

The Blasphemy Law in Pakistan

By Mariam Faruqi

Nearly eighteen months ago, Asia Bibi, a Christian woman, was accused of blasphemy by the Muslim women she worked with as a farm labourer in Pakistan's Punjab. A First Information Report¹ (FIR) was lodged against her for uttering words against the Prophet, 'Peace Be Upon Him' (PBUH). Despite her pleas of innocence, Asia was sentenced to death by a Sessions Court² in the Nankana Sahib District. She was due to be hanged on November 8, 2010. On January 4 this year, Salman Taseer, Governor of Punjab and outspoken advocate for Asia's pardon and release, was assassinated by a guard from his own security detail claiming that he did so because he considered Taseer was guilty of blasphemy. WHY? The late governor has since been reviled as a blasphemer by certain clerics. It is significant that a group of lawyers, a profession that is supposed to uphold the law, were among those who joined in to garland Qadri, the self-confessed murderer.

This act of vigilantism has echoes of an earlier case in Lahore in 1927. Raj Pal a publisher and bookseller published a book about the Prophet of Islam (PBUH) with derogatory references. He was charged and tried for blasphemy, but acquitted because the prosecution was unable to establish Raj Pal's intentionality. A critical component of the criminal law is the convergence of the guilty act with the guilty intent (*mens rea*). A Muslim called Ilam Din murdered Raj Pal. Ilam Din was tried for murder and awarded the death penalty. Significantly, his memory has been resurrected in recent times in Pakistan and he has been declared a *Ghazi*³ in certain quarters.

The prohibition of blasphemy or irreverence towards holy persons, religious beliefs, customs and artefacts as currently articulated in Pakistan's Penal Code (PPC), finds its roots in colonial legislation. The Indian Penal Code 1860, prepared by the First Law commission chaired by Lord Macaulay, criminalised the act of damaging or defiling a place of worship or a sacred object under section 295. Section 295A was added to provide for the offence of '*outraging religious feelings*'. Penalties for such offences included imprisonment for a term extending up to two years, a fine or both. Pakistan inherited this Code at Independence and subsequent amendments transformed the legislation into the controversial law in place today. All provisions enacted by colonial authorities included the concept of 'intention'.

In the Pakistani context, the blasphemy law is the fulcrum of a contest to determine the nature of the Pakistani state and rights to citizenship or relegation to the margins as a minority. In the broader context of South Asia, this law is part of a widening of the social and political space for religious fundamentalists in the region. This article considers the historical development of the blasphemy law and its manipulation for political ends in the context of the current situation in Pakistan; particularly the amendments to the law under the aegis of Zia-ul-Haq and Nawaz Sharif. By considering some older and more recent cases it can be seen that the law not only promotes intolerance but has made both Muslims and non-Muslims vulnerable to accusations of blasphemy that require no

¹ A report written by the police in India and Pakistan upon receipt of information about the commission of a cognizable offence

² A court of First Instance in criminal cases in Pakistan

³ A warrior of high rank / a man who has successfully fought against infidels

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substantive proof or establishment of intentionality, and yet is a criminal act now punishable by death. It will become clear that the crux of the debate at this time is not whether there should be a blasphemy law, but rather that if there is one, how can its use or misuse for political or individual mischief be prevented.

Attempts at amendments to the law, which include clarification of vague terminology, the inclusion of intent, a critical element of any criminal charge and provisions to prevent misuse of the law by imposing penalties for bringing false claims have outraged extremist factions of the public. Sherry Rehman, former Information Minister and a prominent member of the Pakistan People's Party (PPP), who submitted a private members bill to amend the blasphemy law in December 2010, is herself facing a charge of blasphemy under section 295C PPC. The Multan High court directed local police to register the charge against her after a local shop keeper accused her of blaspheming during a television appearance in November 2010. The police had previously refused to file the charge as it was out of jurisdiction. Ironically, after having drafted the amendments in consultation with lawyers and other members of her party Rehman has been sidelined within the PPP and accused by many of submitting the amendments at the wrong time.

The development of the blasphemy law in Pakistan must be placed in the context of the on-going battle fought on two fronts: first, to determine the nature of the Pakistani state. The second contest devolves on the question of citizenship rights for Pakistanis. Jinnah the founder of Pakistan envisaged the new state as a place where *"in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State"* (from Jinnah's address to the constituent assembly of Pakistan, August 11 1947). Nevertheless, soon after his death, the Objectives Resolution of 1949 declared Pakistan an 'Islamic republic'. There was clearly a shift in the ideal of who a citizen of the State should be.

