

Section 295-C of Pakistan Penal Code: Controversy and Criticism

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ABSTRACT

This article discusses blasphemy law of Pakistan and deliberates on international criticism and pressure on Pakistan to change death penalty for crime under section 295-C of PPC. It highlights the reasons why even the most liberal Pakistani governments have not been able to bring any reforms in this law let alone change the law. The article further focuses on section 295-C of Pakistan Penal Code on defamation of Prophet Mohammad (PBUH) and sees how it is different from other offences relating to religion mentioned in part XV of Pakistan's Penal Code. This research carries out an in depth study of the Qur'anic verses and the incidents which took place during the life time of Prophet Mohammad (pbuh) as recorded in classical Islamic literature, of offending, ridiculing or disobeying the Prophet of Islam. Finally capital punishment under Islamic law and under laws of United States is discussed. Islamic legal philosophy on capital punishment and mannerism in which Islamic legal system deters the misuse of law in capital crimes is part of this research. The article also suggests that the constitutional status of a country has a very important role to play in its legislation.

Keywords: Blasphemy, Pakistan Penal Code, Defamation, Sharia, Law

INTRODUCTION

Section 295-C of Pakistan Penal Code has been subject to severe criticism since its promulgation at National and International level. Within Pakistan the controversy is religious cum political in nature and public is divided in its opinion on blasphemy law. Due to international pressure one group stress the need to revise the law and suggest that like other Muslim countries (with the exception of Saudi Arabia, Iran, Afghanistan, Yemen, and now Kuwait) punishment for blasphemy should be imprisonment or fine instead of capital punishment. The second group argues that this law has been in force since the time of Caliph Abu Bakr (RA) and many incidents can be quoted even from the time of Prophet Mohammad (PBUH), therefore due to consensus of the Muslim *ummah* the law must remain unchanged.

Section 295-C has invited international criticism from two angles one is that this punishment is not stated in Quran or hadith therefore it is not *hadd* penalty and is therefore subject to change and secondly it is a gross violation of human rights as it prescribes death penalty which should be abolished. Section 295-C is criticized by United Nations and Human Rights activists for its misuse and severity of punishment. Having failed in their efforts to get this law amended United Nations suggested that procedural reforms be introduced in the implementation of this law to deter its misuse. In spite of this condemnation any suggestions to prevent alleged or actual misuse of blasphemy law in Pakistan or any attempt to make procedural changes has been opposed fiercely within Pakistan.

Discussion in this article will primarily be limited to section 295-C of Pakistan Penal Code. Before we move into detailed discussion on this section it is pertinent to note that there are

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ten sections in part XV of the Pakistan Penal Code (Act XLV of 1860) which deal with 'Offences Relating to Religion'. These are section 295, 295-A, 295-B, 295-C, 296, 297, 298, 298-A, 298-B, 298-C.²

Out of all these sections, section 295-A (Defiling Holy Quran) and 295-C (Defaming Prophet Mohammad (PBUH)) carry severest punishments. For defiling Quran the punishment is life imprisonment and for defaming Prophet Mohammad (PBUH) the punishment is life imprisonment or death sentence. In the remaining sections the punishment is of fine and or imprisonment up to three years except section 295 (outraging religious feelings) for which the punishment is imprisonment up to ten years. Thus 295-C is the only section which prescribes capital punishment and is subject to severe criticism and debate.

Section 295-C of Pakistan Penal Code states;

*"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."*¹

HISTORICAL OVERVIEW OF LAW OF *TAHAFFUZ E NAMOOS E RISALAT*

Defamation of religion and blasphemy are broad general terms and penalties for crimes committed under these in Western countries as well as in Pakistan (with the exception of section 295-C) are imprisonment or fine or both but not capital punishment. Penalty for the crime committed under section 295-C of Pakistan Penal Code is death sentence in addition to life imprisonment and fine. Therefore it is subject to much criticism at International level. Revision of this law has been under debate in Pakistan since this law was introduced in 1980s under General Zia ul Haq's regime. It would be appropriate here to give a brief history of *Qanoon Tahaffuz e Namooos e Risalat*.

