

# Shamed at Gojra

## No Faith in Law



Mehreen Zahra-Malik

We are grappling now not just with a bad law but with enduring attitudes that ensure that, in theory, even if this law were removed or changed, people would continue to be harassed and even killed.

Should the law concern itself with blasphemy?

Following the Gojra massacre where eight Christians were killed after days of tension sparked by the rumoured desecration of a Quran, this question, as well as the debate on the blasphemy laws, whether they should be retained, reformed or abolished, has once again assumed major socio-legal importance. The arguments which characterise this debate raise fundamental issues about the relationship between law, religion, politics and culture in Pakistan and manifest some of the pivotal conflicts of Pakistani society today.

Major justifications for retaining laws against blasphemy, besides the obvious duty of a Muslim to protect the faith, include arguments about the relationship between religion and morality as well as the maintenance of public order. Both arguments reveal the general direction the Law has taken in this country. Both are also logically and empirically flawed.

On talk shows and in the vernacular press is repeatedly reproduced Lord Devlin's famous attack on the position which he characterises as a separation of law and morality. Lord Devlin's justification: that 'without the support of the Churches the moral order, which has its origin in and takes its strength from Christian beliefs, would collapse', that 'no society has yet solved the problem of how to teach morality without religion', and that 'without the help of Christian teaching the law will fail'.

In Pakistan today, Devlin's ghost speaks whenever the subject of blasphemy is raised. The law has to protect Islam because that means protecting 'our system of morality'. But for such a justification to be tenable, it cannot stop at the argument about the enforcement of morals alone. It must go one step ahead and defend legal intrusion by showing that religious faith, and therefore moral beliefs, are actually sustained by such laws. Such a defence would be difficult to maintain for several reasons.

One, it doesn't seem that blasphemy laws have had much impact one way or the other upon the level of religiosity. Two, the protection of religion for moral purposes is unfeasible in a society where some, even a few, base their morality – if it is accepted that morality does ensue from religion – on a religion other than the dominant one. Indeed, there is enough evidence in Pakistan of the mischief created in the name of blasphemy.

Most importantly, the argument about moral utility provides no rationale for restricting criminality only to abusive and offensive attacks upon religion. 295C of the Pakistan Penal Code 1860 stipulates that any person who 'by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or indirectly' defiles the name of the Prophet Mohammad (pbuh), is liable for blasphemy, and in addition to a fine, shall be punished with the death sentence or imprisonment for life. Such a law then stifles even the sober, balanced and well-reasoned critiques of societal attitudes and mores, which is an intolerable restriction upon freedom of inquiry, and clashes directly with the norms of democracy. In this case, then, the defence of a blasphemy law in terms of its moral utility seems entirely irrelevant.

The second major argument for why the law should concern itself with blasphemy has to do with maintenance of public order. This is one of the most commonly cited reasons for limiting freedom of expression, accepted not just by theologians and elements from the right but also by political thinkers such as JS Mill and John Rawls. However, if the law has to concern itself with religious expression because it may provoke breaches of peace, this does not justify a law that concerns itself specifically with blasphemy. Thus, those who speak of reform or of abolishing the existing law of blasphemy are no less concerned about threats to public order than those in favour of the law. What they are arguing is that such threats should be dealt with not through blasphemy laws but by better laws of public order in general.

It should be obvious, then, that while the defence of a blasphemy law in terms of its moral utility claims too much, appeals to public order prove too little.

Indeed, the public order argument seems even more problematic given that since its enactment in 1986, 295C has frequently been misused to intimidate or punish religious minorities and to settle personal scores. Ironically, many moderate Muslims have also fallen victim to the blasphemy laws. The mandatory capital punishment accompanying the charge is a matter of controversy even in Islamic circles. One could even argue that the very existence of laws regarding blasphemy promotes antagonism towards minorities and gives Muslim fanatics a warrant to take the law into their own hands.

In many mosques, it is taught that those who commit blasphemy deserve to be killed; that protecting a blasphemer is as bad as blaspheming itself. One can be arrested for blasphemy without a warrant and imprisoned without bail. Many people accused of blasphemy have been killed while standing trial and lower courts have invariably awarded the death sentence to the accused because of threats from extremists groups.

At a broader level, then, the problem is about a societal attitude that creates bad laws and also nourishes their misuse. Consider that in 2000, Lahore High Court Judge Mr. Justice Nazir Akhtar publicly stated that it was the religious obligation of Muslims to kill on the spot anyone accused of blasphemy; for a blasphemer, there was no need for any legal proceedings. The statement reflects the extent of judicial bias on the subject. It also suggests how the Law tragically stands for certain societal attitudes. The state and its branches have, for their own reasons, fallen for the agenda of the right and created a schema which works to the advantage of the right, such that we are grappling now not just with a bad law but with enduring attitudes that ensure that, in theory, even if this law were removed or changed, people would continue to be harassed and even killed.

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As harsh as this may sound, the Pakistani state and public must acknowledge that characteristics usually connected with fascist movements are among some of those visible in extremist politics in Pakistan today: the systematic manipulation of ignorance, victimisation of members of a particular community, the use of unconstitutional tactics against certain groups, and so on. Indeed, Gojra and similar incidents are a classic example of the political use of people's gullibility to engender extremism. The Muslims who were mobilised in Gojra accepted unreasoned claims by the inciters of violence as well as the bizarre ethical argument that these claims actually justified the killing of people.

As complex and multi-dimensional as the situation is, a solution must come in the form of single-minded opposition by the public and the government. Obscurantism thrives on lack of education and awareness, such that to the traditional problem of illiteracy in Pakistan has been added the danger of slanted instruction. The government must intervene on this count. As recommended by Amartya Sen and others regarding extremist politics in India, the weakest link in the extremist chain in Pakistan too is a basic reliance on ignorance. That is where a confrontation is most necessary.

At a general level, this would mean that political authorities have to stop appeasing the right. Indeed, the appeal of fundamentalisms of all kinds in Pakistan has grown alongside the demise of the moral authority of the state. Around the world, there is a recrudescence of religion which can be partly attributed to the moral meaning of existence which modern institutions so thoroughly tend to dissolve. The quandary of legal methodology even for developed democracies is how to combine resurgent pre-modern belief with an acknowledgment of the need for rationalisation and accommodation among incommensurate interests.

In Pakistan, where we still have to figure out the basics of law, politics and religion, blasphemy and laws regarding it could very well present one of the most decisive indicators of the future cultural and political direction of the state. By the same token, the crisis offers a new opportunity to retreat from the discourse of double standards and bring home the notion of the rights of every Pakistani as a Pakistani. In a country about which it is commonly asked whether it is possible to be both a non-Muslim and a Pakistani, perhaps a profound re-imagination of the nation itself is required.

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