

IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS OF RELIGIOUS MINORITIES: A REVIEW

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Abstract. The situation is always complicated when a religious, cultural and political majority and minority, both are involved in the act of blasphemy or accusation of blasphemy in a specific situation. From the perspective of safeguarding the rights of minorities this can be further classified into two categories. First, a majority community member commits the act of blasphemy against a minority, and second are minority community member is wrongfully accused of committing blasphemy against the majority religion, cultural values or political philosophy. Every instance of blasphemy involving a minority class affects the society more than where only majority class is involved. This paper is a brief overview of human rights' violation of religious minorities in India, Indonesia and Pakistan in context of blasphemy and blasphemy laws. It is the need of time that these countries should adopt proper legal and social measures to address the grievances of religious minorities, especially Christians in Pakistan, Ahmads in Indonesia, and Muslims in India.

Keywords: *blasphemy, religion, minorities, human rights, violation*

Introduction

The UN General Assembly, by resolution No. 47/135, has adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities on 18 December, 1992. The protection of existence and the national or ethnic, cultural, religious and linguistic identity of minorities is responsibility of a State according to this declaration. The State is liable to protect the minorities within its territory and shall adopt appropriate legislative and other measures to achieve those ends (UN, 1948). The minorities, without interference or any form of discrimination, have the right to enjoy their own culture and to practice their own religion, freely. The minorities have the right to participate effectively in cultural, religious, social, economic and public life according to the Article 2. This declaration emphasizes in Article 4 that on States to take measures in a way that the minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. This declaration provides with the protection of minorities and protection of their Human Rights.

The religious rights of minorities are separately mentioned as well and also they are included in the basic Human Rights. It is important to keep in mind that some minorities are classified solely on the basis of religion and their one and only interest is protection and preservation of their religion (Gilbert, 1997). This is a group of people with the distinguishing feature of a separate and un-identical religion than the majority of the population. After the emergence of Nation State, a religion cannot be specified as a minority religion at worldwide level. There are people following a religion, at some

places they are in majority and at some places they are in minority. For example the Muslims are in majority in Muslim majority and Islamic countries and they are in minority in western countries and other countries. The Christians are a majority in countries like United States, Russia, European countries, and South American countries but they are in a minority in countries like India, China and many other countries. One important point to keep in mind is that the population of a country plays a very vital role in this phenomenon. The numbers of Muslims in India are more than the population of many Muslim majority and Islamic countries but still they are treated as a minority in India. Same is the case with number of Christians in India and China, the Christian population is more than many Christian majority countries of Europe but still they are a minority in India and China. While analyzing this whole phenomenon, the demography of a specific country or a region must be considered and kept in mind.

Results and Discussion

The recognition of the rights of minorities is generally considered to take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between the people who follow a religion or a culture and those who don't, it is important to foster a climate of mutual tolerance and respect between different communities. The minorities should be allowed to have permission to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries. The rights of these religious communities to establish and maintain freely accessible places of worship or assembly, organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, solicit and receive voluntary financial and other contributions should be respected and well protected. They can be allowed to engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom.

The minorities should have a right to give and receive religious education in the language of their choice, whether individually or in association with others. The parents should be at liberty to ensure the religious and moral education of their children in conformity with their own convictions. There should be appropriate institutions for the training of religious personnel. The religious minorities at individual level and at community level should have the right to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief. The religious faiths, institutions and organizations should be allowed to produce, import and disseminate religious publications and materials. The religious communities should be allowed and to be encouraged to participate in public dialogue, including through the mass media (These rights are first documented in 1886 at Vienna and a part of Concluding Document of 'The Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe').

It was held in *Otto-Preminger-Institut v. Austria* (Council of Europe, 1994) by the European Court of Human Rights that those who choose to exercise the freedom to

manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State. It is the responsibility of the State to protect the religious sensibilities of the all the religious groups even if it is inferred with the freedom of expression of others. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them. Especially in recent times the State is considered more responsible for the religious and cultural rights of their minority population. There is always a wave of some sort of discrimination in the world and it affects many, mostly the minorities. The connection of blasphemy with minority population in a Nation State is of two types. The first one is where blasphemy is committed by someone who belongs to majority population against the beliefs of minority population. The Muslims are in a minority in different European countries and in North American countries. There were different instances where someone had attacked on the religious beliefs of the Muslims and committed an act of blasphemy against Islam.