There was no law for *Tahaffuz e Namooos e Risalat* during British rule in the sub-continent. The need to promulgate law for anti-defamation of religious leaders arose when Ghazi Alam din Shaheed killed Raj Paul for passing blasphemous remarks on Holy Prophet (pbuh). Therefore in 1927 for the first time in Indian Penal Code section 295A³ was introduced. In 1962 word Pakistan was added to this law and introduced in to Pakistan Penal Code. During the military dictatorship of General Zia ul Haq (1977-1988) several additions were made to Pakistan's blasphemy law as this law seemed insufficient to cover the cases related to blasphemous remarks passed on Prophet Mohammad (pbuh) therefore in 1984 section 295-C was added to PPC in which penalty for defaming Prophet Mohammad (pbuh) was prescribed as death sentence or life imprisonment along with fine. Mualana Mohammad Yousaf Ludhianwi, religious scholar of Deoband said that this law was against the Islamic law as life imprisonment was suggested as an alternative to death penalty whereas in Islamic law penalty for defaming prophet Mohammad (pbuh) is only death penalty without even taking into consideration the intentions of the accused. In pursuance of this in October 1990, Federal

² Section 295 forbids damaging or defiling a place of worship or a sacred object. § 295-A forbids outraging religious feelings. § 295-B forbids defiling the Quran. § 295-C forbids defaming the Islamic prophet Muhammad (pbuh). § 298 forbids wounding religious feelings of any person. § 298-A forbids Derogatory remarks in respect of Muslim holy personages. § 298- B prohibits Ahmadiyya from Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places. § 298-C prohibits Ahmadiyya from calling themselves Muslims.

³ Section 295-A. of Pakistan Penal Code-PPC | Deliberate and malicious acts intended to outrage religious feelings of any class by insulting Its religion or religious beliefs:
Whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Shariat Court wrote to the then president of Pakistan Mr Ghulam Ishaq Khan, that the law in section 295-C be amended to remove the punishment of life imprisonment from it by April 30, 1991. The court further added that if change is not incorporated by the said date the law will stand amended by itself after this date. Federal Shari'at Court ruled that the penalty for blasphemy should be mandatory death sentence, with no right to reprieve or pardon. The due process was delayed but in June 1992 National Assembly unanimously passed the resolution that penalty for defaming Prophet Mohammad (pbuh) is only death sentence. On July 8, 1992 senate approved this Bill granting it status of an Act. The current situation is that the clause 'or life imprisonment' has not been removed from Pakistan's Penal Code and the Pakistani Government has often used this anomaly to defend itself against critics of the death penalty. Defaming Muhammad (pbuh) merits death with or without a fine. If a charge is laid under § 295-C, the trial must take place in a Court of Session with a Muslim judge presiding.

In April 2000, President Musharraf proposed that procedural reforms should be introduced for filing FIR for blasphemy cases. He further suggested that individual cases should be scrutinized by a Deputy Commissioner prior to an arrest. On this announcement Islamic militant groups threatened nationwide strike as a result of which President had to declare at a press conference that on the unanimous demand of Ulema and the people no procedural change will be made in registration of FIR for blasphemy cases.

The issue remained controversial and in 2010 various efforts were made to revise blasphemy laws. As a result of the efforts of PPP government President Zardari formed a high level committee headed by Federal Minister for Minority Affairs, Shahbaz Bhatti to review Blasphemy laws and propose recommendations to prevent their misuse. Ms. Sherry Rehman PPP parliamentarian also put forward suggestions for reforming blasphemy laws and amended the penal code in accordance with Article 20 of the International Covenant on Civil and Political Rights to make any advocacy of religious hatred that constitutes incitement to discrimination or violence a punishable offence. However, her party did not support the bill and Ms. Rehman received numerous death threats. In December 2010, the Council of Islamic Ideology recommended that the blasphemy law be amended to prevent its misuse against any individual irrespective of their religion, but opposed removing the death penalty. In 2011 after the murders of Governor Punjab Salman Taseer and Federal Minister for minority affairs Mr. Sahbaz Bhatti, Prime Minister Gilani and other PPP officials stated that reform was no longer being considered.

