royal Geographical Society of London, 1868-1869, Vol. 13, No. 2, pg.130-133.

annually from Chitral to Badakshan, making the slave trade a principal item of revenue.³⁹ The Kalasha were favourites in this slave trade for several reasons. The Kalasha were favourites in this slave trade for several reasons. Firstly due to their pagan origin, they were easily differentiated from the majority and the ruler viewed them as outsiders, maintaining a clear conscience while allowing them to be traded as slaves. Secondly, the Kalasha were in high demand due to factors associated with their race, in relation to their disposition and physical traits. The Kalasha were considered to be docile and non-violent and at the same time they were considered physically attractive human beings. It is perceived that the women of Kalasha had fair skin and green-blue eyes and that their men were built strong and muscular.

Under the British rule the authority of Mehtar became more despotic than ever before; the British strengthened the position of Mehtar and his control over his subjects. However, the British also introduced the abolition of the slave trade.⁴⁰ In November 1947 the Mehtar requested accession to the state of Pakistan, which was initially conceived so as to maintain the same degree of suzerainty with Chitral. In 1949, the first political agent of the Pakistani government was posted in the state.⁴¹ The forced labour system was only abolished in 1969, when the principality of Chitral was fully incorporated into Pakistan and made a district of the North West Frontier Province.⁴²

1.3 THREATS TO AND THE VULNERABILITIES OF THE KALASHA

The situation of the Kalasha people in Pakistan is precarious with multifaceted issues affecting their rights and survival as an ancient people that can be grouped in two main categories: loss of cultural identity and loss of ethnic territory.

³⁹ Munphool Pundit, *Relations between Gilgit, Chitral, and Kashmir*, The Journal of the Ethnological Society of London (1869-1870), Vol. 2, No. 1, p. 37.

⁴⁰ Cacopardo, *Gates of Peristan*, p.55.

⁴¹ Murtaza 1982, quoted in *Gates of Persitan*, Cacopardo p.64.

⁴² See supra note 8, p.154

1.3.1 Loss of Cultural Identity

The Kalasha people face serious obstacles in the full enjoyment and practice of their religion, culture, language and human development. The religious conversion of the Kalasha people to Islam is the greatest threat of all time in the history of the Kalash. Religion is fundamental to the Kalasha people's lives, existence and identity, setting them apart as different people. Religious conversion is the foremost threat to cultural identity that the Kalasha have been resisting since they were invaded in the 15th century. The population of ethnic Kalasha was estimated to be 50,000 at the time of their subjugation in 14th Century AD.⁴³ Currently, there are only 4000 people who consider themselves to be Kalasha, in terms of adherence to their ancient religion, language and culture. In order to maintain their distinct Kalasha religion the Kalasha have exposed themselves to discrimination, servitude, indignity, and taxation with slave serfdom.⁴⁴ As aforementioned, the slave trade was abolished in 19th century when the British colonists appeared in the region. Forced and unrewarded labour of the Kalasha people was terminated when Chitral was fully incorporated to Pakistan in 1969⁴⁵. However, discrimination on the basis of religion and race has continued even after the recognition of the Kalasha people as citizens of Pakistan. The religious conversion to Islam is not merely a religious shift in spiritual sense but it has serious repercussion on the Kalasha ethnicity, identity, culture, language and human rights. The conversion to Islam of an individual of the Kafir Kalash is meant to discontinue, disengage, dismember and dislocate a member of the Kalash from their non-Muslim Pagan culture and from all of the culture's manifestations for the rest of their life. Kalasha conversion to Islam, described by a Kalasha man, is, "being dead in cultural sense, you can never convert back to Kalasha or you will be killed by Muslims for being apostate."⁴⁶

⁴³ Kazi Khosh Nawaz, *Personal Investigation Summer*, 2008.

⁴⁴ See supra note 7, p. 204.

⁴⁵ See supra note 8, p.154

⁴⁶ Imran Bazik, *Kalash of Kafirstan*, unpublished, p. 78.

The conversion to Islam affects the Kalasha society as whole, and Kalash women in particular. Kalash women, after converting to Islam, are required to leave their immediate Kalasha family houses in the Kalash villages in order to live with Muslim families. They are forced to abandon their traditional dress for Muslim women's attire, the *Shalwar Qameez*, scarf and chador to cover themselves.⁴⁷ Due to Islamic religious rule women can't choose a life partner from the Kalasha community, a freedom that they enjoyed before converting to Islam. ⁴⁸A Kalasha man can only marry a Kalasha woman that converts to Islam if he converts to Islam as well. This condition leads to the conversion of Kalasha men who wouldn't otherwise convert to Islam, but only do so in order to marry a converted woman in a traditional Islamic way. Converted Kalasha women also lose their freedom to decide on issues relating to important aspects of their lives and mostly they are wed outside the valleys, and often without their informed consent. . Also, they are mostly wed outside the valleys, and often without their informed consent. The converted women are often given to suitors from cities in Pakistan due to their comparatively wealthier status than local Muslims and converted Kalasha men.

The attributes of the beauty of Kalash Kafir women is often considered desirable due to their fair skin, green and blue eyes, which are rare and distinct physical characteristics in the area. Currently, travel literature popularizes and emphasizes these physical attributes as well. This kind of publicity causes men from surrounding cities, seeking women, to go to the region. The equalitarian nature of the Kalasha culture, where Kalasha women are free to speak and travel in the valley, compared to Muslim societal norms may impose a misperception of Kalasha women's morality. Once the Kalasha women are converted and are wed outside the valleys they are no longer allowed to be members of the Kalasha community or society. Their whereabouts in the city are unknown; often they never return. Many cases

⁴⁷ Dr.Naveed, *quoted in Kalash-the paradise lost*, supra note 7, p .114.

⁴⁸ Wynn Maggi (2001), *Our women are free*, The University of Michigan Press, pp. 44-73.

have surfaced which claim that converted women have been taken to cities and have been led into abuse and prostitution. Thus, the religious conversion to Islam of the Kalasha women often places them in a vulnerable position, as they are no longer accepted in their communities and are unfamiliar with the society outside of the Kalasha valley. In such a vulnerable position they can easily be exploited. The children of the Kalasha are also victims of Islamic proselytization at state schools where teachers, who are invariably Muslims, teach that the Kalasha religion and culture is inferior to Islam. They are ridiculed for their Kalasha customs and given lectures on hellfire and paradise.⁴⁹ This can have a great detrimental effect on young impressionable minds.

Despite experiencing harsh and inhuman treatment on the basis of religion, at the core, Kalasha people have resisted conversion to Islam. It would perhaps be easier if the people converted to Islam but Kalasha culture stands in rigid opposition to Islam as a free culture and independent way of thinking. Wynn magi in her book about Kalasha women, *Our Women Are Free* explains that the “fact they feel physically and emotionally invested in the landscape in which they live are all directly linked to the idea that Kalasha women are free”.⁵⁰

Zealous mullahs and missionary Muslims, who find the Kalasha culture incompatible with Islamic values and culture, threaten and harass the Kalasha people. Even after the advent of being part of Pakistan a Kalasha village was attacked in an attempt to put an end to Kalasha funeral rites. During this attack, the dead body of a Kalasha man was confiscated and many villagers were coerced into conversion to Islam.⁵¹ In these rites of passage a veritable feast is held for the deceased person and many Kalasha gather for up to two days to pay their tributes to the dead person through song, speeches and dance. The Kalasha festivities, ceremonial cycles, rituals and funeral rites are scorned, intimidated and interrupted. The altars and ancestral effigies are mutilated and many cultural symbols and indigenous crafts are ravaged.

⁴⁹ Alauddin, *Kalash-the paradise lost*, p. 228.

The Kalasha are forced to abandon many ceremonies, to change their calendar system and make changes in their laws, customs and cultural performances, as they are disturbing and different to the Muslim faith and culture. In the same time the number of mosques in the Kalasha territory has increased to 42 and the number of missionary mosque schools has increased to 30⁵². The persistence and persuasive nature of preaching by the Muslims in the Kalasha Valleys is affecting Kalasha human rights, by denying the recognition of the Kalash culture and respect for their beliefs.

Furthermore, the Kalasha language is deeply rooted in Kalasha traditions and the ritual language of Kalasha animism is therefore sacred. The issue of language is very important for the Kalasha, as it is one of the founding elements, defining ethnic identity. It is in serious risk of extinction due to this identity shift; as once individuals are converted to Islam they are discouraged from using the Kalasha language. Moreover, within the schools in the valleys, the Kalasha children are taught in Urdu as national language, which is leading to their assimilation to Muslim society at young age. Although the constitution of Pakistan concedes that sections of communities possessing a distinct 'language, script or culture' shall have the right to preserve the same, in order for oral culture to exercise this right or preserve their culture, state support is required to effectively exercise this right.⁵³ However, there has been no such support for language preservation and documentation. There are no state educational institutions to promote the Kalasha language, or newspapers and media adopted to use any local language. It is only in within 15-20 years that serious efforts have been made by foreign linguists to save the Kalasha language from extinction by compilation of Kalasha dictionary⁵⁴. Linguists from America and Australia initiated the work on the preservation and documentation of the Kalasha language but, due to state negligence, Kalasha literacy and the

⁵⁰ See supra note 46, p.79.

⁵¹ Imran Kabir, *The Kalash of Kafirstan*, Unpublished, p. 56.

⁵² Alauddin, *Kalash the Paradise lost*, p. 230.

⁵³ Constitution of Pakistan: Art 28.

non-inclusion of Kalasha language in Kalasha Schools, the efforts have been hampered. Issues relating to the use of official State language over ethnic languages have been a problem in Pakistan. There is no official recognition accorded to ethnic and linguistic minorities according to the constitution of Pakistan. The state language of Pakistan is Urdu along with the official use of English.⁵⁵ The constitution of Pakistan provides a right to its people to preserve distinct languages but small ethnic minority language like Kalashamondr is not given the same consideration in education and in documentation and for its maintenance. The Kalashamondr language of Kalasha is one of the ancient languages spoken in the Hindu Kush region. It largely remains an oral language and is mainly spoken by un-Islamic Kalasha. The usage of Kalashamondr among the converted Kalasha is very low as local Muslims in associate it to a pre-Islamic past that is viewed as something to exterminate. This dramatically reduces the speakers of a common language and its transference to future generations. According to the makers of the Kalasha Dictionary the Kalashamondr speakers could be as high as 10,000 (Islamized and Non-Islamic Kalasha included) than the current 4000 non-Islamic Kalasha who speak it only daily basis.⁵⁶ The elders, guardians of the Kalasha tradition, are the last of the people who know the legends and the rituals “the way they really are”. They usually transfer indigenous knowledge to the people during festivals and special events. Yet leading characters in the Kalasha community are becoming increasingly concerned, saying this is simply not enough any more since their young ones are gradually drawn into the outer world, away from the “fireside” that had previously provided the space for sharing stories of old times. Loss of language is strong indicator of cultural loss; a death of language entails death of culture.

⁵⁴ See, *Kalasha Dictionary, Compiled by Trail and Cooper*, SIL & National Institute of Pakistan Studies, 1999.

⁵⁵ Constitution of Pakistan 1973, Art 251.

⁵⁶ Trial & Cooper, *Kalasha Dictionary*, p.12.

1.3.2 Loss of Ethnic Territory

The survival of the Kalasha culture is heavily dependent upon the protection of their land base, which is vulnerable to the greater economic and political power of broader society. The prime subsistence resources of the Kalasha include communal pastures, oak forests, walnut trees and agricultural lands. Large portions of these resources have been appropriated from the Kalasha through abusive means and exploitation.⁵⁷ According to a survey conducted by the district administration of Chitral in 1985, more than 1000 walnut trees and more than 100 grapevines in the Kalasha Valleys were mortgaged to Muslims settlers. The data also reveals that these trees were appropriated from the Kalash on unacceptable prices. Walnut trees were obtained for a pair of shoes, tea, sugar, a shirt or a hat in 20-40 years period. The government of Pakistan extended loans to the Kalasha to redeem their walnut trees. However the non-Kalasha mortgagees in many cases refuse to sell the trees back to the Kalasha, which were threatened with physical violence. In some cases Kalasha people have been over land and forest.⁵⁸

The Kalasha people face a high degree of marginalization in opportunities for social, economic and human development. The exploitation of the Kalasha culture by Pakistan's tourism industry started as early as 1970. Numerous travel magazines, photo journals and documentary films on the Kalasha have been portraying them as some 'mysterious race to visit'- as one might visit a zoo or nature reserve.⁵⁹ There have been continued remarks on their existence as a living museum turning their religious festivals and rituals into a derogatory and banal form of entertainment, associating their non-Muslim identity and non-veiling dress culture as an excuse to forge stories about sexual liberation. These negative constructions about the Kalasha have attracted many curious westerners as well missionary

⁵⁷ See supra 8, p. 156.

⁵⁸ *ibid.*

⁵⁹ Government of NWFP, (2009), Kalash Festival- at from <http://nwfp.gov.pk/Events/index.php> Retrieved November 29, 2009.

mullahs to purify the Kalasha with the light of Islam.⁶⁰ The Kalasha ceremonies of a religious nature are falsely labelled and “marketed” as entertainment feasts. Sacred sites and graveyards sites are rampaged by tourists who destroy or steal traditional objects, effigies⁶¹ and fruit⁶². The constant presence of thoughtless tourists pointing photographic cameras disturbs men, women and children alike. It violates their dignity and privacy and observance of daily cores and ceremonies, not to mention the privacy of their homes in the Kalasha villages generally.

