

Laws that insult reason and justice -by Peter Jacob

by admin

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After a considerable wait for some initiative on the part of the parliamentary sub-committee reviewing blasphemy laws and the concerned ministries, Sherry Rehman moved a bill in parliament on November 24, 2010. Unlike the bill she moved against the Hudood Ordinances during her previous tenure as a member of the National Assembly (MNA), the current bill does not seek to repeal the five sections of the Pakistan Penal Code known as the blasphemy laws. It rather outlines some safeguards to stop the abuse of law and religion. Therefore, the bill proposed 12 amendments in both the Pakistan Penal Code as well as Criminal Procedure Code.

It is not known so far when parliament will discuss the bill, which will largely depend on the Pakistan People's Party (PPP) leadership having enough courage to do so. Tabling of the bill is nevertheless a breakthrough that the government can rely upon. Especially, the credentials of the mover of the bill as a principled, independent and conscientious voice can help the treasury if they decide to make any meaningful progress on this highly important issue.

The leadership of the ruling parties in Punjab and the Centre neither took a position in favour nor against the bill but some ministers and parliamentarians from different parties expressed their support for and against any amendment to the blasphemy laws. Importantly, civil society

organisations and media have begun to take the issue to the common people, while certain religious organisations have taken a tough position against any amendment, as expected.

Well-meaning and courageous people who dare to ask for the blasphemy laws to be repealed or changed are met with accusations of themselves being guilty of committing blasphemy, something the government should have taken notice of because then there will be no discussion. Branding the demand for repeal 'sacrilegious', religious outfits forced some campaigners to limit their argument even around the misuse of the law, let alone taking a position on an inherently bad piece of legislation.

The point that our religious parties seem to ignore is that the fault lies within the content and intent of the blasphemy laws themselves. The assumptions and the very scheme of these laws are manifested to be at cross-purposes with justice and the rights of the citizens. The manner in which sections 295B and 295C, 298A, 298B and 298C were inducted in the Pakistan Penal Code also shows that the result could not have been different. Talking about the text first, the formulation and the content of the above-mentioned sections violate four major safeguards in criminal justice, i.e. not guilty until proven, clarity in law, the verifiable element of intent in a crime and parity of citizens before the law. On the contrary, the law is framed with the corresponding faulty assumptions.

The first assumption is that the offence is committed already and it merely needs to be punished, hence no safeguards were considered necessary by General Ziaul Haq's draftsmen while making these extraordinary amendments in the law, whereas criminal law around the world has inbuilt verification methods and procedures for such exceptional legislation. These laws create and nurture a mindset of religious insecurity, ignorance and self-righteousness that facilitates a primitive practice of crime in the name of religion. Thus the procedural amendment, about investigation by a high ranking police official in 2004, failed to yield any results in the area of application of the law.

The second assumption is that the offence is well defined, therefore there is no need to define what constitutes the offence of insult. These sections speak only about the mode and manner the supposed insult could be offered and do not define what constitutes the offence of insult. The very draft of the blasphemy laws ignores that the concept of insult and respect varies from person to person, culture to culture, and from one social group to the other. This lacuna could not have brought a result any different from what we see. True that the civil law defines defamation and insult, but that is civil law, which does not carry heavy penalties like a number of years of imprisonment and capital punishment. Moreover, civil law does not deal with a matter as sensitive as offences relating to religion.

The third assumption is that the faith of an overwhelming majority in the country needs protection of the law against any possible insult while the religious minorities can do without it. Not that other faith groups need similar laws but the blasphemy laws failed to see that the country had other faith groups who do not subscribe to the religion under question, hence the other faiths needed to be treated as an exception. Some Islamic scholars categorically pointed out the irrationality of application of the blasphemy laws on non-Muslims.

It is very clear that you cannot have an ambiguous and illogical text of a law and not have problems with justice and application of the law. The blasphemy laws became a tool for hate crimes and incitement. With these laws in place, the people of Pakistan cannot see an end to their worries regarding religious intolerance because injustices under and by the law perpetuate and form a legacy that is harder to remove.