The blasphemy law must also be placed within the matrix of the military dictator General Zia's wider tampering with the law in his attempt at making the Pakistani State and its citizens more Islamic. Successive amendments under Zia served to impose excessively harsh penalties for the crime of blasphemy and enabled the laws to be used to settle personal scores, bring cases against members of minority communities and victimize the poor. In 1982 section 295B was added to the PPC, providing that: *'whoever wilfully defiles, damages or desecrates a copy of the Holy Quran or any*

extract thereof or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.' Ordinance XX, which added sections 298B and C to the PPC, sealed the expulsion of Ahmadis from the Pakistani State in 1984. An Ahmadi, calling himself a Muslim, or preaching or propagating his faith, or outraging the religious feelings of Muslims, or posing himself as a Muslim is now liable to three years imprisonment. Under the current legislation an Ahmadi has two choices: either to renounce being a Muslim and be classified as a minority in Pakistan, or claim his or her faith and face the harsh penal measure.

In 1986, the Criminal Law (Amendment) Act III provided a further amendment in the form of section 295C, providing that: *'whoever by words, either spoken or written, or by visible representation, or by any other imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (PBUH) shall be punished with death or imprisonment for life, and shall also be liable to a fine.'* It is under this section that Aasia Bibi became the first Christian woman to be sentenced to death for blasphemy and Sherry Rehman is currently facing charges.

In 1992, the Nawaz Sharif's government in Pakistan removed the option of a life sentence from section 295C and imposed a mandatory death sentence, thereby giving more power to those who wished to use this law. One of the first fatal attacks against Pakistan's Christian minority community triggered by the Blasphemy Laws took place soon after the enactment of the 1992 amendment. A Christian teacher and poet in Faisalabad, Punjab was accused of blaspheming against the Prophet (PBUH). He was subsequently stabbed to death by a member of the Anjuman-e-Sipah-e-Sahaba.

The vague terminology of the current legislation enables the misuse of sections 295-298 PPC, and has particularly allowed the persecution of minorities and the poor and provides unscrupulous complainants with a mechanism for settling personal vendettas through the justice system. The law has manifested in society as a tool for promoting intolerance. Even though a majority of those charged under this law are Muslims, the law has made non-Muslims even more vulnerable and the manner in which it has been propagated by the religious groups in Pakistan has led to vigilantism and mob violence. The State has consistently failed to intervene and protect any one against violence by maliciously motivated elements and the certainty of impunity has encouraged them to commit lawlessness. Reported incidents reveal that those accused of blasphemy are killed in jail often even before they are sentenced. As recently as November 14, 2010 the accused in a blasphemy case was shot

dead near his house in Lahore after being granted bail. Other examples include incidents on July 30th and August 1st 2009, when seven Christians were burnt alive in Gojra, Punjab and dozens injured after riots broke out further to allegations that a Christian girl committed blasphemy against the Holy Quran.

Another high profile case involved two illiterate Christian children, Salamat Masih and Rehmat Masih, who were sentenced to death for blasphemy by a lower court in Lahore in 1995 for allegedly writing words against the Prophet (PBUH) on the walls of a mosque. They were also sentenced to two years' hard labour and fined 25,000 rupees each. The children's uncle was shot dead outside court and violent threats were made against their lawyer, Asma Jahangir, a renowned human rights activist, former UN Special Rapporteur on Freedom of Religion or Belief and now the President of Pakistan Supreme Court Bar Association. In 1997, over two years after the case, the Lahore High Court judge Justice Arif Iqbal Bhatti, who presided over the case, was assassinated for his role in acquitting the boys.

Recently in December 2010, Dr Naushad Ali Valliani, an Ismaili physician from Hyderabad, was accused of blasphemy. He was arrested for throwing a visiting card belonging to a Muhammad Faizan into the dust bin. The guilty act was throwing a card bearing the name 'Muhammad'. Dr. Valliani apologized for throwing the card in the dust bin insisting that he had no intention of insulting the Holy Prophet (PBUH) but local religious leaders insisted on further action and a FIR under section 295 C of the Pakistan Penal Code was registered against him. This blatant abuse of the law against innocent people only highlights the necessity for reform and increased scrutiny.

As part of a series of attempts to reform the law, the Pakistan Law Commission recommended a review of section 295C in 1994 and Benazir Bhutto's government agreed to reform. This was met with demonstrations across the country and amendments were abandoned. As early as 1995, following a mission to Pakistan, the UN Special Rapporteur on Freedom of Religion or Belief recommended amendments to the blasphemy laws reporting that 'such legislation should not be discriminatory and should not give rise to abuse, nor should it be so vague as to jeopardize human rights, especially those of minorities.' It was not long after this in 1998 that Father John Joseph, a Roman Catholic Bishop and human rights campaigner committed suicide in protest when he failed to find a lawyer willing to take the case of Ayub Masih, a Christian convicted for blasphemy. This tragic episode led to international debate about the laws and potential amendments were discussed.