Their predicament is a direct consequence of the absence of the customary protected status of the Kalasha Valleys, which were once under the protection of the Kingdom of Chitral; this status allowed the Kalasha people to be left alone in their valleys, while the access of Muslim settlers and missionaries was restricted. The Islamic Republic of Pakistan did not uphold this arrangement after it annexed the Kingdom of Chitral in 1969. In his paper, *Enclaved Knowledge*, Professor Peter Parkes from the University of Kent argues: “With the protective authority of Chitral authorities in eclipse, zealous mullahs organized proselytizing raids into the valleys, from whose forced conversions the majority of Muslim Kalasha derive.”⁶³ Yet, it was their pre-existing right of Territorial and Cultural Autonomy and non-interference that enabled the Kalasha to preserve their ancient language, practice their religion and enjoy their culture despite the overwhelming all-Islamic environment surrounding them.

⁶⁰ Abbas Zaidi, *Ethnic Cleansing of the Kafirs in Pakistan*, at www.gowanus.booo.com/Kafirs.htm, Retrieved November 20,2009.

⁶¹ Prestige Statues are stolen and are leased to Museums in Europe, in many cases destroyed.

⁶² Walnut tress and Alpine seeds

⁶³ Peter Parkes 2000, *Enclaved knowledge :Indigent representation of environmental management and development among the Kalasha of Pakistan*, p. 5. Retrieved from <http://www.mtnforum.org/resources/library/park99a.htm>

1.4 The Historical Conditions of the Kalasha Cultural Survival

Prior to the secession of Chitral to Pakistan, the Kalasha enjoyed an exclusive degree of cultural autonomy under the suzerainty of the ruler of Chitral⁶⁴. The Mehtar (King) of Chitral protected their valleys and prohibited non-Kalasha settlers from migrating into the Kalasha valleys, only with exception of the Kafirs of Bashgal, who sought asylum during the onslaughts of Kafirstan proper in 1895. The Ruler of Chitral prohibited the entry of Muslim missionaries and new settlers into the valleys. The Kafirs of Bashgal came as refugees of religious persecution and were also non-Islamic tribes.

This historical agreement between the Ruler (*Mehtar*) of Chitral and the Kalasha delineates in many ways the nature of the autonomy that helped the Kalasha Kafirs to survive, compared to the Kafirs of Kafirstan proper. However, the Kalasha paid a heavy price to maintain their culture with this historical agreement for autonomy and non-interference. In order to establish that their valleys would remain their own, they had to pay tax on their subsistence, agricultural products and livestock husbandry, and could not engage in rewarded labour. The Kalasha existed in a semi-slavery status for the *Mehtar*.⁶⁵ Depending upon the ruler who succeeded in the position of authority in Chitral, over 600 years, there have been gross violations of Kalasha people's rights especially in regards to the forced conversions of two Kalash valleys in the 20th century, as clear examples of this continuing subjugation. Nevertheless, this historical agreement with the state ruler also lays the foundation of group-differentiated rights, which the Kalasha were entitled in the former kingdom. This special status of the Kalasha should not have been ignored when the Kalasha as a historic community were incorporated into Pakistan. If the former state of autonomy was retained upon their incorporation in Pakistan, then this historical agreement may justify the same rights as a principle of equality argument. The Kalasha under the repressive and tributary regime

⁶⁴ A.Qamar, *Kalash the Vanishing Culture*, Agha Jee Printers, 1999, p.12.

⁶⁵ Cacopardo(2001), *Gates of Peristan*, p 45.

believed that when they became part of the nation state of Pakistan they would be not be subjected to tributary taxes and forced labour. The Kalasha as “Aborigines of Chitral” were not in a position to exercise their right of self-determination under international law with the means of power, or to renegotiate the terms of their association within Pakistan.

CHAPTER 2: THE STATUS OF THE KALASHA IN PAKISTAN

The annexation of Chitral to Pakistan altered the customary legal status of Kalasha Valleys without due consideration to their aboriginal rights. The Kalasha claim that they were immune from alteration of their protected status and privileges under the princely state of Chitral. This undermining of their self-determination has a drastic impact on the survival of Kalasha culture. This chapter discusses Kalasha indigenes, and why they if they could fall under the rubric of Indigenous Peoples. In order to evaluate the current status of the Kalasha in Pakistan, a brief constitutional history and the rights of minorities and ethnic groups are also explored.

2.1 Kalasha Aboriginal Factor

The Kalasha aboriginal factor has a strong foothold, which appears in more than 80 ethnographic, linguistic, and anthropological works of the 20th century.⁶⁶ These researches were conducted mainly by European researchers who verify that the Kalasha people are distinct and aboriginal as habitants of Chitral with their own language (Kalashamondr), religion, culture and primordial way of life.

In many ways, aborigines that were never contacted or “discovered” before by modern civilizations existed for the purpose of scientific study and curiosity. The views that indigenous people held about themselves and about their culture were not thought irrelevant but the early anthropological findings were unbalanced and made arbitrary cultural classifications. Sir George Scott Robertson in his book *Kafirs of Hindu Kush*, writes that the Kalasha were an idolatrous slave tribe and a degenerate race in comparison with Kafirs of Bashgal who were still independent and fierce fighters.⁶⁷

⁶⁶ See Supra note 8, p. 152.

⁶⁷ Robertson, *Kafirs of Hindu Kush*, Original work published 1886, Oxford University Press, p. 23.

2.2 Kalasha Under the Indigenous People Rubric

The generic term “indigenous people” did not exist in the past as an emblem of collective rights. Up until the late seventies, the term ‘indigenous people’ was used for people who were colonized by European settlers in their home lands. These included the Americas, Australia, Europe and Pacific Asia but not necessarily the people in Asia.⁶⁸ The foundation of a group focusing on indigenous people’s rights not only provided a platform for indigenous communities to come together, but also included Asian and African indigenous communities in this organization. From this point onwards the organization and movement of indigenous peoples in Asia and Africa was facilitated. The Pacific-Asia Council of Indigenous People, which initially developed connections with the pioneering World Council of Indigenous Peoples, and the Asia Indigenous Peoples Pact (AIPP) became active internationally.⁶⁹

Furthermore, while the theorizing of indigenous rights has seen important developments in international law, the absence of a coherent definition of indigenous people has exhibits the many setbacks in the field, especially for the purposes of International law.⁷⁰ The United Nations Special Rapporteur Jose R. Martinez-Cobo procured the most publicized definition of indigenous peoples and communities:

Indigenous communities, peoples and nations are those which, having continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

The historical continuity may consist of the continuation, for an external period reaching into the present, of one or more of the following factors;

- a) Occupation of ancestral lands, or at least of part of them;
- b) Common ancestry with original occupants of the lands;
- c) Culture in general, or in specific manifestation (such as religion, living under a tribal system, membership of international community, dress, means of livelihood, life-style, etc.);
- d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main preferred, habitual and general or normal language).

⁶⁸ Benedict Kingsbury, *Indigenous peoples in International law: A constructive approach to the Asian controversy*, p4. ,*The American Journal of International law*, Vol.92, No.3 (July, 1998), pp.414-457.

⁶⁹ Id.

⁷⁰ Will Kymlicka, *Review: Theorizing Indigenous Rights*, *University of Toronto Journal*, Vol. 49, pp.281-293

- e) Residence in certain parts of the country, or in certain regions of the world;
- f) Other relevant facts⁷¹

Applying the above definition of indigenous people to the Kalasha, it becomes evident that Kalasha is an original tribe of the Hindu Kush who went through subsequent invasions and occupations from Aryans, Macedonians and Muslim (Rais dynasty) colonizers in the 14th Century. The Rais ousted the Kalasha from their tribal sovereignty and political authority in Chitral and the Kalasha were left with two options: either convert to Islam or accept the authority of the Muslim ruler to pay “thangi” tax, labour and slavery. They choose to retain their religion and culture in order to remain as Kalasha enabling them to consider themselves different from Muslims, and they paid high price for this choice. However despite the hardships they endured during this period of 600 years they showed their resistance to Islam and kept their ethnic identity as Kalasha.

The Kalasha people’s worldview is manifested in their culture through the observance of an ancient animist belief system, peculiar dress code and language of their own. The territories of the three Kalasha valleys have been their last abode linking the Kalasha people’s historical continuity reaching into the present day. Within these three small valleys of Biriw, Rukmu and Mumuret they are, today, outnumbered by Muslims, which makes them a non-dominant sector of society in their own ancestral territory. Despite all odds the Kalasha are determined to preserve, develop and pass on their cultural and ethnic identity to their future generations.

There is no universally accepted definition of indigenous people as the UN declaration on Indigenous Peoples rights fails to provide a definition of Indigenous people. Instead, there is a general consensus on “self-identification”⁷² as a criterion of indigenousness. In fact it was

⁷¹ Special Rapporteur, Jose R. Martinez-Cobo, *Study of problems of Discrimination against Indigenous populations*, UN Doc. E/CN.4/Sub.2/1986/7/Add.4/1986, p.29, paras 378-80.

⁷² Draft Universal Declaration of the Rights of Indigenous Peoples: Art 8, 12th session of Working Group Indigenous Peoples, 23 August 1994, E/CN.4/Sub.2/AC.4/AC.4/1994/4/Add.1

promoted as a right in the first draft declaration of indigenous rights by indigenous peoples themselves. A more balanced approach to self-identification is provided by the World Bank in operational directive 4.20, which suggests that the following criteria be taken into account when assessing indigenesness:⁷³

- a) Close attachment to ancestral territories and to the natural resources in these area;
- b) Self-identification and identification by others as members of a distinct cultural group
- c) An indigenous language, often different from the national language;
- d) Presence of customary social and political institutions; and
- e) Primarily subsistence-oriented production.

The points outlined above are fully applicable to the Kalasha in reference to their strong attachment to their ancestral territory and resources, agro-pastoral subsistence, non-cashed based production as well as the fact that the Kalasha possess a distinct language of their own. The Kalasha peoples' legal claim to be treated as indigenous people is further strengthened by the World Bank itself by awarding a grant for cultural preservation in 2004 based on their indigenous status⁷⁴. The Kalasha, have also been identified as an indigenous people by reports submitted on UNHCR site which states, "Kalasha are indigenous in every sense of the word".⁷⁵ The Kalasha themselves know that they are indigenous people and in order to legally construct their legal identity, they have formed indigenous organizations such as the "Kalash Indigenous Survival Programme"(hereafter KISP)⁷⁶. KISP has participated in UN meetings for climate change and indigenous people and presented a case study of soil erosion and on how glacial melting is affecting the peoples of Hindu Kush. Nevertheless, the indigenous status of the Kalasha is not recognized in Pakistan. In order to evaluate the reasons for neglect and wide spread discrimination, an overview of the modern Islamic state formation during the decolonization of India is necessary.

⁷³ The World Bank Operational Manual: Sep 1999, *Indigenous People*, OD 4.20.

⁷⁴ World Bank: Grants Facility for Indigenous Peoples Secretariat Rural Community Development Program, Pakistan, p.5

⁷⁵ <http://www.unhcr.org/refworld/docid/49749cd22.html>

2.3 The Creation of Pakistan: The Role of Religious Identity

Liberal Constitutional Theory and English Common Law, which were introduced to the area by the British colonists, resulted in production of modern-educated classes, among whom a large number are lawyers trained in British schools and universities. As these were educated in a British system, they acquired a sense of citizenship and rights under the law.⁷⁷ This holds true for the main political leaders in the Indian sub-continent; leaders such as Gandhi, Jinnah and Nehru had all received their education in England and returned to their native countries upon finishing their academic studies. Mr. Jinnah, a lawyer educated in Britain who championed the campaign for Pakistan, had liberal political views, which can be traced to his work for Muslim-Hindu unity.⁷⁸ His views were drastically altered after the realization that Muslims, despite forming a large minority in India, would not have the same political benefits. This was the departing point for him, after which, he joined the Muslim league to champion the different identities of Muslims on India; he based his arguments on the historical clashes between Hindus and Muslims and claimed that their existence together in one Indian nation was impossible.

The role of religion in the independence movement of Pakistan can be viewed as a driving political force behind the mobilization of Muslim communities in India. The promise of a new land echoed idyllic to all Muslims of the Indian subcontinent. Muslim communities comprised of diverse social, linguistic and cultural backgrounds beyond geographical continuity, perceived the call for independence in multiple ways. All of the different social classes, each with their own social, political and religious interests became stakeholders in the

⁷⁶ KISP: Kalash Indigenous Survival Program was created in 1998 by an own initiative among the Kalash and is registered as a regular NGO in Pakistan.