Blasphemy, gustakhi and shutm, all three are borrowed terms. The Penal Code of Pakistan calls this chapter 'Offences relating to religion'. Not all sections of the chapter but only sections 295B and 295C, 298A, 298B and 298C, qualify to be termed 'blasphemy laws' because they are religion-specific and the penalties surpass far beyond the damage of the supposed crime, i.e. 'hurting the feelings' of citizens.

It is important to note that four out of five additions to the penal code came through presidential ordinances of a martial law administrator — later validated through the 8th Amendment to the constitution that legitimised General Ziaul Haq's illegal rule and actions; hence this whole process was thoroughly undemocratic. However, the sequence of their introduction to the law itself is revealing.

The first induction was section 298A in 1980 that sought to punish any derogatory remarks against any wife (ummul momineen), members of family (ahle-e-bait), first four caliphs (khulfa-e-rashideen) or companions (sahaba) of Prophet Mohammad (PBUH) with three years of imprisonment and fine or both. This section, prima facie, aims to deal with inter-sectarian issues and hate speech. However, 1980 was the year when Zia planted militant sectarian organisations of Sunni background after a reaction from the Shia community against the Zakat and Ushr Ordinance. The apparent intent of this law was contrary to his action. The Iranian Revolution was just one year old and the anxiety of the neighbouring dictatorship under Zia could be the reason for legislation on sectarian lines. The other noticeable aspect is that the Prophet Mohammad's (PBUH) respect was not yet considered for legislation till this time, in fact his third year in power.

The second induction was 295B in 1982 that dealt with the offence of defiling of the Holy Quran, which was punishable with a life sentence. There is no evidence that any situation demanded this law to be promulgated.

Sections 298B and 298C came in 1984, which banned misuse of Islamic epithets, etc., reserved for Muslims and calling himself a Muslim or preaching or propagating his faith by any person belonging to the Ahmedi faith. These two amendments came in the 10th year after parliament led by Mr Zulfikar Ali Bhutto declared Ahmedis non-Muslims. Zia wanted not only to appease certain clerics but also wanted to show that he could compete or rather go further than Bhutto in persecution of the Ahmedis. Majlis-e-Khatm-e-Nabuwat claimed these laws coming into existence as their victory later on, which means they must have made some contribution to this portion of the blasphemy laws.

The most abused section, 295C, dealing with the use of derogatory remarks, etc., in respect of Prophet Muhammad (PBUH), was the latest addition in 1986. While Mohammad Ismail Qureshi, a lawyer of Majlis-e-Khatm-e-Nabuwat claimed responsibility for the draft, a Jamat-e-Islami

member of the National Assembly moved the bill in parliament. It carried the death sentence or life imprisonment as punishment. The Federal Shariat Court in 1991 cancelled the option of life imprisonment after a petition asking for the same.

The people are made to believe that it is only section 295C that the clerics are trying to protect, whereas these laws incrementally inducted in the penal code show an irrational pattern and order as far as respect of the personage the laws sought to protect is concerned. If the Sharia was clear on the subject, why was it not known on the very first instance of legislation? Section 295C should have come first, not last.

Dozens of innocent lives lost, properties looted, houses set alight, people displaced, uncalled for rigours of prolonged litigation and years of detention took place and thousands of people have suffered due to these laws. These incidents are blots on our justice system and conscience as a nation, something that the independent and free judiciary should look into, but not to the disadvantage of the already suffering masses.

It is time that Pakistanis should move to 'understand' not only the laws and policies that govern them but also their consequences. The consequences that we have seen, over and over again, are in the form of religiously motivated lawlessness. True that the laws have had extremely adverse effects on religious minorities, but Muslims too have suffered under these laws in huge numbers. Can any democratically elected government allow citizens to be kept hostage to the whims of a handful of organisations trying to keep people blind to the facts in the name of faith? If so, can they even justify their claim about working to eliminate extremism from the country?

The bill moved by Sherry Rehman has brought an opportunity to rationalise the blasphemy laws. The government and opposition parties can even try and improve the bill by their input in parliament. There is no doubt that the future of this bill holds the key not only to the environment of religious freedom for all citizens but also to the future of democratic development.

Source: Daily Times