The private members' bill, the Blasphemy Laws Amendment Bill submitted by Rehman last year, was intended to clarify the law in order to avoid miscarriages of justice. The amendments are essentially to the PPC and Criminal Procedure Code, the legislation which provides for the law and procedure in relation to blasphemy. The proposed amendments included the requirement for the complainant to demonstrate premeditation or malicious intent by the accused. The current absence of the requirement to demonstrate premeditation in blasphemy means that those accused of the crime can be charged for a crime with no substantive evidence against them, and convicted with no proof of intent. The Bill re-drafts sections 295 and 298 of the PPC to include acts done '*maliciously, deliberately and intentionally*', thus codifying this essential aspect of intentionality in criminal law. Other amendments included that penalties for each crime should be reduced proportionately and the life sentence and death penalty are removed entirely. The Bill included an additional section (203A), which ensures that anyone making false or frivolous accusations under the legislation is penalised as befitting the section under which the original claim was made. This is intended as a preventative measure to promote justice rather than open doors to religious persecution.

The violent reaction to the amendments from extremist factions, cold blooded assassination of Governor Taseer and persecution of individuals like Rehman, has put a halt to any attempt to amend the law. The politicization of the blasphemy laws has cast a shadow over the real question, whether any subjectively felt offence can become the basis of this very serious allegation that can have drastic consequences for an accused both legally and extra-judicially. In the meantime, Asia Bibi sits in an isolation cell for her own protection awaiting a decision on her case and other Pakistani citizens are accused of blasphemy every day. Notwithstanding the colonial roots of the law, the Pakistani state, legislature, executive and judiciary must stand accountable for the perpetration of a law that spawns cultures of vigilantism. The state cannot stand by as an onlooker as citizens take the law into their own hands. Furthermore, the so-called Muslim majority must also stand accountable for what acts of violence committed in the name of their faith.

Crisis of Governance and Human Rights in Nepal

By C K Lal

During the last week of January at Geneva, the 10th Session of the Universal Periodic Review Working Group under the Human Rights Council of the United Nations discussed and then accepted the report of Deputy Prime Minister and Minister for Foreign Affairs Sujata Koirala with some significant suggestions. Meanwhile, it was politics as usual for the caretaker government back home in Nepal. Premier Madhav Kumar Nepal forgot that he had resigned eight months ago and reshuffled the cabinet with the audacity of a person completely unconcerned with the legality, morality or acceptability of his decisions. When the political leadership becomes so amoral, it is quite natural for the administration and the law enforcement agencies to become a law unto themselves.

Within days of the development in Geneva, the law got a beating in Janakpur, a religious town in the southern Tarai-Madhesh flatlands of the country. On January 27, police gunned down Dipendra Jha, a former deputy chairperson of the student union of Ramsagar Ramswarup Multiple Campus of Tribhuvan University. District Superintendent of Police of Dhanusha Jagdish Pokharel claimed that Dipendra was killed in an encounter during routine patrol when he had fired at the police first. The family of the dead charged that the police had shot the student leader in cold blood after taking him under control. Since law enforcement agencies in Tarai-Madhesh have acquired some notoriety for what is euphemistically called “extra-judicial killing”—if it is “extra-judicial”, it is murder plain and simple, and couching the crime in legalese helps protect the perpetrators from public scrutiny—sent shockwaves throughout the region. Agitating students enforced a *bandha* (complete shutdown) in Janakpur town demanding that erring police personnel be brought to justice. The Terai Human Rights Defender Group too issued a statement for independent probe and compensation to the affected family pointing out that the police had no right to execute an accused without proper trial.

Reverberations of the ‘encounter’ made various rights workers across the country nervous. One such person who feared for his life was Human Rights Defender C. P. Singh in Nepalgunj, yet another town in Tarai-Madhesh, about 500 KM west of Janakpur. A day after Dipendra was shot, Singh sent a SMS that read more like a SOS to his friends and well-wishers. The message urged recipients

to rescue Singh from vindictive law enforcement agencies that had slapped fictitious charges upon him. It is not unnatural for Human Rights Defenders (HRDs) to interact with armed groups. Sometimes their interventions save innocent lives. However, there is always the risk that the police would interpret a HRD’s interaction with outlawed groups as complicity. Singh’s fears are thus genuine. Since governance has almost come to a halt, rule of law or presumed innocence of an accused—based on the principle that everyone is innocent until proven guilty in a court of law—has become a joke among security personnel. The root of the problem, however, runs deeper than the malaise in administration; it goes to the very core of governance: National Politics, uppercase symbolic.

Crisis of governance:

Even though Nepal is perhaps the oldest nation-state of South Asia, with more or less unaltered boundary and unbroken record of independence since 1768, the country remained in the grips of medievalism for much of its history. Political modernisation began with the overthrow of Rana oligarchy and the restoration of Shah monarchy in 1951 when a decision was made to adopt parliamentary democracy modelled after the Westminster system. Experiments in democratic governance, however, did not last. In the winter of 1960, King Mahendra suspended the parliament, imprisoned the prime minister elected by two-third majority of the legislature, outlawed political parties and instituted an autocratic rule. The country had to struggle for three decades to have democracy restored. The Constitution of Kingdom of Nepal—1990 once again adopted constitutional monarchy and parliamentary system of governance.