⁷⁷ Ishtiaq Ahmed, *Religious Minorities in the European Union and Pakistan: Historical Comparisons*, Institute for Security and Development Policy, 2007, p.6

⁷⁸ R.Ahmad 1997, Vol 2, pp.419-421, Retrieved from www.jinnaharchive.com/docs/doc/1915/01151111.htm

creation of Pakistan. The dominant perception of a demand for separation relies heavily upon the “two nation theory”.⁷⁹ This theory stressed the need for an acceptance of two main nations in India. Muslims being the second largest group according to the theory ran the risk of Hindu rule upon India’s independence from the colonial empire. The proponents of this theory argued its rationale on the basis of irreconcilable political, religious, cultural and social order. Jinnah feared that Hindu majority would have undermined their economical and social rights and he strived to secure a congregation of areas with a majority of Muslim population, in order to form a separate state.⁸⁰

The creation of Pakistan is exceptional in the sense that the principle of self-determination was only used at the time to justify the independence of peoples from colonial powers but not for territorial or ethnic minorities to place a bid for independence. As the liberation of India from the British Colonial Empire came closer to materialization, the Muslim minorities throughout India intensified their demand for Partition carrying out protests and marches, while incidents of civil disobedience occurred.⁸¹ These two opposing configurations posed serious threats to law and order, security, and foreseeable political turmoil. The burden of responsibility fell on the British upon their departure and left them with no other option but the partition of India.

2.4 Constitutional History and Religious hegemony

The political campaign for a separate state transcended the theocratic message of a ‘puritan utopia’ for many Muslims. This was by large far from the ideology of Pakistan’s founder Mohammad Ali Jinnah,⁸² a liberal and strong believer of constitutional democracy who

⁷⁹ See supra not 8,p.1

⁸⁰ See supra note at 74. P. 7.

⁸¹ Ibid.

⁸² Jinnah was distinguished lawyer and politician who studied at Lincolns Inn in London. He merited himself in becoming the youngest south Asian lawyer to be ‘called to the Bar’ in England as well the first Indian politician to secure a seat in British Parliament. www.jinnahachieves.com

rejected the theory of Pan-Islamism and envisioned Pakistan as a progressive, democratic and tolerant society, which, while retaining a Muslim majority, would give equal rights to its non-Muslim citizens.⁸³ Jinnah, in his capacity as first governor general gave the following speech to the first Constituent Assembly of Pakistan on the 11th of August 1947.

*“ You are free, you are free to go to your temples, and you are free to go to your mosques or to any other places of worship in the State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State ... We are starting with this fundamental principle: that we are all citizens and equal citizens of one State. Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not so in the religious sense because that is the personal faith of each individual, but in the political sense as citizens of the state.”*⁸⁴

The two-nation theory in India was rooted in religion differences, but its actual application awarded equality a central place as a principle of citizenship. Jinnah gave precedence to equality over religion by minimizing its role to the individual level. His vision in a state founded on the rule of law, was to protect its minorities on the basis of the principle of equality, by giving equal right to its citizens. He was conscious of the fact that Pakistan would start off, as a non-secular state with Muslim majority but his vision for Pakistan was to develop into a modern state without interference from religion in its functions.

The liberal vision of Pakistani state was set-aside after the early death of the founder of Pakistan M.A Jinnah, and instead the “objective resolution”⁸⁵ was passed in 1948 by the constituent Assembly entrusted to make the constitution for Pakistan. The objective resolution with its emphasis on Islamic identity and principles brought back the prospect of religion having a predominant role within the state. The inclusion of an official state religion in the constitution shifted Pakistan’s orientation favouring Muslim identity rather than citizenship. Even the name of the state was set to become the “Islamic republic of Pakistan”. While religion was deemed to be important to contain all differences within pre-dominant Muslim

⁸³ M.A Jinnah Interview with Mr.Doon Campbell, Reuters’ Correspondent, New Delhi, 21st May 1947, Retrieved from www.Jinnaharchives.com

⁸⁴ M.A. Jinnah, *Constituent Assembly Inaugurating Speech* 11th August 1947, Karachi: Pakistan Publications, pp.8-7.

⁸⁵ See Constitution of Pakistan 1973, Preamble

multi-ethnic society however the linguistic and territorial rights were suppressed through its political utilization. The involvement of the army in state politics become prominent as it became the only physical entity that was able to suppress the rights of ethnic minorities. The ban on the use of “Bengali” language in East Pakistan (now Bangladesh) as an identification created a successful movement for the Bangladeshi people claiming their right to self-determination.⁸⁶ The representation of Islam in the nation building process utilized the idea that religion was an essential core of Islamic national identity and all other ethnic, linguistic and cultural differences were suppressed and set aside. Religion as homogenizing force for multi-ethnic, multi-lingual societies excluded non-Muslims as only minorities in Pakistan.

Islam as the state religion and marker on national identity played a central role in the constitutional development of Pakistan. The accent on Islamic identity and exclusion of non-Muslims religious identities are apparent in the various constitutions leading to the current constitution of 1973. The non-Muslim minority distinction empowers the state religion to disqualify non-conformist or new religious disciplines from within; the major religious traditions are at the risk of being classified as religious minority. The declaration of Ahmadis sect within the Muslim faith as non-Muslim minority through democratically elected office shows that the religious majority can exercise the power of defining a state religion and create a minority within it. These acts of creating minorities render the case of pre-existing separate religious identities more elusive in terms of protecting their special rights. The state power of defining religion can allow religious institutions or orthodox dominations to make qualifications on faith. The majority religious group is free to take precedent against other religious faiths by promoting one thinking and forcing the others to submit to this mainstream way of thinking.

⁸⁶ See, *supra* note at 8, p. 8.

2.5 Ethnic Minorities in Pakistan: Exclusion of the Kalasha

The multi ethnic character of Pakistan's peoples shows that the nation is held together through the majority religion of Islam. According to Ahmed Rashid, "Pakistan's inability to forge a national identity has led to an intensification of ethnic, linguistic and regional nationalism, which has splintered and fragmented the country."⁸⁷ The separation of Bangladesh as new country formally called East Pakistan has shown that the religious hegemony to define a nation has proven to be futile. The experience of the succession of Bangladesh from Pakistan came to illustrate that Pakistan was unable to exist as a monolithic Muslim entity, causing the government to rethink the structure of Pakistan. To achieve some kind of political stability a new arrangement created four provinces with provincial autonomy, which contain the four major ethnic groups that are the Baloch, Sindhis, Punjabis and Pakhtuns. The federally administrated tribal areas present an interesting co-relation to their pre-existing rights and autonomous status, which was up held by Pakistan after it acquired jurisdiction over the tribal territories.⁸⁸ Still, there are inconsistencies relative to the inclusion of all ethnic groups; only the large ethnic groups are recognized through provincial autonomy and political representation on national level. The issues faced by the four major ethnic groups are that of language, culture and resources; in the case of Sindhis the latter is negotiated as a demand for restriction on new settlements in their province.⁸⁹

In identifying a majority based on ethnicity and population, the Kalasha are considered to be numerically small. Additionally, it is evident that the concept of ethnic majority and ethnic rights does not apply to all ethnic groups in the same manner in Pakistan. The Kalasha people with their ancient pagan beliefs do not share the same religious identity of Islam,

⁸⁷ Ahmed Rashid, *Descent Into Chaos: The United States and the Failure of Nation Building in Pakistan, Afghanistan, and Central Asia*, by, 2008, p. 36.

⁸⁸ Committee on the Elimination of Racial Discrimination Fiftieth session: CERD/C/304/Add.25 23 April 1997, p.5, para.16.

⁸⁹ *See, supra* 8, p. 112.

which is a common feature of the other ethnic groups in Pakistan. This “otherness” classifies Kalasha into the religious minorities category groups them with all the non-Muslim urban populations which do not have well defined ethnic territory as Kalasha Valleys. In effect, this over-generalized categorization challenges their decision-making opportunities, as well as obliterating the Kalasha people’s indigenous character by placing them in a category with predominant urban cultures. Ali and Rehman have pointed out that:

“Provincial with in the constitution of Pakistan may address the issue of rights of Pakhtuns who are main ethnic group of North West Frontier Province but fails to mention Kalash, who are people totally distinct from Puktuns and have remained an economically depressed community for centuries.”⁹⁰

The pre-existing rights for autonomy of the tribal areas are maintained and enshrined in the Constitution of Pakistan.⁹¹ However, the Kalasha were excluded from the similar treatment after Chitral came under the Jurisdiction of Pakistan.

2.6 Religious Minorities in Pakistan: Exclusion of the Kalasha

The Kalasha people are alienated from political participation as it is defined in the constitution of Pakistan for religious minorities. The seats allotted for religious minorities in the Provincial government are competed for on the bases of numerical strength rather than the representation of each religious minority group in Pakistan. A noteworthy explanation is provided in the constitution under Article 106; “{w}here no independent seat is allocated to a minority in a province for being very small in number, the seat allocated jointly to all other non-Muslims in the that province shall be deemed to include that minority.”⁹² This indicates that the large-scale religious groups have advantage over small groups and less mainstream religions in general.

Discrimination due to religious affiliation can be assumed for all religious minorities, yet those in the tribal areas face imminent threats of physical termination. The efforts to

⁹⁰ See supra note 8, p.20.

⁹¹ Constitution of Pakistan 1973: (Ch.3), Tribal Areas (Art 246).

introduce Islamic law (Sharia Law), which would have precedence over regional state law, resulted in discrimination of religious minorities in North West Frontier Province to which Kalasha Valleys are affiliated. Particularly, this occurred when the government allowed the Muslim religious groups to implement Sharia law in the Swat valley and adjoining districts.⁹³

2.7 Observation: No Protection for the Kalasha People

Through the above, analysis it becomes apparent that the Constitution of Pakistan does not allow for specific representation quotas for Kalasha within legislative bodies at Provincial level and also at the federal level. In this way the Kalasha are politically the most marginalized religious group. They are affected by decisions, which are made for them by representatives who are not aware of the Kalasha culture and religion. The religious hegemony and the affirmative measures conducted are designed to assimilate and integrate them into Muslim culture, which prevents the correct assessment of issues faced by the small-scale indigenous community. The shift from an ethnic minority category to religious minority deprives the Kalasha of political resources. The religious minorities in Pakistan are spread throughout the country where as the Kalasha people have a well-defined small ethnic territory that has been their homeland for thousands of years. Unlike the other religious minorities and ethnic groups which are urban and whose very culture is not dependent upon the land, the Kalasha people cannot move to another location; it would imply a complete departure from their cultural identity. The Kalasha culture and religion has evolved through centuries of residence in the Hindu Kush Mountains. Uprooting the culture or weakening it with negligence and insensitivity is giving a way to exploiters and ethnocide forces. For Pakistan, the notion of a religious minority distinction is solely focused on religion and does not include other significant components of ethnic identity, language and culture.

⁹² Constitution of Pakistan 1973: (Article 106).

CHAPTER 3: PROSPECT OF INDIGENOUS CULTURAL SURVIVAL

3.1 Legal Setting of the Kalasha Case

Henkin mentions that, “A norm or obligation brings no guarantee of performance; it does add an important increment of interest in performing the obligation... it takes an extraordinary and substantially more important interest to persuade a nation to violate its obligations.”⁹⁴

As Henkin states above, international law, from its conception, identified and established rules that would govern the conduct of states primarily based on customary practices or binding agreements that were conducted amongst them. Deviating from the norm of pursuing self interest in a strict sense and relying upon reciprocity as a means of commitment to such acts, the emergence of human rights law has come to present a framework where states wilfully bound themselves to preserve the rights of their natural citizens and persons within their jurisdiction. This is essentially the act of states negotiating issues of the domestic sphere on the international platform. This phenomenon could be viewed as a de-emphasis on the predominance of sovereignty and on the principle of autonomy, hence enabling a broader capacity to the adherence of international law as a whole.

The State of Pakistan has been a signatory party to the conventions that have come to represent the substantial core of the contemporary human rights regime. In the case of the Kalasha people, the ICERD and ICCPR are the most relevant. Therefore, a close examination of these two conventions, explicabilities and interpretations is in order, having successfully argued that the state of Pakistan falls under their jurisdictions. Pakistan signed and ratified

⁹³ Jared Ferrie, *Minorities as Risk in the North-West Frontier Province*, Minority Rights Group International, July 2009, p. 5.

⁹⁴ Henkin quoted in Dixon, M. & McCorquodale, R. “*Cases and Materials on International Law*”. New York: Oxford University Press, 1991. pp. 3-4.

CERD in 1966⁹⁵. Concerning ICCPR, its legal effect is somewhat narrowed due to the fact that it has not yet been ratified by the state of Pakistan. Considering that the vast majority of existing states are participant to the treaty and it is universally acknowledged as significant context of human rights law, a claim that it has risen to customary law status is not without merit. Even more so, Article 18 of Vienna Convention on the Law of Treaties recognizes an obligation not to defeat the object and purpose of any treaty prior to its entry into force⁹⁶, in an attempt to define signature-only legal effect. Since the state of Pakistan has yet to ratify it, therefore giving it effect within Pakistan, it is still bound by the provision of Article 18, being an indisputable source in determining general treaty obligations.

Having argued that the provisions of both CERD and ICCPR bind the state of Pakistan, it is evident that the particular clauses pertaining to the case of the Kalasha people should be identified. Article 26 of ICCPR is a non-discrimination clause that falls under the broader scope of CERD as a whole. Article 2.2 stresses the importance of protection for guaranteeing equal rights; Article 5 envisions equal access to public service and Article 6 addresses the issue of remedies. The crux of the matter for the Kalasha people lies in Article 1.4:

“Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”⁹⁷.