On the other hand in 2012, 2013 and 2014 USCIRF (United States Commission for International Religious Freedom) annual reports, Pakistan's blasphemy laws was severely criticized and Pakistan was declared as 'Country of Particular Concern' (CPC) It stated in these reports that Pakistan's Blasphemy law is used to intimidate minorities and is also used against those with whom accusers have conflicts. Lawyers refuse to prosecute and judges are reluctant to take up blasphemy cases. There is a need to make procedural reforms to debar accusers to misuse the law. Complaints are filed by local *maulvis* and accused is convicted on unsubstantiated oral. Judicial proceedings are delayed resulting in innocent victims suffering in jails.

In the light of the above condemnation it is evident that most of the criticism is directed at malfunction of judicial proceedings and not the law itself. Misuse of the law, threats to judges, individuals taking law in their own hands and intimidating religious minorities all these allegations speak vehemently of the need to make judicial reforms. It is only criticism of death penalty that brings section 295-C in focus and the need to explain to the Western world why defamation of Prophet Mohammad (PBUH) is a capital crime under Islamic law. In Pakistan and under Sharia this law is popularly known as '*Qanoon Tahaffuz e Namooos e*

Risalat’ or ‘*Qanoon Tawheen e Risalat*’. ‘*Qanoon Tahaffuz e Namooos e Risalat* is a specific term and deals only with that law which pertains to defamation of Prophet Mohammad (PBUH) and the person who commits this crime is known as *Shatim al Rasool* in classical Islamic literature. Death penalty for this crime has been in force since the time of Prophet Mohammad after his migration to Medina. It was upheld by the four rightly guided Caliphs and was unanimously agreed upon by all Companions. This punishment continued to be in force without any disagreement among the scholars of *fiqh* and all leading schools of Islamic law. None of the companions objected to death sentence for defaming Prophet Mohammad (pbuh) for this reason Muslim scholars consider it ‘*Ijma e Sakooti*’ or ‘Tacit Consensus’⁴. To understand blasphemy it would be worthwhile to throw light on the concepts of ‘*irtidad*’ and the status of non-Muslims living in an Islamic State as *Dhimmis*.

Ibn Taymiyya in his book ‘*Al Sarim al Maslool ala Shatim al Rasool*’ explains that a Muslim who insults or defames Prophet Mohammad (PBUH) is a *murtad* because a Muslim cannot even think of offending or insulting Prophet Mohammad (PBUH). Punishment of a *murtad* is death penalty in Islamic law and there is consensus of Muslim *ummah* on it and is a settled issue. Regarding punishment of a non-Muslim for defaming or blaspheming Prophet Mohammad (PBUH) which is more controversial, ibn-Taymiyya initiates the discussion by quoting from Qur’an that Muslims should wage war against *Mushrikeen* till they start paying *jizya*⁵ Those *Mushrikeen* who are living in a Muslim state and are paying *jizya* are granted the status of *mu’ahid* that is to say that they are under an oath and their lives and wealth is protected by the Islamic state and they will be allowed to practice their own religion freely. In return they will pay *jizya* and will not involve in any activities that will bring harm to the Muslim state or the religion Islam. If these *zimmi* conspire against the Muslim state they will be punished for treason and for breaking the oath, if they hurt the religious feelings of the Muslims or defame Prophet Mohammad (PBUH) or desecrate Quran this will tantamount to breaking of their oath with the Muslim state as well as for blasphemy and the state is no longer responsible for the protection of their life. They will be punished for breaking their oath in accordance with Islamic law. Ibn Taymiyya here explains that by defaming Islam or Prophet Mohammad (PBUH) they are in fact breaking their contract/ covenant with the Muslim state and thus should be punished for breach of contract. Ibn Taymiyya while discussing the death penalty for a *zimmi* for passing blasphemous remarks, relies mostly on those verses of Quran which exhort towards fighting and killing with *mushrikeen* for breaking their contract with the Muslim state. There are clear orders for such people in Quran in verse number 12, 13 and 14 of *surah al-Tawba* (chapter 9 of *al-Qur’an*).