Almost as a twin to democracy, leftwing extremism was also born. Armed Maoist insurgency began in early 1996 ostensibly to overthrow the monarchy but also to do away with parliamentary system. Over a decade of violent insurgency resulted in huge loss of life, property and liberty of citizenry. Meanwhile, Narayanhiti Massacre in June 2001, in which Crown Prince Dipendra allegedly gunned down the entire family of King Birendra and then shot himself, brought King Gyanendra to the throne who tried to rule as an absolute monarch necessitating an understanding between parliamentary parties and the Maoists. A popular uprising in 2006 brought

monarchy on its knees and the road to republicanism was clear.

On May 28, 2008, the first meeting of the Constituent Assembly declared the country a Federal Democratic Republic and formally announced the abolition of the monarchy. A phase of Nepal's evolution as a modern nation was now complete. Or so people thought in the euphoria of republican celebrations. But nothing seems to have changed in the way the country is governed. Forget federalism, democracy or republicanism, even the concept of rule of law is yet to be institutionalised as the country lurches from one crisis to another.

The rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws that are adopted and enforced in accordance with established procedures. The principle is intended to be a safeguard against arbitrary use—abuse in fact—of power. Civilian supremacy over military, independence of judiciary, electoral mandate for the legislature and the executive, and a free and vibrant press are necessary elements of a functional system based upon the principle of rule of law.

Maoist leader and Prime Minister Pushpa Kamal Dahal had to resign in May 2009 when he tried to dismiss army chief Rookmangud Katuwal for insubordination. A politician who had lost elections from two constituencies and managed to enter the legislature through nomination heads the government formed after Dahal's ouster. Technically, there is no law that bars a nominated member of the legislature from heading the executive, but such a person lacks popular legitimacy and acceptability. Consequently, his instructions to the administration go unimplemented as officialdom—the permanent government—continues to run almost free of political control. The same ambiguity exists about civilian control over the security forces.

Theoretically, there is no challenge to the independence of judiciary. However, the judicial system is a legacy of absolute monarchy days where it takes years for petitioners even to get a hearing, let alone obtain justice. The press is technically freest in South Asia, but due to fear of armed groups or the exigencies of the marketplace, self-censorship is norm rather than exception. All in all, Nepal has become almost a dysfunctional state and a fertile ground for groups that do not respect the authority of the government.

Pieces of peace:

Under the Comprehensive Peace Agreement (CPA) signed between the government and the Communist Party of Nepal (Maoists), now called United Communist Party of Nepal (Maoists), in November 2006, the former combatants interned in temporary cantonments should have been integrated in the security forces or rehabilitated. They continue to languish in camps that are now monitored by a joint committee rather than by the team of United Nations Mission in Nepal (UNMIN). The term of UNMIN was unilaterally allowed to lapse even though UCPN (Maoists) wanted it extended until the completion of the peace process. Though Maoists are now in mainstream politics after they emerged victorious in the Constituent Assembly elections, they continue to maintain their revolutionary rhetoric and semi-military party structure. They are an important component of the Nepalese jigsaw peace puzzle.

The CPA had also envisioned a truth and reconciliation commission and a state restructuring commission. Both promises remain unfulfilled. Impunity is rampant and almost nobody has been held accountable for the excesses by militants and the military during insurgency, counter-insurgency and the reign of lawlessness in its aftermath. The second important piece of elusive peace in the country are nearly 100,000-strong army which pledges allegiance to political authority but exercises enormous influence upon the government due to the insecure mindset of anti-Maoist forces in society. Since the army is almost bereft of Madheshis, a self-defined population group concentrated mainly in Terai-Madhesh, domination of defence forces invariably alienates a large section of the Nepalese population.

Madheshis form another piece of the peace puzzle in the country. After an agitation and another popular Madhesh uprising in 2007 forced the government to commit itself to the claims made by traditionally marginalized communities, once again nothing has changed in the country. Madheshi politicians have been co-opted into the system and their alienated constituency has begun to gravitate towards armed groups in Terai-Madhesh where every lull is invariably followed by resumption of violence. Lawlessness is the norm as government officials too fish in troubled waters for pecuniary benefits.