⁹⁵ United Nations Documents, Human rights Index, at; <http://www.universalhumanrightsindex.org/hrsearch/search.do?lang=en&accessType=country&countries=122&orderBy=category®ionCountry=country>

⁹⁶ Article 18: Obligation not to defeat the object and purpose of a treaty prior to its entry into force
A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

⁹⁷ International Covenant on Civil and Political Rights

The Kalasha are to benefit for the positive provisions of this article in order to secure cultural survival and equal access to the rights available in this convention. In effect, this provision is currently applicable only to the major ethnic groups within Pakistan but has not yet reached the Kalasha due to the small size of their population and lack of political momentum. While this may not constitute a discriminating act, since these provisions aim to maintain the survival of the major groups as well, it could be argued though, that there is a legislative gap that needs to be filled so that the conditions set in ICERD able to be fully realized.

Furthermore, Article 24 of the ICCPR, relating to political participation in particular complements the provisions of Article 27 which addresses the rights of ethnic, religious and linguistic minorities, are predominately applicable in the case of the Kalasha. As it has been analyzed in previous chapters of the thesis, the lack of adequate political participation and representation in the national parliament constitutes a violation of the rights of the Kalasha that requires immediate amendment. Furthermore, the narrow definition of the Kalasha as a religious minority disregarding pre-existing notions of distinct identity and culture, denies them both the status of recognition as a separate ethnic group and adequate freedom of expression, thought and conscience as such, as it is established by Articles 17 and 18.⁹⁸ In addition, it is stipulated by the ICCPR itself, “where not already provided for by the existing legislation or other measures, each state party to the present covenant undertakes to take the necessary steps in accordance to its constitutional processes... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized...” by the Convention.⁹⁹ Moreover, under paragraph 3 of the same article it envisions for restitution in case of a violation that should be enforced by the proper authorities of the state after its

⁹⁸ ICCPR, Art: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Art 18: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

⁹⁹ International covenant on civil and political rights, Article 2.2

content has been identified.¹⁰⁰

The most important provision of the ICCPR is contained in its first article stating that “{a}ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. The principle of people’s choice in determining their status and political involvement was verified in a UN relevant declaration stating that only “a government representing the whole people belonging to the territory without distinction as to race, creed or colour can be considered as complying with the right”¹⁰¹. Furthermore, “{t}he consistent practice of the United Nations shows that there is no minimum figure for population to qualify for the right to self determination: it suffices to cite the case of St. Helena... with about 4000 people whose right to self determination has been consistently upheld.”¹⁰² Therefore, the Kalasha, with a population of 4000 people, are not with diminished legal capacity. On the other hand, “{w}hile it is clear that the right of self-determination applies to all colonial situations there has been increasing acceptance of the right in non-colonial situations. Namibia East Timor and Palestine are examples of non-colonial territories where a right of self determination has been internationally acknowledged”¹⁰³.

Even though the content of Article 1 has created considerable debate and is viewed as a challenge to national sovereignty by intended separatist movements, there is no reason to exclude an interpretation of political-status-determination as indigenous status, insofar as it does not threaten the territorial integrity of the state. Since there is no relevant treaty open for

¹⁰⁰ ICCPR Art 2.3: Each Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official;
- (b) To ensure that any person claiming such remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop possibilities of judicial remedy.
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

¹⁰¹ Declaration on Principles of International Law concerning Friendly Relations and Cooperation amongst States in Accordance with the Charter of the United Nations General Assembly Resolution 2625.

¹⁰² Dixon and McCorquodale, p. 220.

¹⁰³ Ibid., p. 226.

voting on indigenous status and only a declaration of the rights of indigenous peoples exist on the international context, article 1 of ICCPR could serve as a foundation upon which such a right could be derived in a transitional manner. Concerning the declaration on indigenous peoples itself, it should be noted that although it does not have a legal binding effect per se, there has been considerable discussion as to whether consensus, in international forums of the prestige of the UN, amounts to acceptance of a new rule of international law or instant custom¹⁰⁴. Moreover, the fact that Pakistan was one of the 30 states that voted in favour of its adaptation adds an enhanced applicability of the rule of instant custom especially taking into consideration that unilateral acts and declarations of an official and accredited representative of state “concerning legal or factual situations, may have the effect of creating legal obligations”¹⁰⁵, even though it is a concept pending clarification on its scope and applicability.

Finally, in weighing the facts for any case, even pertaining to human rights law, it is pertinent to examine whether there is a case of customary law affecting its basic premises. The most reliable way to establish the existence of custom and distinguish it from habit is the presence of *opinio juris sive necessitates*: namely whether the actions of a state are consistent, frequent and occurring under the perception of them being required by a rule of law. This would be evident by official statements from the state claiming it to be so, or by representatives with official capacity, yet not limited to only that. Even in cases of conflicting practices there is still the space for recognition of customary law, especially if the mode of declaration is expressed as an apology for non-conformity or a justified derogation. As it is recorded in the International Court of Justice’s decision of *Military and Paramilitary Activities in and against Nicaragua*, “if state acts in a way *prima facie* incompatible with the recognized rule but defend its conduct by appealing to exceptions or justifications contained

¹⁰⁴ Ibid., pp. 31-32, and 50-51.

¹⁰⁵ Ibid., pp. 59.

within the rule itself then whether or not the state's conduct is in fact justifiable on that basis, the significance of the attitude is to confirm rather than to weaken the rule"¹⁰⁶. Moreover, it is only in the case of a persistent objector that a new rule applies or that the adherence to a previous rule currently superseded is justified. On the contrary, the number of parties recognizing or exercising such a rule does not determine the binding effect of a customary rule; regional custom is equally effective. In a 1960 case the ICJ established this by stating:

"{with} regard to Portugal's claim of a right of passage as formulated by it on the basis of local custom it is objected on behalf of India that no regal custom could be established between only two states. It is difficult to see why the number of states between which a local custom may be established on the basis of long practice must necessarily be larger than two".¹⁰⁷

In the case of the Kalasha valleys' protective status being an instance of regional customary international law, it can be argued that this practice was consistent over a significant period of time, even in instances of Chitral's accession to a different sovereign entity, or succession from a former colonial rule to independent status. Various academic and historical sources trace the existence of protected status over a period of 600 years. The consideration of its semi-autonomous status, which occurred as a result of the conquering of the previously independent kingdom by Muslim rulers and further Chitral being under the supervision of the British colonial rule, should not diminish the effect it would have as a proper state party; international law recognizes legal personality to other territorial entities.

It is important to note that by the time Pakistan emerged as an independent state in 1947 until the full accession to it by Chitral officially in 1972, there is a significant period of 23 years where the autonomous status of Chitral was in check of a loose suzerainty to Pakistan. Prime Minister Bhutto terminated all special privileges pertaining to royalty of Chitral in 1971.¹⁰⁸ He known to have been first Prime minister to visit the Kalasha Valleys calling the Kalasha aboriginals of Pakistan and declaring the government will take action to

¹⁰⁶ Ibid, pg 31

¹⁰⁷ Ibid.,

¹⁰⁸ See supra note 8, p. 154.

protect them.¹⁰⁹ One of the positive measures that appeared as a result was the funding for education and the special fund for welfare. Even though Bhutto did not formally refer to continuing the special protective status that applied before, the presence of *opinio juris* is reflected in the categorization of Kalasha as aboriginals, setting a precedent for claiming indigenous status, and the protective measures to ensure cultural survival. As Charney mentions “many authorities argue that a state can be bound by a rule of customary international law even though the state neither expressly nor tacitly consent to the rule”¹¹⁰. On the contrary, by these actions it effectively condones the existence of regional custom perceived as an obligation, in the case of cultural preservation. Finally, the actions of more recent governments of Pakistan, such as the offering of tax-free loans to the Kalasha for the restitution of walnut trees, were an implicit recognition for the necessity of protection. Consequently, the lack of objection to or condemnation of a protective status, though accompanied by less rigorous adherence to previous custom, is convincing evidence for the existence of regional custom amounting to customary international law.

3.2 International Legal Framework on Indigenous Cultural Survival

The Convention on the Prevention and Punishment of the Crime of Genocide of 1948 enshrined the fundamental legal right of the physical existence of individuals. Within the text of the convention minorities are not explicitly mentioned, yet, it is the very nature of vulnerability of indigenous groups, who remain among the most persecuted of all minorities facing threat of extinction and discrimination on the basis of their religion and ethnicity, that makes it pertinent. The convention, having acquired validity due to widespread ratification, creates legal obligation to all state parties to prevent any occurrence of genocide. Article 2.c especially defines cultural genocide as “[d]eliberately inflicting on the group conditions of

¹⁰⁹ See supra note 7, p.228.

¹¹⁰ as quoted in Dixon and McCorquodale, p. 34.

life calculated to bring about its physical destruction in whole or in part”.¹¹¹

Furthermore, the connection between the physical and cultural existence of groups presented in the ad hoc committee following the view reflected in UN General Assembly Resolution, elaborated on the issue of cultural genocide in article 2 of the draft Convention:

“In this convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on the grounds of national or racial origins or religious belief of its members such as:

- 1) Prohibiting the use of the language in daily intercourse or in schools or the printing or circulations of publications in the language of the group,*
- 2) Destroying or preventing the use of libraries, museums, schools, historical introductions and objects of the group”.*¹¹²

The inclusion stated was opposed by several representatives who held the view that cultural genocide “was more appropriately dealt with within the ambit of international law of human rights rather than convention of this nature.”¹¹³ The Pakistani delegate commented on the issue:

*“{it} would be contrary to the letter and spirit of resolution 96(1) of the General Assembly, which explicitly mentioned cultural genocide in its preamble. Cultural genocide could not be divorced from physical and biological, since the two crimes were complementary in so far as they had the same motive and the same object, namely, the destruction of a national, racial or religious group as such, either by exterminating its members or by destroying its special characteristics.... cultural genocide represented the end, whereas physical genocide was merely the means. Thus the ends and the means were closely linked together; cultural genocide and physical genocide were indivisible. It would be against all reason to treat physical genocide as crime and not to do the same for cultural genocide.”*¹¹⁴

Historically the relevant international instrument in force is the 1957 convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (hereafter ILO 107). The convention referred to “tribal peoples” and “indigenous peoples” as distinct and vulnerable groups in need of protection. It laid stress on the notion that Indigenous Peoples and tribal people are hindered “from benefiting fully from the rights and advantages enjoyed by other elements of the population” because they “are not

¹¹¹ Convention on the Prevention and Punishment of the Crime of Genocide (1948): Art 2.c.

¹¹² J.Rehman (2000), *The Weaknesses in the International Protection of Minorities*, Kluwer Law International, p.72.

¹¹³ Ibid.,p.62.

¹¹⁴ Ibid., p.84.

yet integrated into the national community”.¹¹⁵ Yet, criticism on the assimilative nature of ILO 107 lead to its reformulation with the 1989 Convention concerning Indigenous and Tribal Peoples in Independent Countries (hereafter ILO 169), which acknowledged the need “to adopt new international standards on the subject with a view to removing the assimilation orientation of the previous standards. The emended convention recognizes “the aspirations of (indigenous) peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live”.¹¹⁶ In addition it emphasizes the need for Indigenous people to be involved in decision- making processes so that they may chart the course of their development¹¹⁷ and sets the requirement of consultation and other activities to take place through the traditional institutions of indigenous people.¹¹⁸ Most importantly, ILO 169 requires the transference of responsibility in areas such as health and education to indigenous communities to the extent that they desire, and are capable of exercising, such responsibility.¹¹⁹

In context of the cultural and language rights, as they would apply to indigenous people, the International Covenant of Political and Civil Rights Article 27 states:

“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”¹²⁰

The Human Rights Committee has commented on the universal meaning and application of Art 27 of ICCPR stating that “[t]he terms used in article 27 indicate that the person designed to be protected are those who belong to a group and who share in common a culture, a

¹¹⁵ ILO 107(1957): Preamble

¹¹⁶ ILO 169(1987): Preamble

¹¹⁷ ILO 169: Arts. 6 (1)(b), 7(1), 15(1) & 17(2)

¹¹⁸ ILO 169: Arts. 6(1)(a), 8(2) and 12

¹¹⁹ ILO 169: Arts. 22(3), 25(1), 27(2) and (3)

¹²⁰ International Covenant of Political and Civil Rights

religion and /or a language”¹²¹ and elaborated on its scope in General Comment 23:

“{c}ulture manifests itself in many forms, including a particular way of life associated with use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserve protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation...”