There is no denial of the fact that acts of blasphemy were also committed by a member of majority population against their own religion, culture and beliefs. But the matter is more sensitive when the acts of blasphemy were committed by a member of majority against the minorities. There is a very simple and logical explanation for this. The minorities are already in a comparatively small number and somehow trying to protect and keep intact their separate identity and cultural values against the majority religion and cultural values. They are already feeling insecure by the influence of majority on their daily lives. One very common and most observed example worldwide is the celebration of Christmas. Whatever one may say, Christmas is purely a religious festival that basically celebrates the birth of Jesus Christ. It is strictly related to Christians and Christianity. Though Christianity is the majority religion in this world, the celebrations of Christmas are not just related to Christian majority countries or to the Christians anymore. It is an event celebrated in different ways. The celebrations of Christmas can be observed in not only Christian majority countries but also in other countries, even at some level in the countries which are completely not-religious in nature. It may be called and considered as a cultural phenomenon but it has its basis in religion and it cannot be changed. The celebrations of Christmas all over the world are a very obvious example how majority religion or culture can influence the whole world at some level. The same is the case when it comes to the connection and impact of majority on minorities in a society. The minorities are always insecure at some level and need to have a guarantee of the protection of their rights by the State.

The act of blasphemy committed against the minorities' religion or culture is not only something which is just against the minorities but it can harm the whole social fabric of the society. There are videos circulating on internet and social media where minorities are forced to act against their religious and cultural values. There are often videos from India where Hindu extremists force Muslims to speak ill against Islam. They were often asked to utter blasphemous content against their own religion and then followed by a beating or a murder. These kinds of videos sometimes make to mainstream media but sometimes just been uploaded and seen at different social media

platforms. The acts of blasphemy against minorities can cause a strong reaction by minorities but always end up damaging themselves more. The examples in India are very obvious where in 1992, Muslims stood to save a mosque from destruction by Hindu extremists and ultimately became a victim of hatred all over India. Same happened with Sikhs, when their sacred places were invaded by Indian Army in 1984. Keeping aside the rationale provided by Hindu extremists behind these acts, whenever the sanctity of a religious place belonging to a minority is attacked, the minorities which are already smaller in number and comparatively weaker, forced to think about the value of their own existence and their role in a multi-religious and multi-cultural society.

The act of blasphemy is sometimes committed against the minorities with the intention that it may go unnoticed and the minorities will not react against it. The other type of involvement of act of blasphemy against the minorities is where a member or a group of people from the minorities blamed or accused of blasphemy against the majority religion. There are countless examples of different countries where a member of a religious or cultural minority was accused of committing blasphemy against the majority class. These situations are particularly harmful where the minorities are most of the time wrongfully accused of this kind of act because of other reasons and ulterior motives. By the time they are proved innocent by the court of law, they have lost a considerable part of their lives behind the bars.

Pakistan is one of the countries with very strict and well defined laws against the act of blasphemy. The strict law has refrained many from committing the heinous act of blasphemy but on the other hand the law has been misused against the non-Muslim minorities by the Muslim majority. The most recent example is of the case of Asia Bibi (Court of Pakistan, 2018). She was a Christian lady, who was ultimately acquitted by the court of law after a long period of time. The final judgment of the Supreme Court of Pakistan expressly declared her innocent. The reason behind the whole case was a mere disagreement between some Muslim ladies and Asia Bibi. This disagreement ultimately led to a charge of blasphemy and a lengthy litigation. The charges and act of blasphemy committed by Asia Bibi never been proved and she was acquitted in the end. In the case of Ayub Masih (Court of Pakistan, 2018), a Christian was wrongfully accused of blasphemy by his Muslim neighbor who wanted to acquire his property for personal gain. Then there are some more examples from Pakistan where a mob has attacked to deliver justice on those who had committed blasphemy and ended up destroying properties and even killing the innocent.