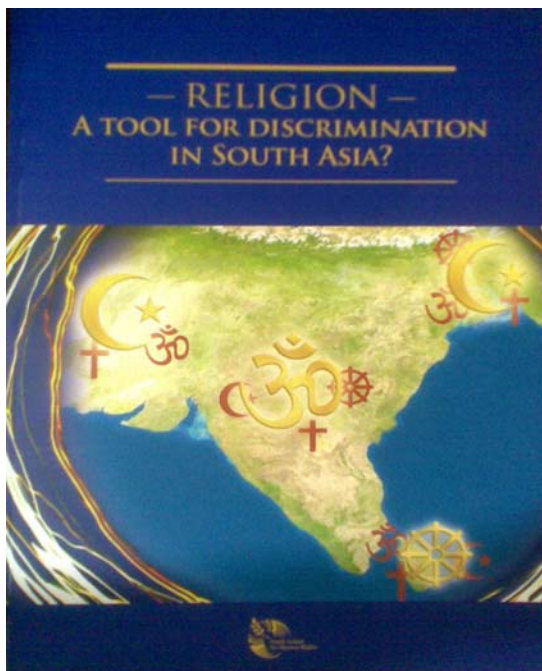
Representation of women in the legislature is impressive, thanks due to the statutory provision in the Interim Constitution that at least one-third of lawmakers have to be women, but their influence is limited due to the hold of patriarchy upon Nepalese

society. Indigenous *janjati* population have their own grievances against the state and some of them continue to be restive. Dalits of Hindu society have been legally empowered as equals of other castes and community groups, but discriminatory practices, including some forms of untouchability, has not yet been fully eradicated from the country. Nepal was once a Hindu country that prided on its Buddhist identity, but Christians and Muslims failed to receive the same respect in society. The Interim Constitution has declared the country secular, but there is a long way to go before religious freedom becomes a reality.

Nepal is one of the poorest countries of the world with the widest gap between the haves and have-nots in Asia. This is a sure-fire prescription for chronic volatility. Widely felt but less recognised is the fact that political awareness in Nepal has progressed at a much faster rate than institutionalisation of democracy. This anomaly is perhaps the main cause behind the state of flux and instability in Nepalese politics. Timely promulgation of constitution, well before the extended term of the Constituent Assembly expires in May 2011, can restore a sense of hope among the masses. However, nothing less than a political miracle, something that politicians keep promising but repeatedly fail to deliver, can make the promulgation of constitution within the stipulated date possible.

The 10th Session of the Universal Periodic Review Working Group under the Human Rights Council of the United Nations in Geneva allowed Nepal to escape with a minor rap, but the international community would need to keep a closer watch on the human rights situation in Nepal. Failure to promulgate a constitution, delay in restructuring of state, hesitation in reforming the army and vacillation in rehabilitating Maoist combatants can severely complicate an already precarious human rights environment in the country. Failure of the national legislature to form a government after several attempts over the last one year is a symptom rather than the cause of dysfunctional state of Nepal.

SAHR LAUNCHES THE PUBLICATION RELIGION: A TOOL FOR DISCRIMINATION IN SOUTH ASIA?



On 1st October 2010 a ceremony was organized by Sangat for South Asian activists at the Bangladesh Shilpkala Academy, Dhaka, and the Meeto Memorial Award for young South Asians was given. On this occasion SAHR released their latest publication entitled "Religion: A Tool for Discrimination in South Asia?" This book which is based on studies in different countries illustrates how policies and programmes, educational texts, media and administrative measures, have exacerbated discrimination against religious minorities in Bangladesh, India, Pakistan and Sri Lanka. Prof. Amena Mohsin, a renowned researcher from Bangladesh, gave a brief note on the research. This book was dedicated to Meeto Bhasin-Malik, who helped set up the SAHR network and who was committed to building communal harmony.

Religion as a Tool of Discrimination in South Asia (Review Article)

Vijaya Samaraweera¹

Religious belief is readily acknowledged to be a purely personal matter. Yet, the social nature of religion transforms religious beliefs into distinguishing social markers, and when religions enter the political space and acquire influence and power, there are serious consequences for the individuals and groups that are left behind politically. History is replete with records of the discrimination, oppression and violence unleashed by dominant religions at adherents of politically weak religions. The latest publication of South Asians for Human Rights (SAHR), *Religion – A Tool for Discrimination in South Asia?* Colombo, 2010 (241 pp.), documents this reality in contemporary Bangladesh (authored by Amena Mohsin), India (Satya Sivaraman), Pakistan (Saba Naveed Shaikh) and Sri Lanka (Chulani Kodikara). The detail and breadth of the coverage in the four essays makes this volume a welcome addition to the burgeoning literature on human rights in South Asia.

The title of this volume is formulated in the form of a question. Whether this is appropriate is questionable since it is indubitable that religion has been a basis of discrimination virtually from the time these four countries emerged as nation-states with ethnically diverse populations. The conceptual problem lies elsewhere, in isolating religion as a basis of discrimination. In some settings, religion is only one element in the make up of ethnic groups, and in such cases the “triggering” marker for discrimination may not be religious belief but one of the other distinguishing identifiers of ethnicity (language, for example) or, alternatively, religious factor may be subsumed within the other markers. None of the four essays in the volume specifically address this conceptual issue. Nonetheless, with some exceptions, the role of religious discrimination is made clear in the discussions.