According to the constitution of Pakistan Islam is its state religion and its laws are based on Sharia. In contrast to this legal systems of secular countries are exclusively based on human reason and experience with total disregard for religious and divine guidance. There is a very basic difference between Islamic legal theory and Western or Secular theories of law. The primary objective of Sharia is preservation of religion therefore whenever there is a conflict between preservation of religion and preservation of human life, preservation of religion shall prevail. This is evident in the philosophy of ‘*shahadat*’ and in spirit behind ‘*jihad*’. *Jihad* is equated with killing and terrorism by the Western world where as for a Muslim *jihad* means sacrificing one’s life for preservation of their religion ‘Islam’. On the contrary Western legal theories aim at preservation of humanity above the preservation of religion. According to secularism religion is an individual’s personal matter therefore the state does not base its laws on any religion. This is the reason they are strong advocates of Human rights with total disregard to religion. For this reason they undermine Islamic legal system under which

⁴ Mohammad Ismail Qureshi, *Namooos e Rasool aur Qanoon Tawheen e Risalat*’, p. 109, al faisal publishers , 2006.

⁵ Al- Quran, 9:69

preservation of religion is above the preservation of humanity; a legal system in which sacrificing life to preserve religion is termed as *shahadah*.

Death penalty for defaming Prophet Mohammad (PBUH) resembles concept of '*jihad*' in spirit and philosophy. In *jihad* a Muslim sacrifices his own life to preserve Islam whereas under *Qanoon Tawheen e Risalat* Islamic law prescribes death penalty to preserve the sanctity and veracity of Prophet of Islam. In both cases the objective is to preserve 'Islam' at the cost of human life. Thus capital punishment of *Shatim e Rasool* is very much in line with the objectives of *shariah*.

This point can be further elaborated in the light of Ibn e Taymiyya's discussion in *Sarim al Maslool ala Shatim al Rasool*. He states that offending Prophet Mohammad (PBUH) is equal to offending Allah (SW) and obeying the Prophet (PBUH) is as if one is obeying Allah (SW). He then quotes verses from Quran which state that love for Allah and Prophet Mohammad (PBUH), bliss of Allah (SW) and Prophet Mohammad (PBUH), obedience of Allah (SW) and Prophet Mohammad (PBUH) and opposition of Prophet Mohammad (PBUH) and Allah (SW) are one and the same thing. Meaning thereby that obedience or disobedience towards Prophet Mohammad (PBUH) is equal to obedience or disobedience of Allah (SW).

BLASPHEMY IN ISLAMIC RELIGIOUS TEXTS

There are several verses in the Quran which deal with blasphemy. Verses revealed in Makkah are comparatively lenient as compared to those revealed in Medina. Most often quoted Makkan verses in response to vain talk and blasphemous attitude of non-Muslims are stated below:

*"Hold to forgiveness, command what is right; but turn away from the ignorant."*⁶

*"And when they hear vain talk, they turn away therefrom and say: "to us our deeds and to you yours; peace be to you."*⁷

*"When ye hear the signs of Allah held in defiance and ridicule, ye are not to sit with them unless they turn to a different theme."*⁸

There are many who hold the view based on above mentioned verses that there should be no earthly sentencing for blasphemy.

However verses of surah al Ahzab revealed in Madina carry a strict punishment for offending and ridiculing Prophet Mohammad (pbuh). These verses are quoted below:

"Surely those who offend Allah and His Prophet, Allah curse them in this world and in the hereafter and have prepared for them a disgraceful torment." [Qur'an 33:57]

And

"These accursed people, wherever found are to be seized and every one of them to be killed" [Qur'an 33:61]

In these two verses of *surah al ahzab*, unlike the above mentioned three verses from *surah Nisa, Qassas and Anfal* the wrong committed is offending Allah and His Prophet (PBUH) and its punishment is also plainly ordered in imperative that '*... these accursed should be seized and every one of them be killed.*'

⁶ Al-Qur'an, 7:199, Surah al-Ara'af was revealed in Makkah

⁷ Al-Quran, 28:55, Surah Qasas was revealed in Makkah and its chronological order is 49.

⁸ Al-Qur'an, 4:140, revealed in Medina

Verse 61 of Surah Al-Ahzab is subject to severe criticism by the western world as it orders killing of those people who offend Allah and His Prophet (pbuh).

It is a known fact with scholars of *seerah* that Muslims were not allowed to kill non-believers (*kuffar*) before migration and for some time after migration. Permission of *jihad* was granted for the first time in surah al Hajj verse 39. We find numerous ahadith in which Muslims have been instructed to kill those who ridicule and offend Prophet Mohammad (pbuh).