In 2009, six Christians, including four women, were burnt alive and dozens were wounded in clashes in the town of Gojra, in the province of Punjab (Nawaiwaqt Group, 2009). The Christian minority was brutally attacked by the Muslims over the allegations of blasphemy on some of the members of Christian community. The Muslims and Christians had coexisted in Gojra peacefully for a very long period of time. But just a single occurrence of alleged act of blasphemy had changed everything. An angry mob had attacked and burnt down the houses of Christians living there. Although a criminal case was already been registered against the culprits but the whole community was punished extra-judicially by the mob. Later in 2013, in Lahore, which is capital of Punjab province, another sad incident had taken place. After an alleged occurrence of blasphemy, the Muslims in the neighborhood had lost control and burnt down a church and around 125 houses of innocent Christians (Ali, 2013). In 2014 a Christian couple was burnt alive by a mob of angry Muslims over the charges of alleged blasphemy. The

people simply took the law in their own hands and killed the couple extra-judicially. The due course of law was never followed, and instead of reporting the alleged blasphemy to local police, the people of a village took the matter in their own hands and killed the Christian couple (Ansari, 2014).

Christians are not the only minority who had faced this kind of situation regarding issues of blasphemy in Pakistan. Other minorities, especially Hindus are also a victim of this. Most recently a Hindu school principal in Ghotki, a city in the Sind province of Pakistan was accused of blasphemy. Instead of keeping the matter focused towards one person, who was accused of blasphemy, the Muslim rioters attacked multiple Hindu temples (BBC News, 2019). Though the attackers were also charged with the act of blasphemy as they have attacked holy places of Hindus but this is an alarming situation. It is normal and understandable of general public to get angry for the disrespect of their religion and religious beliefs, but it is very unfortunate that the people come out as a mob and instead of adopting the legal course of action against the accused person or culprit, start to punish the whole community by attacking their religious places and burning their houses. There are examples from Pakistan where a mob attacked and killed a Muslim over the charges of alleged blasphemy but a whole Muslim neighborhood had never been punished for the crime of a single person. In case of minorities, these three incidents from past decade are very unfortunate. There were some other incidents like this recorded in the history of Pakistan but these three events are from past decade and proper evidence and media coverage is available at internet.

Unfortunately, Pakistan is not the only country where minorities are charged with blasphemy and sometimes an individual or sometimes a community is punished for this. In Indonesia, the result of Meiliana's objection over Muslim call for prayer ended up in riots and destruction of Buddhist temples by the Muslims (Tehusijarana and Gunawan, 2018). This is simply inappropriate to exhaust anger and hatred on the whole community just because of mistake of a single person. The outrage of the Muslims was originally aimed at Meliana, a Chinese-Indonesian woman who complained about the volume of the *adhan* call to prayer from a nearby mosque, had caused furious rioting on 29 July 2016 in Tanjung Balai (North Sumatra). In the end it was not just her house which was partially burnt but also 14 temples were destroyed (Sapiie and Gunawan, 2019). Indonesia was known as a secular state which has developed a reputation for pluralism and moderate Islam while doing more to protect freedom of expression than many of its neighbor countries and other Islamic countries. But recent events in past decade have changed the paradigm of whole society, especially after the introduction of criminal provisions related to blasphemy.

