

Mariam Haider Syed *

PAKISTAN'S BLASPHEMY LAWS: A CONCERN FOR MCCARTHYISM

Abstract

The tension between the right of freedom of expression and the desire among many Muslim majority countries to prohibit blasphemous speech has become a focal point of conflict between Western and Muslim worlds. The proponents of blasphemy laws advocate that such laws maintain social and religious cohesiveness in a society, while the opponents highlight the underlying cause of dissent; the breach of human rights by suppressing religious minorities and hindering freedom of speech. There are three reasons that keep unassailable blasphemy laws a powerful charge in Pakistan. First and foremost, is the close relationship between Islam and State so that any religious offence will easily be construed as a state offence as evident in Article 2 and Article 31 of Islamic Republic Of Pakistan's Constitution. Secondly, the extreme reverence Muslims possess for their religious beliefs and rightly so. Lastly, how such beliefs are often exploited for political gains. Blasphemy laws not only exist in Pakistan but also are present in majority of the Muslim countries including Afghanistan, Iran, Somalia, Saudi Arabia and Nigeria having the same death penalty. This treatise will explore the historical context of blasphemy laws in Pakistan, its potential abuse targeted at individuals for personal enmity and the theoretical perspectives on the issue of human rights in context of blasphemy laws. It must be acknowledged that blasphemy laws in Pakistan are here to stay due to the country's religious environment. Hence, the only viable solution is to discourage the laws being used as a potent tool for malicious abuse and punish the true culprits of the crime.

HISTORICAL CONTEXT OF BLASPHEMY LAWS:

Pakistan formed by Mohammad Ali Jinnah was an independent, inclusive and secular state, which guaranteed equality of all citizenry including religious minorities. Mr. Jinnah's vision was reiterated in his commendable Presidential Address to the first Constituent Assembly on 11th August 1947¹:

“You are free. You are free to go to your temples, you are free to go to your mosques or to any other place of worship in this state of Pakistan,” Jinnah declared. “You may belong to any religion or caste or creed - that has nothing to do with the business of the state.”

Since 1947, vision of Mr. Jinnah was radically altered when General Zia Ul Haq's government came into power in 1977. According to him, Pakistan was created on an Islamic ideology that had to be maintained at any cost. It must be highlighted that his motives were in direct contrast with Jinnah's vision of a pluralistic society.

* *Mariam Haider Syed is a lawyer, who recently graduated with an Upper 2:1 LLB Honors Degree from University Of London. She is the recipient of an Academic Achievement Award for securing the highest aggregate marks in Pakistan for the first four law modules*

At the time of his Presidential tenure, Zia was cunning enough to employ religion as a legitimacy tool to justify his undemocratic military coup d'état.² Consequently, the Islamization program was introduced and soon crept into the legislative arena as well. A constitutional body of Council of Islamic Ideology (Article 228 of 1973 constitution) was created which had a duty to 'advise' the legislature if any law was repugnant to the true spirits of Islam. One of the most radical move towards Islamization of the judiciary was the establishment of Federal Shariat Court whose functions were provided under Article 203D Of Islamic Republic Of Pakistan's 1973 constitution. It had the authority to declare any law as null and void if it was not in conformity with the injunctions of Islam. Critiques argue that the body Council Of Islamic Ideology has been made redundant following the establishment of such courts and should be abolished.

Blasphemy laws in Pakistan are a product of British Colonial Government's Indian Penal Code 1860.³ Indian Penal Code contained a Chapter 15 titled 'Of Offences Relating to Religion' which emphasized on freedom to exercise one's own religion and to be tolerant towards other religious minorities. This was enacted by the British Government for the purpose of gaining legitimacy and order in a religious heterogeneous society, which comprised of Hindus, Muslims, Christians and Sikhs, Jains, and Parsis. It must be stressed that this provision accorded protection to the religious beliefs of all creeds and not just one category of religion.⁴

Moreover, it gave undue weightage to the rights of religious minorities as well. A viewpoint corroborated by **Justice Ali Nawaz Chohan** in the case of **Muhammad Mahmood v State** maybe helpful. He argued that such legislation was passed by the British government to safeguard the religious interests of the Muslim minority in the subcontinent against the majority of the Hindu populace. Contrarily, the amendments that General Zia Ul Haq introduced under chapter 15 of Pakistan Penal Code's blasphemy laws are religion specific as such laws cater only to offenses pertaining to Islam, which is quite contrary to the spirits of the original Section 295 under the Indian Penal Code. Even though, protection of religious minorities is upheld under Section 295-A and Section 298 of PPC 1860 by criminalizing acts intended to insult 'any class' but minorities are not shielded from being exploited under religion specific sections, namely 295-B and 295-C. Only Section 295-B and Section 295-C of PPC 1860 will be discussed in this regard⁵

Section 295-B:

“Whoever willfully defiles, damages, or desecrates a copy of Holy Quran or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment of life.”