Thus in the light of *Quran* as well as *Sunnah* punishment for blaspheming Prophet Mohammad is death penalty. It is also evident that this punishment came into effect in the city state of Madina.

CAPITAL CRIMES IN ISLAMIC LAW AND UNITED STATES

Islam prescribes capital punishment for murder, adultery, apostasy and blaspheming Prophet Mohammad (pbuh). An in-depth study of these crimes is needed to understand Islamic philosophy of punishment and its implementation. To impose *hadd* penalty, the criteria is extremely strict. Besides confession of the convict, four eye witnesses of the crime is a condition pre requisite if *hadd* penalty is to be imposed, anything short of it drops *hadd* penalty and the judge is authorized to announce any other penalty by way of *tazir*. Intention of the murderer is also taken into consideration before imposing *hadd*. Islamic law aims at preservation of human life, it therefore puts forward law of blood money (*diyat*). So even if the crime of murder is established against the convict and he stands guilty in the eyes of law the parties are still given option to resort to *diyat* (blood money).

Islamic law gives the same position to God and the Apostle which British law gives to the King and the royal family and U.S. gives to the national government and the federal constitution of the United States. *The basis of the Islamic "nationality" is religious and not ethnic or regional. Hence apostasy has naturally been considered political treason.*⁹ *No state can look upon political treason directed to it with indifference. It must deal with the traitors, when convicted after due process of law, either with banishment, life imprisonment, or capital punishment. The Islamic state is no exception to this.*¹⁰ *The protection of society is the underlying principle in the punishment for apostasy in the legal system of Islam.*¹¹

According to Shi'as and Hanafi jurists female apostate is never executed but is imprisoned.¹² According to Imam Abu Hanifah, may the mercy of Allah be upon him, the female apostate should not be put to death, but must be imprisoned until she Islamizes.

In United States of America murder and treason are capital crimes. Also drug trafficking and perjury resulting in death are capital crimes in USA, however, crimes subject to death penalty vary by jurisdiction from State to State.¹³ On June 25, 2008 in *Kennedy vs Louisiana* Supreme Court of United States ruled out death penalty for any crime against an individual as opposed to "offenses against the state" such as treason, espionage or crimes against humanity. Additionally, the Uniform Code of Military Justice allows capital punishment for a list of offences during war time such as desertion, mutiny and spying.

⁹ From M. Hamidullah, *Introduction to Islam*, Centre Cultural Islamique, Paris, 1969, pp. 155, 156

¹⁰ From Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, American Trust Publications, Indianapolis, n.d., pp. 326, 327 under "Capital Punishment" p.48

¹¹ From Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study*, American Trust Publication, Indianapolis, 1982, p.64

¹² Apostasy Is a Glaring Sin in Islam", *Kayhan International*, March 3, 1986 (a Shi'i statement)

¹³ http://en.wikipedia.org/wiki/capital_punishment_in_the_united_states#cite_note-corr-61

CONCLUSION

To conclude it is stated that section 295-C of Pakistan Penal Code is in line with the verses of Quran and Prophetic traditions. Since the Constitution of Pakistan states that laws should not be repugnant to injunctions of Islam therefore derogating Prophet Muhammad's name or personality is considered as a capital crime under section 295-C. International criticism on this law is partially due to capital punishment and partially due to misuse of this law. Numerous cases have been reported in Pakistan where religious minorities are intimidated under section 295-C or when there are personal conflicts with the accusers. Constitutional status of a country also has to play an important role in its legislation. However human agency has to play a positive role in interpreting the textual sources in word and spirit and take into consideration changing social scenario. Serious note should be taken of the misuse of law, especially when it is based upon religious percept as it will amount to defaming the religion itself. Law of Pakistan also provides for deterrence to misuse of law under section 194 of PPC¹⁴ which should not be overlooked while adjudicating upon capital crimes.

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¹⁴ Section 194 of PPC: Giving or fabricating false evidence with intent to procure conviction of capital offence: Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted on an offence which is capital by any law for the time being in force, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; if innocent person be thereby convicted and executed : and if an innocent person be convicted and executed in consequence of such false evidence the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.