The country's independence leader and first president, Sukarno, elaborated a national ideology called Pancasila that consisted of five core principles: belief in God (monotheism), humanitarianism, national unity, representative democracy by consensus, and social justice (In Sukarno's first draft of Pancasila, dated June 1, 1945, reference was made only to "belief in God," and no particular god or religion was specified. A later document known as the Jakarta Charter amended reference to "belief in God" by adding "and the obligations of Muslims to adhere to Islamic law." When the state ideology was officially adopted in August 1945, these words were dropped and the doctrine reverted to its original, more secular form) (Kraince, 2009). Unlike many other Islamic countries/Muslim majority countries, a Judicial Review was filed against the blasphemy laws in Indonesia on the basis that it is discriminatory against the religious minorities and it is also against the very basic values of the country's social setup. This

judicial review was eventually dismissed and the judges decided in favor of blasphemy laws. The judges gave clarification that it is to maintain public order and also everyone is free to practice their own religion without the interference from the government (Pasandaran and Haryonto, 2010). The blasphemy laws in Indonesia have their impact on minorities (Human Right Watch, 2010). The language of the laws strictly suggests that it is not restricted to any religion but being a Muslim majority country, these laws are mostly used against different minorities. The analysis of different case laws from Indonesia related to blasphemy shows that most of the suspects are Christians or belong to some other indigenous religion. Sometimes a clear element of discrimination can be spotted in the society.

Again, the government and legislation is making sure that there shall be no discrimination but the application of laws is always dependent upon the structure of society. Ahmadiyya religion is one of the religions which is discriminated sometimes in Indonesia. The followers of Ahmadiyya religion try to relate themselves to the Muslims but they are not Muslims. They don't believe in finality of prophet-hood of Prophet Muhammad (PBUH) which is one of the basic requirements to be a Muslim. The false portrayal of Ahmadis as being a Muslim has caused rage against them in Indonesian society. Apparently there is no problem considering them a separate religion but when they falsely portray themselves as Muslims and try to take advantage of this then the problem starts. Finally in 2005, they were declared non-Muslims categorically by the Indonesian Council of Muslim Scholars but this positive step was taken a bit too late. The Muslim population had already having hostile feelings for Ahmadis and there were some instances where followers of Ahmadiyya religion were victims of violence. The charges of blasphemy against the followers of Ahmadiyya community were totally correct and cannot be denied. But there is always a proper forum to deal with this kind of illegality. It is not appropriate to take law in own hands. For example, according to the Asian Legal Resource Centre, in June 2007, several followers of Ahmadiyya religion were attacked in West Java by Muslims belonging to specific religious groups (Asian Legal Resource Centre, 2007).

The right of freedom of expression is also closely related to blasphemy laws. Sometimes members of a minority community are indulged in an activity which is very much obvious of an act of blasphemy but they try to take cover under the right of freedom of expression. For example a group of Christians in East Java made a long video in which they had said derogatory remarks about Quran. When the charge of blasphemy was proved and they were sentenced ultimately, the international community took it as an attempt of restrict freedom of expression but in fact it was a clear case of an act of blasphemy under the national laws of Indonesia. The laws related to blasphemy may restrict the religious freedom for the minorities as maybe a religious ritual or religious obligation by a religious group can be considered blasphemous to the majority religion. In the case laws earlier discussed from Indonesia related to blasphemy, we can say that Ahmadiyya religion had been affected by this when they were stopped from proselytizing (It was enforced by Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of the Interior of the Republic of Indonesia, No. 3 of 2008).

Another country which is not only known for being multi-religious but also because of religious atrocities is India. The situation in India is even worse than Pakistan and Indonesia. In Indonesia the laws are present but not very strict, and in Pakistan there are some unfortunate events where some members of a religious community were killed

during a mob attack but these kind of acts were never been supported by the government, in fact the government had always tried to use all its authority to prevent this kind of unfortunate events. In India, the majority religion is Hinduism and the constitution of the country declares it a secular state but with passage of time it is becoming a Hindu extremist state where the other religious groups and minorities are living a life of fear. 'Cow' is considered a holy animal in India. Any insult to cow is considered an attack on religion and blasphemy to Hinduism according to the orthodox Hindus. There are number of cases where someone, especially a Muslim was suspected to buy, eat or slaughter a cow and was eventually tortured and killed by angry Hindu mob. In some cases the whole family of the suspected person was killed (Marlow, 2019). It is an unfortunate situation for the minorities all over the world that how they are discriminated and treated ill in the name of blasphemy. The religious in majority of many countries takes advantage of being in majority and ill-treat minorities. Although in some cases the accusations of blasphemy has sort of truth behind them but when it comes to mob justice, then they not only punish the accused but also the family and unfortunately the whole community suffers the consequences. The cases discussed above already are clear examples of this phenomenon. In Pakistan, the whole village or whole community of Christians was attacked and their houses were burnt because of wrongful act of a single person. In Indonesia, the whole Buddhist or Christian community has faced the consequences in the same way. In India, almost every year there are Hindu-Muslim riots on this base.