Section 295-C:

“Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

Before embarking upon a comparative analysis between how the law existed under the Indian Penal Code and after the amendments, it is imperative to clarify the misconceptions surrounding the law, which take the face of vitriolic criticisms in the contemporary world. In the case of *Muhammed Ismail Qureshi v Pakistan* (PLD 1991)⁶ the judge vehemently passed a significant decision where he eliminated the alternative life imprisonment sentence stating it was repugnant to Islamic injunctions. Hence, blasphemy was equated to apostasy requiring the death penalty as the sole punishment for such an abhorrent offence following the Hanafi school of thought. Following a radical shift in the law by introducing declaration of death as the only mandatory punishment for blasphemy, a light must be shed on a legitimate problem that ensued. The problem was highlighted in *Muhammad Mahboob v State*⁷, where it was witnessed that the number of registration of blasphemy cases had increased drastically ever since the law became stringent. Therefore, it is indicative of how this law can be subject to exploitation. Despite the fact that successive governments have not amended the wording of Section 295-C of PPC 1860, the decision of this case has made it evident that not only does it prescribe death penalty for blasphemers but also it applies to 'all' the Prophets and not specifically to Prophet Muhammad (P.B.U.H). Thus, effectively displacing the criticisms that it only applies to one Prophet. A point of contention that usually arises on the issue of blasphemy being equated with apostasy (Hadd Offence) is that how can it apply to Non Muslims as the application of Hadd Offences is solely limited to the Muslims. Moreover, Hadd Offences involve severe punishments requiring an extremely strict and higher evidentiary threshold which the blasphemy laws lack in Pakistan. According to a theologian Ibn Taymiyyah, the intention of the accused must be taken into account considering the strict punishment that follows if someone is accused of blasphemy. Alternatively, Ibn Abidin, an Islamic scholar, argues that the alleged accused shouldn't be executed if he repents and enters the folds of Islam again. Therefore, this is an area, which the judiciary of Pakistan needs to address so that justice is rightly served on people who are actually guilty of such a heinous crime.

1. MISUSE OF BLASPHEMY LAWS IN PAKISTAN:

1.1 Lack of the Mens Rea Requirement:

A comparative analysis must be made in relation to the laws that were inherited from Indian Penal Code and amendments made by Zia Ul Haq. In the original Section 295 of pre Zia blasphemy laws, intent of the alleged accused was a vital pre-requisite which had to be 'deliberate' and 'malicious' for an individual to be liable under this section. The case of **Punjab Religious Book Society v State** is illustrative in this regard. It held that the alleged blasphemer would only be convicted if there were a conscious and a spiteful intent on part of the accused to insult the religious feelings of another person. The importance attached to the Mens Rea requirement in this case is in stark contrast to the current blasphemy laws, which contain no reference to the intention of the accused making it a strict liability offence.⁸ The absence of mens rea requirement in Section 295-B, 295-C and 298 A has led to lengthy trials and numerous convictions which otherwise would have failed under the old law.

The absence of an intent requirement may lead to drastic ramifications as highlighted in the case of **State v Muhammad Arshad Javed**⁹ where it involved the conviction of

a ‘mentally imbalanced’ person by the trial court. Soon after, the High court set aside the decision and acquitted the alleged accused on the basis of an ‘insanity defense.’ Thus, it is apparent that the trial court in this case in particular and other similar cases have ignored the applicability of an insanity defense under Pakistani law, which draws its inspiration from the M’Naghten rule.¹⁰ It must be noted that a myriad of blasphemy cases are concluded at the trial court level and they have failed to discharge their duty to promote justice. In addition to this, a major factor along with a lack of mens rea, is the dearth of definitional specificity making Section 295-C subject to diverse interpretations based on subjectivity.¹¹ This has an effect of being used as a license by many to feed on their lusts for personal vendettas as it was evident in case of **Ayub Masih v The State** where the Supreme court noticed that the prosecution desired to acquire the land of Ayub Masih and his father after falsely framing them under Section 295-C PPC 1860. Undoubtedly, judiciary should punish the ‘true’ transgressors of the blasphemy laws but they must be wary of the individuals, which invoke this section for ulterior motives.