The Case law emerging under article 27 relative to indigenous peoples establishes indigenous peoples rights over land and resources through a broad interpretation of the concept of “cultural integrity”, as in the case of *Ominayak, Chief of the Lubicon Lake Band v. Canada*¹²², the *Yanomami case*¹²³ and the one concerning the *Miskitu Indians of Nicaragua*.¹²⁴

Moreover, the fact that positive assistance and measures are essential for the survival and well being of ethnic minorities is not a new concept in international Human Rights Law¹²⁵. In 1935 the International court of Justice instructed the Albanian government to “ensure for the minority element suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.”¹²⁶ Likewise, the Special Rapporteur Francesco Capotori, appointed by the UN Sub-commission on prevention of discrimination and protection of minorities, has taken the position that ethnic minority rights necessarily imply an obligation to take positive measures to assist minority groups in preserving their cultural traditions:

“It is hard to imagine how the culture and language of a group can be conserved without, for example, a special adaptation of the educational system of the country. The right accorded to members of minorities would quite obviously be purely theoretical unless adequate cultural intuitions were established...Only the effective exercise of the rights set forth in Article 27 (of the ICCPR) can guarantee observance of the principal of the real, and not only formal, equality of persons belonging to minority groups. The implementation of these rights calls for active and sustained intervention by States. A passive attitude on the part of the latter would render such rights

¹²¹ General Comment No, 23 (50) 15 Human Rights Law Journal (1994) at 234 quoted in Perry Keller: Re-thinking Ethnic and Cultural Rights in Europe, p.94

¹²² *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*. Canada. 10/05/90. Communication No. 167/1984. Canada. 10/05/90. CCPR/C/38/D/167/1984. A/45/40 Vol. II (1990) Annex IX sect. A (pp. 1-30)
<http://sim.law.uu.nl/SIM/CaseLaw/CCPRcase.nsf/84e20b5c50520442c12574530063ebac/81CC8AE9FAD29C75C125664B002C549B?Opendocument>

¹²³ *Conflict and Human Rights in the Amazon: The Yanomami*, Retrieved at <http://www1.american.edu/ted/ice/yanomami.htm>

¹²⁴ *Case Concerning the Miskitu Indians of Nicaragua*, International Court of Justice, June 27, 1986 General List No. 70 at <http://www2.uakron.edu/low/Nicaragua.doc>

¹²⁵ Perry Keller: Re-thinking Ethnic and Cultural Rights in Europe, p.95

¹²⁶ quoted in Varady, T. Law and Ethnicity, Course Material, Academic Year of 2007-2008, Legal Studies Advisory Opinion No.64, *Minority Schools in Albania*, 1935 P.C.I.J. (ser.A/B) at 9

inoperative’¹²⁷.

In addition, The UN biosphere Reserve Program, originally proposed in 1971 as part of UNESCO’s Man and the Biosphere program legitimated the conservation role of tribal peoples and encouraged the protection of their tribal ways of life.¹²⁸ Additional international instruments such as the 1992 Rio Declaration on Environment and Development, Agenda 21, the 1992 Forest Principles and the Convention on Biological Diversity all refer to indigenous people and the need for protection of their habitat.¹²⁹ Still, the international response to the legitimate demands of indigenous peoples grew stronger in the declaration and program of action presented by the 123 nations attending the United Nations World Conference to Combat Racism and Racial Discrimination held in Geneva in 1978 and approved by the United Nations General Assembly. In specific, article 21 reads as:

*“The Conference endorses the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language, and also recognizes the special relationship of indigenous peoples to their land and stresses that their land, land rights and natural recourses should not be taken away from them”.*¹³⁰

Finally, the most outstanding development in recognition of the rights of Indigenous peoples is the United Nations Declaration on Rights of Indigenous Peoples hereafter referred, as UNDRIP; it is part of the normative framework incorporating the whole UN Human Rights system. Three separate mechanisms have been established to advance the promotion and protection of indigenous peoples’ rights: the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The mandate of

¹²⁷ Capotori: United Nations General Assembly Resolution and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities A/RES/47 paras 213,217, and 242

¹²⁸ UNESCO’s Man and the Biosphere program http://portal.unesco.org/science/en/ev.php-URL_ID=4793&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹²⁹ Rio Declaration on Environment and Development at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

The Convention on Biological Diversity www.cbd.int/doc/publications/cbd-ts-10.pdf

¹³⁰ quoted in Victims of Progress Bodley, J. H. (2008). *Victims of progress*. (10th ed.). Lanham, MD: AltaMira Press, p. 168.

Expert Mechanism provides unprecedented opportunities for UN member states and indigenous peoples to work together to make the UN Declaration on the Rights of Indigenous Peoples functional within the framework of the Human Rights Council.¹³¹

The normative framework of UNDRIP sets minimum standards for survival, dignity and well-being of the indigenous peoples of the world¹³². Article 2 affirms that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination in the exercise of their rights, in particular as a result of their indigenous origin or identity.¹³³ The indigenous peoples right to safeguard and maintenance of their cultural traditions and customs are enshrined in article 11 of UNDRIP.¹³⁴

In exercising the right of self-determination, indigenous people have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.¹³⁵ In order to rescue indigenous people from cultural harms and injuries inflicted upon them, the UN Declaration on Indigenous Rights goes even further in asserting the rights for indigenous people through restitution and equitable compensation.¹³⁶

On the other hand, those states who deny the existence of indigenous people in their territories consider the UNDRIP to be a non-binding instrument, thereby denying it normative force.¹³⁷ However, the declaration is deeply grounded in the authority of the United Nations Charter, as it has been adopted by a resolution of the General Assembly.

*“The Declaration is legitimate in three senses: it is a result of procedurally legitimate processes; its content is substantively fair and improves the coherence and determinacy of indigenous peoples’ rights; and, finally, there has been substantial engagement with the Declaration”*¹³⁸.

¹³¹ The Indigenous world 2009: Copenhagen, IWGIA p. 15.

¹³² United Nations Declaration on Rights of Indigenous People: art 43

¹³³ UNDRIP: Art 2

¹³⁴ Ibid. Art 11

¹³⁵ Ibid, art 4

¹³⁶ Ibid, art 28

¹³⁷ The Indigenous world 2009: Copenhagen, IWGIA pg17.

¹³⁸ Charters, Claire: *The Legitimacy of the UN Declaration on the Rights of Indigenous Peoples*, quoted in *The Indigenous world 2009*, Copenhagen, IWGIA pg18.

3.3 Genocide Convention: Relevance to Ethnocide

In order to promote the arguments for communal protection the Genocide Convention comes into effect as a binding multilateral legal document for protection of the physical existence in-group or alone. The Genocide Convention is not directly applicable to the Kalasha because the state is not actively showing intent of ethnic cleansing of the Kalasha People. Having said that, the emergence of terrorism in the region with religious extremism shows that minorities and vulnerable non-Islamic groups are at the a risk of physical extermination or ethnocide through forced conversions to Islam by fundamentalist groups. There is substantial historical evidence to support the genocide of “Kafirs of Hindu Kush” at the end of the last century. The modern nation state of Pakistan cannot be held responsible for the ethnic cleansing of non-Islamic tribes at the end of 20th century since it did not exist in 1895. However the religious factor for the ethnic cleansing of non-Islamic peoples is relevant to the present situation.

During the 1980s, the Pakistani State, under the military ruler Zia Ul-Haq, promoted Islamist nationalism through military aid in the Afghanistan-Soviet war and made the role of religion daunting by prescribing laws that became the source of discrimination for non-Muslims in Pakistan. The Afghanistan-Soviet war brought refugees and zealous proselytizing parties to the Kalasha Valleys, which endangered the Kalasha religion, culture and way of life. There are rare detailed reports on the ethnocide of Kalasha people during this time. Abbas Zaidi, assistant editor for “The Nation”¹³⁹, gives a somewhat sensational commentary of the events:

“General Zia called upon the nation to go one step further than the Government in bringing Islam to every nook and corner of Pakistan. As a result, countless Tablighi (proselytizing) parties confronted every Muslim and non-Muslim Pakistani preaching the Deobandi-Wahabi version of Islam. Coincidentally, that year saw Kalashnikovs and heroin begin to penetrate every nook and cranny of Pakistan. The Kafirs got the first taste of things to come when some Tablighi zealots illegally occupied a large cultivated piece of their land in Bumborate and built a mosque. What happened after that is not hard to discover. The Afghan refugees and the Pathan Tablighi parties (now known as the Taliban) seized nearly 70 percent of Kafir land during the period 1981 to 1995. They built mosques and seminaries where, in addition to learning the Koran by rote only, students learn the arts of war,

¹³⁹ Pakistan ‘s major English newspaper

*techniques that are used against India in Kashmir and against Muslim and non-Muslim religious minorities within Pakistan as well as against "infidels" elsewhere. The first fruit of the Afghanistan jihad for the Kafirs was the decimation of the Kalash forests and wildlife by the Afghan refugees. As the vegetation grew sparse, the Kafirs' cattle met the same fate as their forests, and the traditional Kafir means of livelihood was irreparably destroyed"*¹⁴⁰.

Currently, with the ongoing war on terror and religious extremist acts, the Kalasha have a well-established fear of physical extermination on religious grounds by extremist groups in the border areas. This fear is based on the historical experiences and the current events that are taking place in the region. It is also an undeniable fact that the Kalasha live in the locus of war in the remote mountain frontiers of Afghanistan and Pakistan, which receive no credible protection from Pakistan. In September 2009, a Greek Volunteer working on Kalasha cultural projects was abducted from the Kalasha Valleys and taken into Afghanistan through the unprotected mountain frontiers by the Taliban.¹⁴¹ (At the time of writing the Greek Volunteer is still being held by the Taliban). This incident has further intensified the intimidation, harassment and threats received by the Kalash. Therefore, the survival of the Kalasha people and their culture is very much affected by the present situation when the prospect of life under Taliban insurgency is in question. According to a recent Minority Rights Group report;

*"The Taliban have targeted religious minorities, sometimes imposing jizya, a tax on non-Muslims. Ms. Hilali of the HRCP said that the Taliban demanded jizya from Sikhs living in Bara, a town in the Khyber Agency of the Federally administrated tribal Area....in the process, the Taliban destroyed 11 Sikh homes...43Jizya has been imposed in other towns and on other communities as well....Christians have suffered under Taliban rule Churches have been destroyed, intruders burned Bibles as well as the altar...Individuals have also been targeted..."*¹⁴²

Bearing in mind its human rights and minority rights obligations, Pakistan is required to protect vulnerable ethnic groups in its territory and prevent the occurrence of genocide. There have been considerable developments in international law to protect individuals as well as minority groups by expanding the scope of the Genocide Convention to include offences such

¹⁴⁰ Abbas Zaidi: Ethnic Cleansing of the Kafirs in Pakistan, <http://www.gowanusbook.com/kafirs.htm>

¹⁴¹ Greek Volunteer Kidnapped in Pakistan, Athanasius Lerounis, www.grvol.blogspot.com

¹⁴² Jared Ferrie: Pakistan, Minorities at Risk in the North-West, Minority Rights Group International, p.5

as forced displacement and demographic changes.¹⁴³ Observation of genocide in the field shows that it arises from the cleavage of religious, ethnic, linguistic and radical cultural differences. Pakistan's official understanding of cultural genocide can be judged on the disappointment voiced in the attempted exclusion of cultural genocide from the Genocide convention. Pakistan had well-established fears for the cultural genocide of Muslims in India therefore it showed a keen interest in the adaptation of the genocide convention. In the plenary meetings Pakistan's representative Begum Ikramullah said:

*It must be realized that very often a people did not differ from its neighbours by its racial characteristics but by its spiritual heritage. To deprive a human group of its separate culture could thus destroy its individuality as completely as physical annihilation. Moreover, those guilty of the crime of mass extermination committed that crime because the existence of a community endowed with a separate cultural life was intolerable to them. In other words physical genocide was only the means, the end was the destruction of peoples individuality.'*¹⁴⁴

Furthermore, the position of Pakistan in regards to the right of self-determination is based on its regional political interests, which has been expressed in favour of oppressed Muslim groups outside its borders. Essentially, it has opposed the self-determination of various Muslim ethnic groups within its borders, such as the Baloch, Pakhtuns and people of the Northern areas. Concerning the conflict areas of Kashmir and Palestine where the Muslims are the oppressed groups, Pakistan has hypocritically taken a pro-active position in advocating and championing the right of self-determination of their people. This position on the international stage shows the double standards and contradiction Pakistan applies in principle, which puts the question of religious identity in perspective. The example of East Pakistan, current-day Bangladesh, shows that the rights of Bangladeshi people, despite sharing the same religion with rest of Pakistan, were denied. Using a common religious identity platform to suppress the right of self-determination was not able to hold ground for long; military intervention by India and resistance brought the departure of current-day Bangladesh from the oppression of West Pakistan's majority rule. Bangladeshi people today maintain the view that

¹⁴³ Javed: *the weakness in the international protection of minorities*. p. 58.

they attained independence from Pakistan through the right to self-determination.¹⁴⁵ However, there are still other ethnic groups in Pakistan that have been consistently denied of their rights of self-determination, including the Kalasha.

3.4 COLLECTIVE RIGHTS: RELEVANCE TO THE KALASHA

The notion of collective or group rights in liberal and secular democracies is challenged as they stand in opposition to liberal principals of equality, individualism, and non-discrimination. Collective rights are questioned and criticized in comparison with the principal of equal rights.¹⁴⁶ It is often argued that they are “particularistic and identity based”,¹⁴⁷ as they create obligations upon states towards such groups or members of such groups.