In some Arab countries, some non-Muslim has been proved to commit blasphemy. They were punished according to law and there was no mob or suffering of the whole community, not even the family of the accused (Kaphle, 2013). In recent times, the crime of blasphemy is more linked and associated with the Islamic countries and Muslims in particular. There are more cases of blasphemy related to Islam than any other religion. Sometimes it is Muslims becoming victim of blasphemy or sometimes it is Islam. In Muslim majority countries, sometimes the laws are misused against the non-Muslims for ulterior motives. In other countries, either Islam is criticized by the non-Muslims or in countries like India the Muslims and other minorities were accused of blasphemy wrongfully and unfortunately becoming a victim of an angry mob. The minorities in any society are already less in number and they lack sense of protection against majority population. It is important for the social fabric of the society that the minorities feel safe and secure like majority population. There can be a philosophical debate about the possibilities to achieve this goal. The long-term solution is that the social structure has this much tolerance in it that either people ignore the act of blasphemy or take the due course of law against it. The society should be this much educated that people never think of taking the law in their own hands and leave the matters to the authorities. This can be a very ideal and utopian approach but unfortunately it is not practically applicable in religiously driven societies. The immediate solution to this problem is strict and proper application of law. It is to keep in mind that almost every country in this world has laws related to religious hatred, blasphemy and crimes against religion. But the important issue here is applicability of these laws and trust of general public in authorities. It is very much necessary to develop, build and flourish this trust. For example, the laws are very strict in Pakistan but general public has no trust in system and they always think that the real culprit will be exonerated from the courts of law because of lack of proper investigation. The investigation agencies also have a very bad reputation among public for being corrupt.

So in countries like Pakistan, there is a need to improve the quality of investigation and to change the image of investigation agencies. If people will have this trust that a culprit cannot be spared and will meet his justified fate then most probably they think twice before taking the law in their own hands. It is also important to make sure that those who unjustifiably victimize a minority member or whole minority community should be dealt strictly in accordance with law. On the other hand, if we see the example of Indonesia, which is also a Muslim majority country, the process of investigation maybe very accurate but the punishment for the act of blasphemy is so less that sometimes general public thinks it is not what it should be. The laws in any society are basically will of the people. So in countries like Indonesia, the laws should be more strict and also the punishments so when any act of blasphemy is committed, people have this feeling that if the criminal charge of blasphemy is proved beyond doubt then the culprit will get a reasonable punishment.

Conclusion

The religious sentiments in a society are a very sensitive matter, it is important to meet the needs of the society for the smooth functioning. In countries like India, there should be strict laws, proper investigation and most of all, if someone is victimized wrongfully by a mob or any other group of people for ulterior motives, then those who had accused someone wrongfully should be punished accordingly. Otherwise there will be a two way process of hatred among different religious groups and also another two way process of lack of trust between general public and authorities. The majority should have this trust that there are strict laws and clean process of investigation if anyone, especially a minority member commits the crime of blasphemy. They don't need to deliver justice by themselves to satisfy their religious sentiments but the authorities will do their job properly. On the other hand, the minorities have this sense of protection and trust in the system that there shall be no biased investigation against them. If anyone tries to harm them or victimized them wrongfully then he will be punished according to law. If these two issues were addressed properly, the proper and clean investigation, and strict laws according to the will of the society then the majority will feel there religious sentiments are a secured enough and the minorities will feel more secure and comfortable.

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Conflict of interest

The author(s) confirms that there is no conflict of interest with any parties involved with this study.

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