2.2 Asia Bibi V The State

This case is illustrative of the religious ideologies surfacing the social and moral fabric of Pakistan and the dire ramifications that ensue once a person is accused of a blasphemous charge. The longstanding legal principle ‘Innocent until proven guilty’ holds no regard in the context of blasphemy cases and that is evident by the prevailing notion of extra judicial killings and vigilante justice.

Asia Bibi, a Christian, was arrested in 2009 after she triggered a dispute with two Muslim women over taking a sip of water from a communal cup while harvesting a hot field. The Muslim women accused Asia Bibi of committing blasphemy by uttering derogatory remarks in midst of an acrimonious quarrel. In 2010, she was convicted and sentenced under section 295-C of the 1986 blasphemy law.¹² The Supreme Court in its much-anticipated judgement in **Asia Bibi v The State**, overturned former judgments given by the Lahore High Court and the trial court by acquitting her on the blasphemy charges brought against her. The Supreme Court of Pakistan acquitted Asia Bibi on the following seven grounds;¹³

1. There were over 25 witnesses to the incident, but only two, who were involved in the argument, came forward to accuse Asia Bibi.
2. First Information Report was registered after five days of the alleged incident. As the Supreme Court stated that in absence of any reasonable explanation, it is the court’s duty to disregard prosecution’s arguments if there is a delay in the registration of FIR. This is because it challenges the verity of the prosecution’s testimony and resultantly gives the benefit of doubt to the accused. Furthermore, it is believed that the FIR that is registered after conducting an inquiry loses its evidentiary value.
3. Witnesses in the case gave contradictory statements. Following the decision in **Muhammad Ismail Qureshi V Pakistan**, blasphemy is deemed to be a Hadd offence, which means the Islamic method of testing the credibility of witnesses known as Tazkia- tu - Shahood must be applicable, which requires a very high bar of standard of integrity. In its decision the Lahore High Court judges acknowledged the blatant disregard of the principle of Tazkia-tu-Shahood by the trial court. Ironically, the High Court judges followed similar steps and ignored

the applicability of the Tazkia Tu Shahood. Their excuse was that there was no law prescribing a procedure for a detailed application of the principle of Tazkia-tu-Shahood. The court's argument was fallacious as such legislation did not exist at the time when the Federal Shariat Court applied this principle and decided to withdraw the Hadd punishment in the **Sanaulah** case as well. . Moreover, the Federal Shariat Court in the same case gave a comprehensive procedure for the application of Tazkia Tu Shahood so it was obvious that courts willfully disregarded the well-established precedent.¹⁴ This deliberate ignorance might be attributed to the fact that the judiciary occasionally gets intimidated by the religious hardliners in Pakistan as many of the judges who dared to uphold justice have been murdered. The Supreme Court of Pakistan, however, relied on this principle and casted doubts over the credibility of the witnesses who failed to satisfy this test.

4. The complainant was confused about when the alleged crime had occurred.
5. There were inconsistencies in the statements concerning the FIR and arrest.
6. Lies claiming that no one fought with Asia Bibi.
7. Relying upon Article 37 of Qanun e Shahadat Order 1984, the Supreme Court was of the view that the extra judicial confession of Asia Bibi had no weightage since it was extorted from the alleged accused in an intimidating environment where she was under undue influence.

Thus, concluding that the blasphemy law is a strict liability offence, which requires the prosecution to prove the case 'beyond reasonable doubt.' It was observed that in the present case, the threshold of proving the offence 'beyond reasonable doubt' was not satisfied.

After the acquittal, there were nation wide protests by Tehreek-e- Labbaik demanding the execution of Asia Bibi. However, she managed to take asylum in France. The religious zealots in Pakistan seem to consider it their religious obligation to murder anyone who is 'accused' of blasphemy giving rise to vigilante justice. They take pride in 'killing in the name of Islam' and show no remorse as illustrated by the mob lynching of Mashal Khan in 2017. Given the conservative ideologies dominating the social fabric of Pakistan, it is rare for someone accused of blasphemy to return to public realm. Furthermore, those who support the alleged accused are silenced to death as well. This is exemplified by the assassination of Salman Taseer by Mumtaz Qadri; former Governor of Punjab, on grounds of his incessant support for Asia Bibi's case and the politician's reformist stance regarding the blasphemy laws.¹⁵ Along with him, Shahbaz Bhatti, former Religious Minorities Minister, was executed as well for vocally supporting the alleged blasphemer.