The focus of the essays is on the experiences of the minority religions at the hands of the respective

majority religions that assumed majoritarian (or “hegemonic”, the term used in some essays) roles in the four South Asian polities. Unlike some other parts of the world where adherents of minority religions control the state, state power at the national level in these countries is in the hands of the members of religions that have overwhelming numerical superiority; this strength in numbers constitutes the basis and the enabler of discrimination of minority religions. The thrust of the essays is on the discriminatory measures and violence (necessarily a concomitant of the discrimination) committed by the formally constituted state powers or by their proxies, with some attention devoted to the level of the principal constituent entities of the national state. Actions of non-state actors are not ignored; mob violence against minorities in South Asia is of course notorious. The constitutional edifices and the political and legal structures constructed over the years in each of these countries and the international human rights regimes validated by them (applicable of course only to “state parties”) are offered in varying degrees as backdrops to these discussions.

The treatment of the essays may appropriately be described as reviews of the politics of religion in the four countries that paved the way for religion to become the basis and function as the tool of discrimination of the religious minorities. What is chronicled may be best summed up as the precipitous descent of each of these countries from the lofty idealism at independence to parochial power grabbing that is inextricably linked to discrimination and violence. The visions of the future embraced equal citizenship to all. There was an underlying theme: that citizens would remain uncontaminated by potentially divisive ideas centered on religion; this is essentially an acknowledgement that religious belief is a private matter and that the state (or “nation”) had no legitimate interest in it (for example: Jinnah of Pakistan, Shaikh, p. 133; D.S. Senanayake of Sri

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Lanka, Kodikara, p. 204; and, Mujibur Rahman of Bangladesh, Mohsin, pp. 4-5).² However, not all the leaders were firmly committed to the lofty ideals (for example, S.W.R.D. Bandaranaike of Sri Lanka, Kodikara, p. 205).

In the post-independent era, the visions and ideals were corrupted and shattered by the political discourses that gained currency and they have had far-reaching transformative effects. The crucial importance of acquiring of political power by the majority religious forces is well documented in the essays. With the use of religion for political mobilization in India, the political arena has been converted into the platform for discriminatory advocacy, inflammatory propaganda and violence against the religious minorities – indeed, political discrimination in India is the “foremost form of discrimination” against the minorities. This discrimination does not exist in an ideological vacuum but in a “constantly regenerated ideological climate of stereotyping of minorities, spreading and perpetuating of ideas of bias and hate against them” (Sivaraman, pp. 48-49, 71-72). In Pakistan, adherents of minority religions have been “persistent” victims of religious bias of the majority committed to achieving parochial political and social goals, and they have never been “equal citizens of one state” as envisaged by Jinnah (Shaikh, p. 133). Bangladesh saw the injection of the “process of Islamization” of the society for political ends by successive regimes, both civilian and military, and the incorporation of Islam, the majority religion, as an element of Bangladeshi nationalism (Mohsin, pp 6-7). In Sri Lanka, the discourse drew upon the historical memory of the Sinhala Buddhist majority. The discourse was manipulated in the electoral process that functioned as the arena for political competition along ethnic lines, and the backing of the Sinhala Buddhists was mobilized to graft its key strands into state policy-making (Kodikara, pp. 193ff). Bangladesh is a telling example not only of the electoral manipulations but also of the electoral violence inflicted upon the minorities – indeed, Bangladesh electoral system “turned into a source of persecution for the religious minorities” (Mohsin, p.11). In the case of the deep sense of insecurity under which Muslims and Christians live all over India – especially in regions marked by conflict or strong presence of Hindu right-wing forces – the explanation for the insecurity has to be

found in the fact that it is often deliberately created or consciously maintained by forces that seek polarized communities in order to gain electoral benefits (Sivaraman, p. 70). In Pakistan, as the leader of the Pakistan Sikhs once declared, religious minorities feel isolated because the political system does not provide for “secular representation” in the legislature (Shaikh, p. 137).

The foundational documents of these countries tended to incorporate the lofty “liberal” visions articulated at independence. Thus, “secularism” was enshrined in the first (1972) Bangladesh constitution (Mohsin, p. 5) and Indian constitution provided for rights of equality to all citizens and the protection of the interests of the minorities (Sivaraman, pp. 93-94, 119-120). Yet, there were ominous signs. Amena Mohsin, for example, draws the conclusion that the independent Bangladeshi constitution cannot be treated as a “non-hegemonic” instrument since the hegemony of the majority religion Islam was “implicit” in it (p. 5). In general, the constitutional instruments contained provisions that could be manipulated to advance causes of the majority religions, and the original ideals were shredded again and again. In fact, with the exception of India, the post-independent constitutional developments revealed a pronounced trend in favor of the majority religions. In Bangladesh, a series of constitutional amendments incorporated “Islamic ideals” -- for example the dropping of the principle of secularism and elevation of Islam into the status of state religion -- effectively transformed the instrument’s standing, with minority rights activists asserting that the non-Muslims were no longer equal to the Muslims (Mohsin, p. 6). Pakistan’s 1973 constitution is replete with provisions that categorically provided for the preferential treatment of Muslims (Shaikh, pp. 158-159). And, the 1972 Sri Lankan constitution conferred a foremost place to Buddhism (Kodikara, p.206).