In developing nations with non-secular democracies such as Pakistan, the relevance of collective rights forms the very base for inviolability of religious and cultural identities. Collective rights were at the core of the Pakistan’s creation. As they were a minority in undivided India, the Muslims argued that they would suffer under the tyranny of a Hindu majority rule. In 1971 the successful separation of Bengalis from Pakistan as an independent nation-state shows that collective rights are very much connected with the right of self-determination, hence the reluctance for their recognition by the sovereign state.

The principle of physical existence, the right to self-determination, and non-discrimination clauses are firmly entrenched notions in international law. Self-determination as a concept covers a full spectrum of possibilities ranging from full statehood to limited forms of political and cultural autonomy. The right to self-determination governs the right of

¹⁴⁴ See supra note 108, p. 84.

¹⁴⁵ See supra note 8, p. 8.

¹⁴⁶ Tibor Varady: Minorities, Majorities, law, and Ethnicity: Reflections of the Yugoslav case, Academic Year 2007-2008 CEU, p.7

¹⁴⁷ Eric Heinze: The construction and contingency of the minority concept, p .155
Central European University, Minority Protection Course 2007/2008

peoples to determine what kind of relationship they would like to maintain with the dominant society, their right to choose their role in the modern state in order to be in a position to control external threats which are detrimental to their survival as a group.

The Universal declaration and the indigenous and tribal peoples convention represent the two opposing strains of individual, universalistic egalitarianism and differential, identity-based collectivism. It is a combination of individual rights as well as group rights. The case law on group rights indicates that indigenous people have evoked Article 27 of ICCPR for their cultural integrity and with respect to their natural resources. Anaya has argued that, “[t]he new body of international law concerning indigenous peoples intersects with and in significant part extends from a generally applicable human rights norm of cultural integrity.”¹⁴⁸

...[it] cover[s] all aspects of [the] indigenous group's survival as a distinct culture . . . [and requires] states to act affirmatively to protect the cultural matrix of indigenous groups and not simply to refrain from coercing assimilation or abandonment of cultural practices. The ultimate contention is that individuals who have been persecuted as a group should be acknowledged as a group in any public remedies.¹⁴⁹

The theory of collective rights is compatible with the general political context of Pakistan. As described in chapter 2 of this thesis, major ethnic groups dominate Pakistan's population with their territories in the federation consisting of four Provinces, Tribal areas and Northern areas. The Kalasha as a group are unable to freely profess and practice their religion and culture due to the religious discrimination on the very base of it. The historical forced conversions of the Kalasha and on going conversions¹⁵⁰ to Islam verify this claim of religious and cultural discrimination. Many of practices of the ancient traditions of the Kalasha have had to be exterminated due to Muslim morality. The creation myths and indigenous history of Kalasha are fundamentally different from Islam and it's professed in Kalasha polytheistic beliefs,

¹⁴⁸ S. James Anaya, *The Rights of Indigenous Peoples and International Law in Historical and Contemporary Perspective*, 1989 HARVARD INDIAN LAW SYMPOSIUM 191, 204.

¹⁴⁹ Ibid.,

¹⁵⁰ See supra note 8. p. 79.

ceremonial cycles and customs. The Kalasha honour different mountain spirits and observe ritual rites in sacred sites in their ethnic territory.

After the accession of Chitral to Pakistan's "protected area," the Kalasha were swamped by the unrestricted arrival of Muslim settlers. This is consuming the adherents of pagan culture by dispossession of their natural resources, vital to maintain distinct religion and cultural traits. The Kalasha are expected to respect the norms of dominant society while their own culture is ridiculed, insulted and destroyed. The pressure to abandon the continuity of existence as ancient people has increased due to assimilation policies of national integration and exploitation of their culture through ethno-tourism. The assimilation policies in education and the appropriation of the Kalasha culture has been operating on various levels that the perpetrators of Kalasha cultural ethnocide cannot be identified within as a single entity. The two core threats identified as a loss of ethnic identity and territory cannot be remedied through individual entitlements and rights. A collective rights approach, therefore, is indispensable for the salvation of the Kalasha People's vanishing culture.

3.5 Land Restitution & Cultural Protection: Prerequisite for Kalasha Survival

The multifaceted threats and vulnerabilities, as described in Chapter 1, can be grouped in two core issues. Firstly, the rapid loss of natural resources to Non-Kalasha people is a major issue and secondly, the loss of indigenous cultural identity through conversions to Islam. The state of Pakistan, being a successor state to an undivided India under British rule, including Chitral (previously a kingdom in its own right) is bound under the general principles that govern International law to follow through the customary practices that were established in its historical territory. In this regard the "protected status of Kalasha Valleys" being a particularly relevant one, according to which Islamic people were not allowed to settle and proselytize in the non-Islamic Kalasha area. As a result of this customary practice of

protection of the valleys no longer being recognized, the lands, trees and pastures of the Kalasha people are taken over indiscriminately. Pakistan's failure to protect and recognize this protective status has led to violations of the Kalasha people's human rights as it undermines their means of subsistence and severely compromises their physical, spiritual, cultural and economic integrity. The issue at hand, hence, is whether the Kalasha could still claim restitution for their lands, trees and pastures, which are taken from through force and are indispensable for their cultural survival as indigenous people. It falls under the discretion of Pakistan to decide through which affirmative actions it will redeem this imperilled cultural enclave; restitution of traditional properties, strengthening the non-discrimination parameter on racial and religious grounds and restoration of the "protected status" in the form of cultural autonomy, emerge as the predominant solutions.

A motion for restitution of the traditional lands and resources of indigenous peoples has gained momentum internationally. The Human Rights Committee has addressed this issue as an effective application of article 27 of ICCPR stating that "necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands ..." and; "securing continuation and sustainability of traditional forms of economy of indigenous minorities and protection of sites of religious or cultural significance for such minorities."¹⁵¹

Moreover, in the case of *Sawhoyamaya Indigenous Community of the Enxet People v. Paraguay*, the Inter-American court explained that its jurisprudence holds that indigenous peoples maintain their property rights even where they have been forced to leave or have otherwise lost possession of their traditional lands, including where their lands have been expropriated or transferred to third parties, unless this was done in good faith and

¹⁵¹ General Comment No.23 : The rights of minorities (Art.27) : 08/04/94.CCPR/C/21/Rev.1/Add.5, para 7.
Retrieved at <http://www.unhchr.ch>

consensually. According to the Court, it means that title is not a pre-requisite that conditions the existence of the right to restitution of indigenous lands.¹⁵²

Pakistan has signed the International Covenant on Civil and Political Rights (ICCPR), which implies that State party is required to take steps in accordance with the interpretation of ICCPR Article 27, which constitutes customary international law. As Article 38 of the Vienna Convention affirms; a rule set forth in a treaty may become binding upon a third state as a customary rule of international law.¹⁵³ Pakistan has also ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR)¹⁵⁴; given the principle of interdependence and interrelatedness of human rights, Francesco Capotorti, the Special Rapporteur to the Sub-Commission on Discrimination Against Minorities has elaborated on the link of culture in both Conventions:

“Among the rights referred to in Article 27, at least one goes beyond the range of civil and political rights; the right of members of minorities to enjoy their own culture in community with the other members of their group seems to be involved not merely with freedom of expression but rather more with the right to education and the right to take part in cultural life, which are provided for in under the Covenant on Economic, Social and Cultural Rights . . . It is, accordingly, clear that, at least in the field of culture, the States are under a duty to adopt specific measures to implement Article 27 in the same way as they are in the case of the provisions on cultural rights under the Covenant guaranteeing them.”¹⁵⁵

In the case of *Indigenous Community Yakye Axa v. Paraguay* the Inter-American Court stated that:

“Recognition of legal personality allows indigenous communities to enforce their previously existing rights; the same rights they have enjoyed historically and not since their establishment as legal entities. Their political, social, economic, cultural, and religious organization systems, and the rights stemming there from, such as the appointment of their own leaders and the right to lay claim to their traditional lands, are recognized, not to the legal entity which has to be registered to fulfil a legal formality, but to the community itself.”¹⁵⁶

¹⁵² Inter-American Court of Human Rights. (2006). *Case of the Sawhoyamaya Indigenous Community v. Paraguay: Judgement of March 29, 2006*. Retrieved from

http://www.ggp.up.ac.za/human_rights_access_to_medicines/additional/2009/inter%20american%20legal%20materials/SawhoyamayaIndigenousCommunityv.ParaguayIACtHR2006.pdf

¹⁵³ Vienna Convention on the Law of Treaties, May 23, 1969, art. 34, 1155 U.N.T.S. 331, 341.

¹⁵⁴ International Covenant on Economic, Social, and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3

¹⁵⁵ Francesco Capotorti: Study on the rights of persons belonging to ethnic, religious and linguistic minorities at 1, U.N. Doc.E/CN.4/Sub.2/384/Rev.1, U.N. Sales No.E.78.XIV.1 (1979)

¹⁵⁶ See supra note 148, quoted in case of Inter-American Court of Human Rights. (2006). *Case of the Sawhoyamaya Indigenous Community v. Paraguay: Judgement of March 29, 2006*.

If the Kalasha people are to claim their previously existing rights and contest the infringement of customary justice they have faced it is evident that recognition of indigenous status should occur. For this purpose, the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination could be referenced to encompass the indigenous status. The CERD committee is the human rights instrument that establishes and oversees the implementation of the convention while issuing General Recommendations in an effort to broaden its scope and clarify its intent. It has pressed for the identification of minorities and racial groups requiring “precise information on the various ethnic, linguistic and religious groups, communities and minorities in order to be able to properly verify implementation of the Convention.”¹⁵⁷ In its 50th session, as it is summarized in the records of the 1199th meeting, the committee responded to the periodic reports of Pakistan, submitted under the authority of article 9, “that the policy of the State party to recognize only religious minorities excludes ethnic, linguistic or racial groups living in the country from any specific protection under the Convention that would derive from their official recognition as minorities.”¹⁵⁸ The committee has questioned the situation of minorities in Pakistan and in special reference to Kalasha girls forced conversion.¹⁵⁹

In an effort to negate allegations for religious persecution and present a flexible and tolerant attitude, the delegation of Pakistan referred to the Kalasha as “an ethnic and religious minority of only about 3,000 people who lived in the remote mountainous region of Chitral. They were believed to be descendants of the Greek soldiers in the army of Alexander the Great, and their unique culture was threatened by modernization and tourism.”¹⁶⁰ The statement above avoided the question of discrimination based on religion but it reveals vital

¹⁵⁷ Committee on the Elimination of Racial Discrimination Fiftieth session: CERD/C/304/Add.25

23 April 1997

¹⁵⁸ Ibid.,

¹⁵⁹ Ibid., para 2.

¹⁶⁰ Committee on the Elimination of Racial Discrimination Fiftieth session: CERD/C/304/Add.25 23 April 1997

information related to Kalasha people's cultural survival. It is also the first time that Pakistan officially admitted that Kalasha were an ethnic as well as religious minority. Pakistan refers to their possible origins, from which it is implied that if the Kalasha are believed to be descendants of Greek soldiers, then the soldiers must have married local indigenous Kalasha women, which verifies that the Kalasha have a historical continuity in the place. The Kalasha who were forcibly converted to Islam or became Muslims over the years are the only ones who lost their Indigenous Kalasha cultural Identity, racial traits, language, and beliefs and way of life. The approximate population of 4000 people who did not convert to Islam maintain their distinct racial traits as well as their distinct language, culture and beliefs, as they do not intermingle or mix with other ethnic populations unless they are proselytized to Islam and deprived of their means of existence. Therefore, the insistence of Pakistan in reply to ethnic and linguistic composition that "racial and linguistic groups were deeply intermingled and integrated in Pakistan and that any racial or ethnic identification was therefore difficult" is in contradiction with the essence of their previous statement on origins and cultural autonomy.¹⁶¹ Pakistan makes no reference to the rights and situation of Kalasha people as an indigenous people while the committee is "of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned."¹⁶²

The recognition of Kalasha people as indigenous can be supported by the grant awarded by World Bank in 2004 issuing that:

*"Preservation of Intangible Heritage of Kalash ... to address the problems of the Kalash People, including illiteracy, rapid conversion to the religion of the general population, suppression of traditions by the dominant religion, and conflicts over land, property, and natural resources... {Whose} objectives include bringing the people economically and socially up to par to that of the Muslim population in the area; providing opportunities to preserve the unique culture."*¹⁶³

¹⁶¹ Ibid., para 10.

¹⁶² Committee on the Elimination of Racial Discrimination, General Recommendation No. 08: Identification with a particular racial or ethnic group (Art.1, par. 1 & par. 4). 22/08/90. UN Doc. A/45/18.

¹⁶³ World Bank: Grants Facility for Indigenous Peoples Secretariat Rural Community Development Program, Pakistan, p .5. at www.worldbank.org/indigenous.

The acknowledgement from the Pakistan's delegate that, "unique culture was threatened by modernization and tourism"¹⁶⁴ provides another opportunity to explain that the entrenched and wide spread racial discrimination exists due to ethno-tourism that thrives on marketing the Kalasha as a primitive race of European stalk which denies Kalasha the right to dignified life. The delegate did not specify if the modernization and tourism are "free prior informed consent" which is another issue of particular relevance for indigenous peoples cultural survival in their environment.