The murder of the Governor was praised by majority of the population in Pakistan as they declared Qadri their hero. This once again reflects the ignorant attitudes of the public. In fact, a Mosque was built in Islamabad named after Mumtaz Qadri, who was of the opinion that murder of such a person was 'legal.' Therefore, the laws have produced an atmosphere of vigilantism justifying the individuals who kill in the name of Islam. However, Mumtaz Qadri was hanged to death by virtue of the Supreme Court's decision in the case of Malik Muhammad Mumtaz Qadri v State.¹⁶ This reflects upon the attitudes of the judiciary, which disapprove of extra judicial killings and call for matters to be decided by the courts of law in the country. The decision upheld the settled principle of the independence of the judiciary that 'no one can be a judge in his own cause.' The power to pass and enforce judgments must remain with

the impartial judiciary who has the power to interpret the constitution.

It is quite evident that any call for reform regarding blasphemy laws is nearly impossible in a democratic yet conservative country like Pakistan and judiciary must be wary to rule out cases where false charges are brought against people for ulterior motives. This has been eloquently emphasized by a Supreme Court judge in **Malik Muhammad Mumtaz Qadri v State:**

“Commission of blasphemy is abhorrent and immoral besides being a manifestation of intolerance but at the same time a false allegation regarding commission of such an offence is equally detestable besides being culpable. If our religion of Islam comes down heavily upon commission of blasphemy then Islam is also very rough against those who level false allegations of a crime. It is, therefore, for the State of the Islamic Republic of Pakistan to ensure that no innocent person is compelled or constrained to face an investigation or a trial on the basis of false or trumped up allegations regarding commission of such an offence.”¹⁷

Moreover, punishment for falsely accusing someone of an offence is imprisonment for 2 years, payment of fine, or both as laid down in Section 203 of Pakistan Penal Code 1860.¹⁸ It must be underscored that there is a dire need of a severe punishment for individuals falsely implicating others in blasphemy cases as it can effectively act as a deterrent by reducing a bulk of fallacious cases brought to the courts.

2. BLASPHEMY LAWS AND PAKISTAN’S HUMAN RIGHTS OBLIGATIONS:

John Locke had given human rights their prime importance in a state. He stressed that human rights are *natural* and *inalienable*. They form the fundamental cornerstone of any society that guarantees a right to a peaceful existence without individuals waging a ‘war of all against all.’ As Hobbes had correctly asserted, human nature is driven by self-interest. Therefore, its integral to have a conception of human rights in a country’s constitution as otherwise the world would be in a state of chaotic nature.

Certain perspectives will be explored in relation to the commonly held presumptions that human rights are universal and take precedence over other values. Such presumptions are unacceptable for the religious strata of society who comprehend the concept of human rights in context of their religious beliefs. These perspectives will explore the reason why many Muslims are convinced that blasphemy laws do not violate any human rights, which is contrary to the opinion of the Western World.

The Universal Declaration on Human Rights 1948 lays down equal rights for humanity irrespective of race, religion, ethnicity, which are ‘universal,’ ‘inalienable,’ and ‘indivisible.’ Jack Donnelly, an ardent advocate, further elaborates on this notion by stating that they are ‘the highest moral rights’ which take precedence over any thing in the human world.¹⁹ The well recognized issue with this claim is whether such universality can be accorded in practice given the culturally diverse world one lives in. Many of the worlds cultures associated with religions are ancient, widespread, and

have firm religious beliefs, and it is crucial to realize that when some human rights norms will conflict with some requirements of religion, religious zealots will prefer to follow their religious beliefs without paying heed to human rights standards in cases of conflict. United Nations Economic, Scientific and Cultural Organization (UNESCO) investigated this particular question. In his introduction to the published results of the investigation, Jacques Maritain argued that the global consensus on human rights is impossible in practice as the claim that human rights takes precedence over other values is doubtful to be a valid

2.1 The Challenge Of Internal Dialogue:

The notion of 'internal dialogue' implicitly stresses that the concept of human rights must be developed in accordance with the different cultures prevailing in numerous countries. So, it perceives the theory of 'universality' of human rights as a spurious practice and attempts to show why people flagrantly violate laws. For instance, Article 19 of the Constitution of Islamic Republic Of Pakistan 1973 states 'every citizen shall have the right to freedom of speech and expression subject to any reasonable restrictions imposed by law in the interest of glory of Islam, ' '20 human rights supporters might perceive the reference to the Islamic criteria as a claw back provision which threatens the notion of universality of human rights. On the other side of the coin, Muslims would be more than content to follow human rights principles that accord to their religion. To do otherwise, would imply that they are not following their religious duty adequately. This is one of the reasons why blasphemy laws are not seen to violate Article 19 of the 1973 constitution which itself legitimizes it by imposing 'reasonable restrictions.' Religious enthusiasts espouse death penalty for blasphemy laws simply because it is based on the Hadith of Prophet Muhammad (P.B.U.H). Therefore, Muslims do not take into consideration whether the right to life is being infringed or not when it comes to their religious obligations. However, developing human rights according to different cultures is in itself a problematic approach that can give rise to serious conflicts and threaten the world peace.