This trend was magnified in the post-independent public policies and law making in the four countries and moreover, the discriminatory treatment of the minority religions was intensified in public administration measures. For example, in Pakistan, with a handful of non-Muslim public servants, public sector has manifested a strong bias-against non-Muslims (Shaikh, p. 136). The Bangladeshi lawmakers have acted with overt bias against minorities (Mohsin, pp. 27ff.). In Pakistan, lawmakers have simply refused to accept that the

² Mahatma Gandhi is a fascinating study in this context. He once said that “one’s own religion is after all a matter between oneself and one’s Maker and no one else’s”, and yet stated that politics bereft of religions should be shunned, meaning, as he explained in a number of different contexts, politics should be the concern of the seeker of “God and truth”. Krishna Kripalani (Compiler and Editor), *All men are Brothers: Life and Thought of Mahatma Gandhi as Told in his Own Words*, Paris: UNESCO, 1958.

society for which laws are being made is multi-religious, and as a matter of fact, many laws enacted have endorsed religious intolerance (Shaikh, pp. 146-148, 157). Conversely, the protection of the minorities from discrimination and hate crimes is non-existent or wholly inadequate (Sivaraman, pp. 73-74). Rights enshrined in constitutions have withered or have been threatened by judicial decisions of the highest courts (Kodikara, p.216-217). Structurally weak and/ or ineffectual criminal justice systems have failed the minority religious adherents (Sivaraman, p. 71; Shaikh, p. 146). Moreover, religious textual material and ideas, rituals and symbols of the majority have become integral to the conduct of state activities, including the state-controlled media and (most ominously from a long term perspective) in the education of the young; that these developments carry powerful symbolic importance in these heterogeneous societies cannot be doubted (Kodikara, p. 206-207; Mohsin, pp. 6, 20-21; Sivaraman, pp. 96-101; Shaikh, pp.150-152).

The post-independent developments that carry the hallmark of religious discrimination and violence are amply documented in the four essays under review. The treatment varies from essay to essay and so are their respective lengths. Given the unique and distinctive make up of the four states, this of course is understandable. Nonetheless, the coverage has several common touchstones, such as ideological dimensions, popular representation, employment in the state sector, education, religious rights, law making, media and socio-economic conditions of the religious minorities.

It is not possible to consider these subject matters in detail here. However, it is worth highlighting three different areas as illustrative cases.

Although only the essays on Bangladesh and Pakistan have extended discussions, it is worth drawing attention to the “gendered dimension” of the religious discrimination (to use the formulation in Mohsin, p 34). These essays portray women as the victims who have suffered most by the discrimination and violence motivated by religious biases. It is argued that the insecurity of the minority communities in Bangladesh is “most inextricably” linked to the insecurity of its women who have become primary targets of religious violence (Mohsin, p. 14). The criminal law regime in Pakistan incorporates legislation – commonly identified as “Hudood Laws” -- that completely disregard the rights of non-Muslim women. It is also apt to note that the governing powers that came after Jinnah’s demise have effectively ignored or dismissed his strong commitment to women’s rights (Shaikh, pp. 159-161).

Secondly, it is relevant to draw attention to the documentation in these essays of the failures of both the national and international human rights regimes. It is noteworthy that not all the countries examined have embraced the international human rights instruments. In fact, many such instruments have not been ratified and thus remain unenforceable. The case in point is Pakistan which has refused to ratify a number of core human rights conventions (Shaikh, p. 161). It is abundantly clear that the international human rights instruments that are designed and intended to safeguard the rights of women have had no effect. As a matter of fact, this is true in a broader sense as well. In Bangladesh, the plight of the Hindu minority exemplifies this fact. Tragically, Bangladeshi Hindus, who had suffered under Pakistan rule, have fared no better in the new sovereign state: Thus, regardless of the fact that right to property is guaranteed by its constitution (and by international human rights instruments), land ownership became “the major and most violent source” of discrimination directed at the Hindus; the systematic deprivation of land and attendant violence is the source of their insecurity (Mohsin, p. 27). The Elimination of All Forms of Intolerance and Discrimination on Implementation of Relief obligated upon the Pakistani government after its ratification of that 1981 Declaration effectively remains a dead letter. And, despite the right to freedom of thought, conscience and religion guaranteed by the constitution, the laws enacted in Pakistan have repeatedly violated these rights (Shaikh, p. 157).