In relation to the right to consent, the CERD refers to Recommendation No. 23, which urges State parties 'that no decisions directly relating to [indigenous peoples] rights and interests are taken without their informed consent'.¹⁶⁵ This recommendation deals precisely with the rights of indigenous peoples, affirming a number of standards that could be also found in the new ILO Convention No. 169, which is not ratified by Pakistan. The requirement of prior informed consent has also been delineated in the case law of the Inter-American Commission on Human Rights.

In *Mary and Carrie Dann v. USA*, the Commission noted that convening meetings with the community 14 years after title extinguishment proceedings began constituted neither prior nor effective participation. To have a process of consent that is fully informed 'requires at a minimum that all of the members of the Community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to

¹⁶⁴ See, supra note 153.

¹⁶⁵ General Recommendation No. 23: Indigenous Peoples. 18/08/97

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

Retrieved at <http://www.converge.org.nz/pma/CERD-GR23.pdf>

participate individually or as collectives’.¹⁶⁶

The above-mentioned standards are obligations imposed upon states under international law. The tourism in Kalasha valleys was introduced by state tourism agencies that stereotyped the Kalash *Kafirs*, a mysterious primitive pagan tribe in the Hindu Kush. This active tourist propaganda has led to the exploitation of indigenous territory and resources but also to racial discrimination of the Kalasha people. Not having direct control over the economical benefits of this tourism, the Kalasha merely reflect a picture of a “primitive human zoo”; a zoo which is open to curious foreigners primarily taking into consideration the unique Kalasha people as a foreign exchange resource of the country¹⁶⁷. This exploitation summarized by Alauddin in his book *Kalash, The Paradise Lost* in which he says: “The higher echelons of Govt. sulked back, when it came to taking adverse steps against the aggressive members of the majority community. They possibly suffered from an illusion that weaker groups could be protected without harming the exploiter’s interests”.¹⁶⁸

The direct injury and cultural harm comes from the cultural appropriation of the Kalasha people as a tourist commodity and their representation as a “primitive race”. As Rossel states, “*The economic, technical and cultural marginalization of tourism exposes cultural minorities to discontinuity, disturbance, divergence, even disintegration, and usually to dangerous dependency*”.¹⁶⁹

The activity of cultural appropriation by the Pakistani tourism cooperation agency’s direct involvement is evident as a case of non-participation, discrimination with no free and prior consent of the Kalasha people. This phenomenon limits their capacity to engage and continue their traditional way of life, due to tourism related business encroaching on their indigenous cultural enclave, disturbing the structure and function of small indigenous enclave and leads to active interference with people’s religion and culture that States are required to

¹⁶⁶ Mary and Carrie Dann v. United States, Case 11.140, Report No. 113/01, Inter-Am. C.H.R. (2001)

¹⁶⁷ See, supra note 7. p.283.

¹⁶⁸ Ibid.,

¹⁶⁹ Rossel, 1988:13 quoted in John H.Bodley, *Victims of Progress*, p.130.

refrain from under Art 27 of ICCPR. This right, in the prospect of cultural survival, creates an obligation of non-interference with indigenous peoples culture, language and religion.

One significant example of violation is the portrayal of Kalasha religious ceremonies as festivals of merry-making, dancing with plenty of wine: of primitive people in tourist brochures and media exposure. These traditional ceremonies are performances of identity, ritual, ancestral history with deep spiritual meaning for Kalasha and are not tourist entertainment opportunities to be exploited by the state. The external interference of the state tourism industry is responsible for the influx of alien disturbances in the cultural and religious life of the Kalasha. The dancing ceremonies of spring, summer and winter solstices are performances that require drastic measures to stop the waves of disrespectful Pakistani tourists chasing Kalasha women, pinching them in the dark, and forcing them to be photographed.¹⁷⁰

Furthermore, the Kalasha people view the term “Kafir”¹⁷¹ as derogatory, the use of it insulting and contemptuous, which incites deeply held religious hatred and connotes racial discrimination of the Kalasha people and their ancient ways of being. This is in violation to the Art.1 of CERD, which defines the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁷² The minimum standards in order to ensure cultural survival are in accordance with the principle of non-interference with culture and religion. The cultural and spiritual dimensions of existence are fundamental as set in article 27 of ICCPR, exemplifying that identity of minorities is to be protected and

¹⁷⁰ Jean Yves Loude, quoted in “*Kalasha Paradise lost*” Alauddin 1992, p 274.

¹⁷¹ Arabic word for non-believer in Allah and Holy Prophet chiefly used for Non-Islamic people of Hindu Kush.

¹⁷² CERD: art.1

conditions for its promotion encouraged¹⁷³ thus the state should provide recognition and security to diverse ways of being.

The contemporary regime of human rights is based on the principle of equality of treatment and non-discrimination on basis of religion and race. In accordance, the legal and constitutional framework of Pakistan contains a prohibition clause in relation to non-discrimination. The Preamble of the Constitution of Pakistan, outlining its fundamental objectives states that “... adequate provisions shall be made for the minorities freely to profess and practice their religion and develop their cultures”,¹⁷⁴ including that every citizen has the right to freedom of thought and freedom to profess, practice and propagate his religion. It allows a religious denomination or a sect thereof to establish and manage its own religious institution. The exercise of such rights is, however, subject to law, public order and morality (Art 20). The preamble of Pakistan also asserts “Islamic principals of Justice”. This as well could be argued that Islamic principals of justice applied by the Ottoman Empire regarding minorities was to provide them with a their own cultural autonomy. The article 31 of the constitution states that;

*Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.*¹⁷⁵

The reference to “individual and collectively” is proof that according to the Pakistani constitution people individually or in groups require enabling circumstances, which sets a legal base for the collective rights of the Kalasha people. Since the state is focusing on preserving religion under the argument of equality it is expected to be applicable to all religions without discrimination. In addition, the penal code of Pakistan codified originally by the British (sections 295-295), deals with religious protection; the remaining sections were

¹⁷³ Rehman: *Weaknesses in the protection of minorities* p.78

¹⁷⁴ See Constitution of Pakistan, Preamble

added by an amendment during General Zia military rule in 1980's. It states that:

- (1) Section 295. Injuring or defiling places of worship with intent to insult the religion of any class: Punishment two years.
- (2) 295 Deliberate/malicious acts that out rage religious feelings of the others: punishment ten years.
- (3) Section 295B. Defiling the Holy Quran: Punishment- Imprisonment for life
- (4) Section 295 C. Use derogatory remarks with the respect to the Holy Prophet: Punishment-death or imprisonment for life.
- (5) Section 296. Disturbing religious assembly: Punishment-one year
- (6) Section 297.Tresspassing or indignity upon burial places: Punishment-one year
- (7) Section 298A.Using derogatory remarks about holy personages: Punishment-3 years
- (8) Section 298 B. Misuse of epithets or titles of holy people: Punishment- three years¹⁷⁶

All these offenses are applied only for the protection of the Muslim Faith in Pakistan as a result of the religious hegemony that has taken precedent over other religions. Yet, the intrinsic value of religion requires the same treatment and respect accorded to Islam to be accorded to other religious sects. The Kalasha have endured centuries of undignified and fearful life hearing slurs and derogatory remarks to about their race, religion and Culture, being in inferior state of affairs. The Valleys belong to Kalasha; its land is their home, a humble abode of retreat to remain who they are as people.

The ILO 169 convention on Indigenous Peoples, adopted in 1991, has recognized the aspiration of indigenous peoples to exercise the control over their own institutions, way of life and economic development, to maintain and develop their identities, languages and religions within the framework of states they live.¹⁷⁷ Article 4 further stresses for preservation of cultural and religious values, institutions and forms of traditional social control.¹⁷⁸ Pakistan had ratified the outdated ILO 107 convention and there is evidence that affirmative action for redeeming the Kalasha Walnut trees have been taken. This sets a precedent for adopting new standards of cultural protection prescribed and detailed the in the UN declaration of Indigenous peoples rights. Pakistan has also signed the convention on

¹⁷⁵ Constitution of Pakistan 1973, Art 31.

¹⁷⁶ Pakistan Penal Code

www.punjabpolice.gov.pk

cultural heritage protection through which sites world heritage sites can be preserved. There are currently 6 sites ethno-heritage sites of aboriginal culture, which have benefitted from it.¹⁷⁹

It all comes to the will of states and whether they are willing to protect the most vulnerable and disposed groups in their territory. Mapping the Kalasha Valleys as ethno-heritage site would enable the cultural sovereignty of the indigenous population and the opportunity to manage their own land and forest recourses. Adopting these new legal instruments provides with an efficient strategy to protect threatened cultures. Cultures may change over time but for that they requires their own pace and sense of security, so as to evolve and transform in their own sustainable way. If a culture is threatened with death and decay it's a loss of our common human heritage and diversity, which is bound to manifest, reflect and transcend the beauty of life in a variety of ways. Hence it becomes the obligation and duty of the individual state to protect it.

‘Each nation has a unique tone to sound in the symphony of human culture; each nation is an indispensable and irreplaceable player in the orchestra of humanity’¹⁸⁰

¹⁷⁷ ILO 169: Art 1

¹⁷⁸ ILO 169:Art 4

¹⁷⁹ Operational Guidelines for the Implementation of the world Heritage Convention

WHC.08/01 January 2008, at www.unesco.org

Conclusion

In the history of humanity all people have been indigenous to some place on earth, where they grew in numbers, nourished and expanded their influence over others, where they travelled and founded new empires. Sadly, in many cases a new territory was not terra nullius and had already been homeland to group of people living there throughout time. Such is the history of Kalash, Which expanded over thousand years of continuous existence and courtship with nature, which they are faithful to keep. Their memory bears marks of all the invaders and expansionist regimes that trespassed upon their territory from Aryan hordes to Alexander the Great, Muslim ruler and the British Empire while today they witness the war on terror and foreign domination attempts. Though Research on the historical conditions of their cultural survival shows that they were left unprotected and vulnerable to outside disturbances such as harsh treatment, slavery, subsistence taxes and unrewarded labour. Today, the Kalasha pay no taxes, nor are they sold in slavery but the threat to their cultural survival--indeed their survival at all--continues.

The status of the Kalasha in Pakistan is reduced to a religious minority, which insults their cultural existence and curtails their capability to survive as a distinct group of people.

Attempts to homogenise them with force and assimilate them, disables their capacity to continue and pass down their own philosophy and way of life to their younger generations. International law has moved on to accommodate differences, while discarding discrimination based on religion and race. Religious supremacy and hegemony cannot be justified to contain and subjugate indigenous people and their particular ways of being. Discrimination on the grounds of race and religion was discredited long ago by the human rights regime under which small and vulnerable groups are protected. Indigenous people have gathered under one emblem, as their threats and issues are homologous, their disadvantages require same

substantive remedies and what rightfully belongs to them can be repatriated in legal manners. Denial of the rights of indigenous people and their special status cannot be over-looked any longer; the cobweb of human rights treaties entangles each state through its extensive framework and responsibility to report. Moreover, through their own grass roots representation, self-identification, and with the aid of international organizations, the space that the Kalasha people have for voicing their concerns has been expanded. The state of Pakistan has admitted that the Kalasha are a religious and ethnic minority and are suffering threats to their culture and very existence.

This thesis has tried to answer few questions on the cultural aspect of survival for the Kalasha people, incorporating first-hand experience of the issues and threats that they face. Through extensive research on the pre-existing rights of non-interference in the former Kingdom of Chitral, which has affirmed these rights, raising arguments for the restoration of this arrangement, which should be accorded to the Kalasha by implementing indigenous peoples rights and collective rights as they apply to their case. It is also obvious that a contradiction exists which prescribes the indigenous factor in human populations. There are many ethnographical, linguistic and anthropological studies to rely upon which offer a greater perspective on the subject. Until the 20th century indigenous cultures had been considered as the past references made to cultures. Their connection to place is analogous to the sense of their body-parts and it should be allowed, at the very least, to continue.

The distinction of Kalasha people from religious minorities is absolutely necessary so that their group rights can be realized. Kalasha with a population of 4000 have undiminished legal capacity under International law to exercise their cultural self-determination. Under threatening circumstances in Pakistan the thesis has argued for protection of Kalasha people and their culture from ethnocide. It has provided overview of cultural survival mechanisms

¹⁸⁰ I.L Claude Jr., *National minorities: An International Problem* Cambridge, Mass.: Harvard University Press, 1955, pg 85

and standards that can be effectively incorporated to fill the protective legislative gap in Pakistan for protection of Kalasha people and their cultural heritage.