There are certain theoretical perspectives regarding this matter. As per Norani Othman, one has to acknowledge that there are conflicts between international standards of human rights and Islam. Muslims, she argues, will follow the standards laid down by Islam, as human rights activism must be grounded in local culture so people readily follow them. Therefore, the advancement of human rights in Islamic societies requires a religious rather than a secular approach because international, secular concept of human rights was formed when the Western culture was hegemonic. Successful implementation of human rights will occur once they accord with people's religious beliefs. Secular approach to human rights fail in many Muslim majority countries since it requires Muslims to subordinate their religion to merely human and Non Islamic criteria which is intolerable to them. Therefore, blasphemy laws as Hadd Offences will be given utmost priority by many Muslims in Pakistan over secular standards of human rights. Due to cultural and religious legitimacy granted to blasphemy laws, such laws will remain in Pakistan. The only aspect that the judiciary can work on is to prevent the misuse of such laws for personal vengeance.

The applicability of customary international law in domestic courts depends on the limitations laid by the constitution. According to Article 227 of the 1973 constitution,

any law either domestic or international will be declared void if it is repugnant to Islamic injunctions. Therefore, Pakistan has effectively established that Islamic Law takes precedence over international human rights as evident in the case of Sindh High Court in *Najib Zarab Ltd V The Government of Pakistan*²¹.

Pakistan is also a part of the fundamental human rights treaties, including the International Covenant on Civil and Political Rights, having ratified the treaty in June 2010. This treaty requires Pakistan to ensure upholding human rights of its people without any discrimination.²² As per Article 9(1) of ICCPR, nobody should be subject to arbitrary arrest or detention and by virtue of Article 9(2), must be informed of reasons of the arrest along with the charges against him/her. Blasphemy in Pakistan is a cognizable offence as per section 54 of CRPC²³ 1898, which means an arrest can be made without a warrant and the alleged accused could be investigated as well. In practice, due to lack of legal checks, police violates Article 9(1) of ICCPR and the alleged accused is unaware of the charges brought against him/her when he/she is being arrested. Moreover, Article 9(3) of ICCPR specifies that individuals are entitled to a right of fair trial within a reasonable time as stipulated by Article 10 of Pakistan's Constitution as well. According to section 497 of CRPC 1898, blasphemy is a non-bailable offence in Pakistan which means a bail is not granted to the alleged accused as of right but at the court's 'discretion.' This further exacerbates the situation as illustrated in the blasphemy case of **Murad ur Rehman v The State** where a bail was sought on grounds of statutory delay in the conclusion of a trial but was blatantly refused infringing the right to a fair trial of an individual.

Additionally, Article 18 of the same treaty guarantees freedom of thought, conscience and religion in tandem with Article 20(2), which prohibits discrimination on the basis of religion, or race. Thus, Pakistan along with its own domestic law has a duty to protect its religious minorities from being exploited and suppressed. Freedom of speech embedded in Article 19 of ICCPR is without any restrictions in contrast to Article 19 of the 1973 constitution. Contrary to the popular opinion of the West, Pakistan does not consider the issue of freedom of speech when it comes to blasphemy cases. This may be attributed to the fact that the Article itself justifies it by imposing reasonable restrictions in 'glory of Islam' so the question of freedom of expression never arises in the courts of our land.

CONCLUSION

Islamic Republic of Pakistan, governed by its religious ethos, will not abolish its blasphemy laws enshrined in Pakistan Penal Code 1860. This is because the legislature does not have an autonomous decision making power in this regard as it has to take pay regard to the views of the religious community in Pakistan. Religious fanatics of the country have silenced attempts made by certain members of the society voicing reforms. Therefore, it is wise to acknowledge that blasphemy laws, a sensitive topic, in Pakistan will continue to be a part of the country as it is. The government may initiate a training curriculum to educate the religious hardliners on the negative role vigilante justice can play in the society that corrupts the social and moral fabric of the society. Through the training curriculum, it must be underscored that the excuse of 'killing in the name of Islam' leads to a travesty of justice as it is the responsibility of the courts not the public to convict the blasphemers by prescribing death penalty as a

punishment. Therefore, it is the sole responsibility of the judiciary to prevent travesty of justice by punishing the genuine transgressors of law as well as addressing the loopholes that lead to exploitation of the sacred law in Pakistan.

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