CANDLELIGHT VIGIL AT THE WAGAH BORDER

SAHR India participated in a midnight candle light vigil which has been held every 14/15 August by peace activists from both India and Pakistan. At midnight around 50 peace activists from both sides of the border walked towards the gates with candles shouting slogans of peace and friendship. This year the event was joined by a peace caravan which traveled from Mumbai to Wagah in India and from Karachi to Wagah in Pakistan. These activists carried soil from all the states covered during their journey from both sides of the border. This soil was then mixed to plant a peepal tree at the India Pakistan border symbolizing peace, solidarity and friendship.

REGIONAL MULTILOGUE OF EMINENT PERSONS

The South Asian Multilogue entitled “Challenges to Peace and Prospects for Cooperation” was held at the India International Centre, New Delhi from the 13th to 15th September 2010.

Amongst the eminent persons present were Professor Rehman Sobhan, Dr. Kamal Hossain and Motiur Rahman from Bangladesh; senior journalist I A Rehman and Hina Jilani from Pakistan; Kuldip Nayar, Maja Daruwala and Siddharth Vardarajan from India; Dr. Paikiasothy Saravanamuttu and Dr. Nimalka Fernando from Sri Lanka; Prof. Sarwar Mamound from Afghanistan; Mohammad Latheef from Maldives; and Prashant Jha from Nepal.

The objective of the conference was to stimulate discussions that could define alternative political and economic strategies to address the rise of terrorism and cross border violence; communal hostility and discrimination against minorities; dislocation of internally displaced persons and refugees; impunity of state instigated violence; and to encourage freedom of movement and cultural exchanges within South Asia and development that will be people centred, and which would protect the rights to education, health, livelihoods and shelter.

At the conclusion of the conference, a statement was issued which was circulated widely among civil society organizations, media personnel, youth, socially committed business community and others in the South Asian region. The statement issued at the conclusion of the Multilogue could be accessed at <http://www.southasianrights.org/?p=1478>



REGIONAL CONSULTATION OF CITIZENS' VOICES 2010

The Regional Consultation, which was held from 27 – 29 November 2010 in Kathmandu, Nepal served as a forum for a wide cross section of human rights defenders, academics, professionals and cultural activists from all South Asian countries to share their knowledge and experiences of strategizing to promote human rights and democracy in their own society. The theme of the consultation was “Challenges for South Asia: Human Rights and Democracy” and more than 150 participants engaged in in-depth discussions.

The areas under discussion were transparency and accountability of South Asian parliaments, security laws and freedom from torture, discrimination against religious minorities and internally displaced persons in South Asia. Also, the meeting welcomed the SAARC Summit initiative for a Charter for Democracy but was concerned that the draft of the charter was limited to a bureaucratic exercise and did not ensure that citizen's voices are heard.

The statement issued by SAHR at the conclusion of the regional consultation could be accessed at <http://www.southasianrights.org/?p=2083>

REGIONAL CONSULTATION IN PICTURES



Plenary session on 27th November 2010



The Inaugural Address given by Honourable Justice Kedar Nath Updhyay, Chairperson, National Human Rights Commission, Nepal



Keynote Address delivered by Mr. C. K. Lal



The session on the "Challenges for South Asia: Human Rights and Democracy - country perspectives"



The session on "Transparency and Accountability of South Asian Parliaments"



The members of Parliament in the South Asian countries during the discussion on "Transparency and Accountability in South Asian Parliaments"



Speakers at the session on "Security Laws and Freedom from Torture"



The panel at the session on "Discrimination against Religious Minorities"



Participants discuss recommendations to the "SAARC Charter for Democracy"



The session on "Internally Displaced Persons"



The participants at the Regional Consultation



The participants at the Regional Consultation

THE NEW BUREAU

- Chairperson : Hina Jilani
- Co-Chairperson: Dr. Nimalka Fernando
- Afghanistan Prof. Sarwar Mamound
Abdul Rahman Hotaki
- Bangladesh Shaheen Anam
Khushi Kabir
Dr. Asif Nazrul
- India Vrinda Grover
Prof. Kalpana Kannabiran
Jatin Desai
Yousuf Tarigami
- Maldives Jennifer Latheef
- Nepal Vijay Singh
Dinesh Tripathi
- Pakistan Zohra Yusuf
Salima Hashmi
Kamran Arif
- Sri Lanka K. S. Ratnavale
Dr. Deepika Udagama
Ambika Satkunanathan



L-R: Dr. Asif Nazrul, Jatin Desai, Dr. Nimalka Fernando, Khushi Kabir, Dr. Deepika Udagama, Prof. Sarawar Mamound, Jennifer Latheef, Vrinda Grover, Dinesh Tripathi, Shaheen Anam, Salima Hashmi, Kamran Arif, Zohra Yusuf

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