BIBLIOGRAPHY/ REFERENCES

- Alauddin. (1992)., *Kalash: the paradise lost*. Lahore: Progressive Publishers, 1992.
- Ali, S. S. & Rehman, J. (2001). *Indigenous peoples and ethnic minorities of Pakistan: Consitutional and legal perspectives*. Nordic Institute of Asian Studies series, Mongraph series, No. 84. Richmond, Surrey: Curzon Press.
- American Indian Law Review. (2006-7). *Symposium: Lands, Liberties, and Legacies: Indigenous Peoples and International Law* 31(2) 375-399. University of Oklahoma College of Law.
- American Journal of International Law, Vol. 100, No. 4 (Oct., 2006), pp. 783-807.
- Bazik, Imran. (2007). *The Kalash of Kafiristan*. Unpublished ms.
- Bodley, J. H. (2008). *Victims of progress*. (10th ed.). Lanham, MD: AltaMira Press.
- Buergenthal, T. *The Evolving International Human Rights System*. Retrieved October 6, 2009, from <http://www.jstor.org/stable/4126317>
- Cacopardo, A. M. & Cacopardo, A. S. (2001). *Gates of Peristan*, Rome: Istituto Italiano per l'Africa e l'Oriente.
- Capotorti, F. United Nations General Assembly Resolution and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities A/RES/47 paras 213,217, and 242
- Capotorti, F. (1979). Study on the rights of persons belonging to ethnic, religious and linguistic minorities at 1,U.N. Doc.E/CN.4/Sub.2/384/Rev.1, U.N Sales No.E.78.XIV.1
- Charters, C. (2009). The Legitimacy of the UN Declaration on the Rights of Indigenous Peoples, quoted in *The indigenous world*. Copenhagen: IWGIA.p 17
- Cheema. P. I., Nuri, M. H., Mahmud, M. & Hussain, K. (Eds). (2008). *Political Role of Religious Communities in Pakistan*. Asia Papers Series: Papers from a Conference Organized by Islamabad Policy Research Institute (IPRI) and the Institute of Security and Development Policy (ISDP) in Islamabad, October 29-30, 2007. Stockholm-Nacka & Islamabad: Institute of Security and Development Policy & Islamabad Policy Research Institute.
- Cirkovic, E. *Self-Determination and Indigenous Peoples in International Law*. Retrieved October 6, 2009, from <http://www.jstor.org/stable/20070792>
- Claude, I. L. Jr. (1955). *National minorities: An International Problem*, Cambridge, MA: Harvard University Press.
- Durrani, M. S. *Kalash Paradise Lost*, p.283
- Ferrie, J. Pakistan, Minorities at Risk in the North-West, Minority Rights Group International.
- Foreman, J. (2007). The Titans of Kalash, Telegraph Magazine. 28/07/2007
<http://www.telegraph.co.uk/arts/main.jhtml?xml=arts/2007/07/28/smpakistan28.xml&page=1>
- Government of NWFP. (2009). *Kalash Festival - The Indigenous Wisdom (13-16 May)*. Retrieved November 29, 2009, from <http://nwfp.gov.pk/Events/index.php>

- Hambley. (1970). 60-69 quoted in "Gates of Persitan" Cacopardo p32
- Hashmi, A. S. (2009). *Pakistan: Politics, Religion & Extremism*. New Delhi: Institute of Peace and Conflict Studies. Retrieved from http://www.ipcs.org/pdf_file/issue/RP20-Arshi-Pakistan.pdf
- Heinze, E. *The construction and contingency of the minority concept*, p .155
- Human Rights Watch, *Human Rights Watch World Report 1994 - Pakistan*, 1 January 1994. Retrieved November 28, 2009, from <http://www.unhcr.org/refworld/docid/467fca861e.html>.
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- Inter-American Court of Human Rights. (2006). *Case of the Sawhoyamaya Indigenous Community v. Paraguay: Judgement of March 29, 2006*. Retrieved from http://www.ggp.up.ac.za/human_rights_access_to_medicines/additional/2009/inter%20american%20legal%20materials/SawhoyamayaIndigenousCommunityv.ParaguayIACtHR2006.pdf
- International Convention on the Elimination of All Forms of Racial Discrimination. New York, 7 March 1966.
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Economic, Social, and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3 International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171
- International Labour Organization. ILO 169: Arts. 1, 4, 6(1)(a) & (b), 7(1), 8(2), 12, 15(1), 17(2), 22(3), 25(1), 27(2) & (3)
- Javed. *The weakness in the international protection of minorities*. p.58.
- Kalash, T. K. (Ed.). Kalasha community website. www.Kalashapeople.org.
- Keller, P. Re-thinking Ethnic and Cultural Rights in Europe, quoting p.95, General Comment No. 23 (50) 15 Human Rights Law Journal (1994) at 234
- Khan, M. A. (1980). *Chitral and Kafirstan*. Peshawar: Printing Corporation of Frontier Ltd. (Original work published 1973).
- Khazi Khosh Nawaz, Personal communication, Summer 2006.
- Kingsbury, B. (1998, July). Indigenous peoples in International law: A constructive approach to the Asian controversy, *The American Journal of International law*, 92 (3). 414-457
- Kymlicka, W. (1999). Theorizing Indigenous Rights. [Review of *Indigenous Peoples in International Law* by S. J. Anaya.] *The University of Toronto Law Journal*, Vol. 49, No. 2. pp. 281-293 Toronto: University of Toronto Press. Retrieved October 6, 2009, from <http://www.jstor.org/stable/826021>
- Lines, M. (1997). *The Kalasha people of North-Western Pakistan*, EMJAY Books International, Arbab Road, Peshawar Cantonment, Pakistan.
- Loude, J-Y. & Lièvre, V. (1988). *Kalash Solstice: Winter Feasts of the Kalash of North Pakistan*. Islamabad: Lok Virsa.
- Maggi, W. (2001). *Our women are Free: Gender and Ethnicity in the Hindukush*. Ann Arbor, MI: The University of Michigan Press.
- Malik, I. H., (2002). *Religious Minorities in Pakistan*, London: Minority Rights Group International.

- Martinez-Cobo, Special Rapporteur, Jose R., study of problems of Discrimination against Indigenous populations, UN Doc. E/CN.4/Sub.2/1986/7/Add.41986, p.29, paras 378-80.
- Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Pakistan : Pathans*, 2008. Minority Rights Group International. Retrieved November 28, 2009, from <http://www.unhcr.org/refworld/docid/49749cd22.html>
- Morgenstierne, G. *The Kafirs of Hindukush*, Proceedings of Societies, School of oriental Studies, p.3.
- Munphool M. M. (1868 - 1869). On Gilgit and Chitral, *Proceedings of the Royal Geographical Society of London*, 13(2), 130-133.
- Munphool P. (1869-1870), Relations between Gilgit, Chitral, and Kashmir, *The Journal of the Ethnological Society of London* 2(1) 37.
- Murtaza. (1982). 356-57 quoted in Gates of Persitan Cacopardo p.64.
- National assembly of Pakistan. (2004). *The Constitution of the Islamic Republic of Pakistan: [As modified upto 31st July, 2004]*. (Original work published 1973).
- Naveed, Dr, quoted in “Kalash-the paradise lost” Alauddin, p .114.
- Nawaz, quoted in Michael Wood, In the Footsteps of Alexander the Great, p.8.
- New Oxford American Dictionary.
- Operational Guidelines for the Implementation of the world Heritage Convention
- Parkes, P. (1987, Dec). Livestock symbolism and pastoral ideology among the Kafirs of the Hindu Kush, *Man, New Series*, 22(4). 637-660.
- Parkes, P. (1997). Kalasha domestic society: Practice, ceremony and domain. In H. Donnan and F. Selier (Eds), *Family and Gender in Pakistan*. New Delhi: Hindustan Publishing Corporation. Retrieved from <http://www.kent.ac.uk/sac/departments/staff/parkes/Parkes1997.pdf>
- Parkes, P. (2000). Enclaved knowledge: Indigent and indignant representations of environmental management and development among the Kalasha of Pakistan. In R. Ellen, P. Parkes and A Bicker (Eds), *Indigenous environmental knowledge and its transformations: Critical anthropological perspectives* (pp. 253-91). Amsterdam: Harwood Academic. Retrieved from <http://www.mtnforum.org/resources/library/parkp99a.htm>
- Parkes, P. (2001). The Kalasha of Pakistan: Problems of Minority Development and Environmental Mangement. The –[south-asian.com](http://www.the-south-asian.com).http: www.the-south-asian.com/June2001/Kalash1.htm
- Parkes, P. A minority perspective on the history of Chitral: Katore rule in Kalasha tradition, *Proceedings of the 3rd International Hindu Kush Cultural Conference*, Oxford University Press 2008.
- Pincott, F. (1884). The route by which Alexander entered India. *Journal of the Royal Asiatic Society of Great Britain Ireland* p.7
- Pogany, I. Minority Protection. Course Material. Academic Year of 2007-2008, Legal Studies Dept. Central European University.
- Qamar, *Kalash the Vanishing Culture*. Aga Jee Printers, 1999.

- Radio Free Europe/Radio Liberty, *Militants attack students in Pakistan, four killed*, 8 September 2009. Retrieved November 28, 2009, from <http://www.unhcr.org/refworld/docid/4aaf5c803a.html>
- Rashid, A. (2008). *Descent Into Chaos: The United States and the Failure of Nation Building in Pakistan, Afghanistan, and Central Asia*. p. 36.
- Rehman, J. (2000): *Weaknesses in international protection of minority rights*, The Hague: Kluwer Law International
- Robertson, Sir G. S. (1974). *The Kafirs of the Hindu-Kush*. Karachi: Oxford University Press. (Original work published 1896).
- Rossel, 1988:13 quoted in Victims of Progress, John H.Bodley, p.130.
- Taylor, J. (2007). Unveiled: The Pakistani tribe that dares to defy the fundamentalists.18th July. The Independent Online.
- The Middle East Institute. (2009). *The Islamization of Pakistan, 1979-2009*. Washington, DC: The Middle East Institute. Retrieved from www.mei.edu
- Trail, G. H. (1996). Tsyam revisited: a study of Kalasha origins. In: E. Bashir & I. ud-Din (Eds.) *Proceedings of the second International Hindukush Cultural Conference*, pp. 359-76. Hindukush and Karakoram Studies, 1. Karachi: Oxford University Press.
- Trail, R. L. & Cooper, G. R. (1999), *Kalasha Dictionary—with English and Urdu*. Studies in languages of northern Pakistan, vol. 7. Islamabad: National Institute of Pakistan Studies, Quaid-i-Azam University, & Summer Institute of Linguistics.
- UN, Convention on the Law of Treaties, May 23,1969,art.34, 1155 U.N.T.S. 331,341.
- UN, Draft Universal Declaration of the Rights of Indigenous Peoples: Art 8,12th session of Working Group Indigenous Peoples, 23 August1994, E/CN.4/Sub.2/AC.4/AC.4/1994/4/Add.1
- United Nations Declaration on Rights of Indigenous Peoples, (UNDRIP)2007
- United Nations. (1948, December 9). *Convention on the Prevention and Punishment of the Crime of Genocide*. New York: United Nations.
- United Nations Commission on Sustainable Development. (1997). *Pakistan Country profile: Implementation of agenda 21: Review of progress made since the United nations conference on Environment and development, 1992*. Retrieved from <http://www.un.org/esa/earthsummit/pakis-cp.htm#chap15>.
- United Nations Committee on the Elimination of Racial Discrimination. (1990). *General Recommendation No. 08: Identification with a particular racial or ethnic group* (38th session). (Art.1, par. 1 & par. 4). 22/08/90. UN Doc. A/45/18. Geneva: Office of the United Nations High Commissioner for Human Rights.
- United Nations Committee on the Elimination of Racial Discrimination (1997). *Concluding observations of the Committee on the Elimination of Racial Discrimination (Fiftieth session): Pakistan*. 23/04/97. CERD/C/304/Add.25. Geneva: Office of the United Nations High Commissioner for Human Rights. Retrieved from [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.25.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.25.En?Opendocument)
- United Nations Committee on the Elimination of Racial Discrimination (1997). *Summary record of the 1199th meeting (Fiftieth session): Pakistan*. 17/04/97. CERD/C/SR.1199.. Geneva: Office of the United Nations High Commissioner for Human Rights. Retrieved from

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/0be5d382535b05c18025648200612fb2?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/0be5d382535b05c18025648200612fb2?Opendocument)

United Nations Documents, Human rights Index

<http://www.universalhumanrightsindex.org/hrsearch/search.do?lang=en&accessType=country&countries=122&orderBy=category®ionCountry=country>

United Nations Office of the High Commissioner for Refugees. *International Covenant on Civil and Political Rights* (ICCPR).

Varady, T. Law and Ethnicity, Course Material, Academic Year of 2007-2008, Legal Studies Dept., Central European University.

Varady, T. Minorities, Majorities, law, and Ethnicity: Reflections of the Yugoslav case, *Human Rights Quarterly*, p.7.

WHC.08/01 January 2008, at

Wood, M. *In the Footsteps of Alexander the Great*, p.170.

World Bank. (1999). Operational Manual, Sep 1999, 'Indigenous People', OD 4.20.

World Bank. *Grants Facility for Indigenous Peoples Secretariat Rural Community Development Program*. Pakistan, p.5, Washington: World Bank. Retrieved from www.worldbank.org/indigenous.

www.independent.co.uk/news/world/asia/unveiled-the-pakistani-tribe-that-dares-to-defy-the-fundamentalists-4557700.html

www.grvol.blogspot.com

Zaidi, A. (n.d.). *Ethnic Cleansing of the Kafirs in Pakistan*. Retrieved from <http://www.gowanusbooks.com/kafirs.htm>.