

Sectarianism and Censorship in Pakistan: The Punjab Tahaffuz-e-Bunyad-e-Islam Bill 2020¹

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Summary

Should states police the boundaries of theological toleration? What happens when they do? The passing of the Tahaffuz-e-Bunyad-e-Islam (Protection of the Foundation of Islam) Bill 2020 in Pakistan's Punjab Assembly in July 2020 illustrates that laws, which seek to protect the religious sensitivities of one sect over another, politicises theological divisions, criminalises sectarian difference and marginalises religious minorities. It also raises long-standing questions concerning the parameters of the state's authority over religious affairs. The Bill emerges in a context of growing intolerance towards minorities and shares close textual similarities to Pakistan's notorious blasphemy laws.

Should states police the boundaries of theological toleration? What happens when they do? These questions have long haunted Pakistan since its creation in August 1947. Article 1 of the third and current 1973 Constitution of Pakistan declares that the state should be known as the Islamic Republic of Pakistan. However, what an 'Islamic' republic is, however, has been a question that has been difficult to answer since independence. Article 2, moreover, states that Islam is the religion of the state but what this means for religious minorities is a source of vociferous conflict. Indeed, Pakistan was born not as an Islamic state, but rather as a secular dominion with a Westminster-style parliamentary system of government. However, being created in the name of Islam meant that Pakistan had to confront the question of the place and role of religion in the state.² It has since trialled numerous legal, constitutional and institutional reforms to arrive at an agreed upon Islamic destination.³ But

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² The earliest constitutional documents were iterations of the Government of India Act of 1935 with vague, nominal or ambiguous provisions proclaiming the state's commitment to Islam. The first draft Constitution of 1950, for instance, included just two clauses related to Islam. The first urged for the incorporation of the Objectives Resolution as a "Directive Principle of State Policy". The Objectives Resolution of 1949 outlined the general principles for the constitution of Pakistan. It tied the sovereignty of the state, democracy and minority rights to Islam. The second article stressed that steps be taken in many spheres of governmental activities to enable Muslims to order their lives in accordance with the Holy Quran and the Sunna; but it did not enumerate how this was to happen.

³ In the aftermath of independence, alternatives to the model of the nation-state were also put forward. But whether it was Mawlana Abul Ala Mawdudi's formulations of a theo-democracy or a modern caliphate purported by the ulema-led Board of Talimati Islamia, these models had limited appeal since they required existing political elites to relinquish much or most of their powers and authority to the ulema. These models left little room for politics altogether. Nor did these constitutional schemes care much for elections and democratic deliberations. Mawdudi's theo-democracy, for instance, reduced officials (elected, religious or otherwise) to state agents essentially responsible for the implementation of the sharia (divine law). See Sayyid Abul Ala Maudoodi and Kurshid Ahmad, *The Islamic Law and Constitution* (Lahore: Islamic

despite its efforts, numerous ambiguities persist. Almost all Islamic reforms remain fundamentally contested and what it is that makes a political and legal order 'Islamic' remains unclear. The passing of a recent Bill in the Punjab Assembly illustrates these points.

Tahaffuz-e-Bunad-e-Islam Bill 2020

The provincial assembly of Punjab passed the Punjab Tahaffuz-e-Bunad-e-Islam (Protection of the Foundation of Islam) Bill 2020 on 22 July 2020. Its objective is to prevent the printing or publication of objectionable materials in books in the Pakistani province of Punjab.⁴ The Bill was drawn up to stop the spread of slander and insults against Prophet Muhammad, his family and his companions. In this regard, it follows closely with the logic of the laws found in Chapter XV of the Pakistan Penal Code often referred to as the infamous blasphemy laws.⁵ The Tahaffuz-e-Bunad-e-Islam Bill demands that honorific titles and epithets precede and follow the names of the Prophet, his wives, children, descendants (*ahl-e-bait*), companions and the first four caliphs in printed or published books. Muhammad Basharat Raja, the current Provincial Minister of Punjab for Law and Parliamentary Affairs, hailed its passing as a step towards the 'PM's vision of Riyast-e-Madina'.⁶ Punjab Chief Minister Sardar Usman Buzdar declared the moment as a historic step of the Pakistan Tehreek-e-Insaf-led government.⁷ Although the Bill was passed in the legislature, it has yet to acquire the Governor of Punjab's seal to become law. And the Governor has given no indication that he will approve the Bill any time soon. This is because the Tahaffuz-e-Bunad-e-Islam Bill has proved to be as controversial as it is divisive. The provisions seek to protect the religious sensibilities of the Sunni majority in Pakistan.

The Tahaffuz-e-Bunad-e-Islam Bill bestows sweeping powers on the Directorate General of Public Relations (DGPR), a department which acts as the main publicity arm of the Punjab government. This department is tasked with the responsibility of determining violations of

Publications, 1975). pp. 139-140; Seyyed Nasr, *Mawdudi and the Making of Islamic Revivalism* (New York: Oxford University Press, 1996) pp. 90-114. The ulema's contribution to the early debates on the Constitution had been in an advisory capacity primarily through the Board of Talimaat-e-Islamia. The Board was asked to advise the Constituent Assembly on matters pertaining to Islam. Leonard Binder, *Religion and Politics in Pakistan* (California: University of California Press, 1961) p. 162.

⁴ Although the Bill concerns itself with the content of books, it defines 'books' broadly, stating that a book includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, sign, map, chart, or a plan printed, reprinted or reproduced, lithographed or produced in any soft form (for example e-books).

⁵ The Pakistan Penal Code (Act XLV of 1860). <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

⁶ When Imran Khan assumed power following his victory in the July 2018 elections, he promised to recreate Pakistan as a welfare state in the image of 7th century Madinah under the leadership of the Prophet. In his first address as Prime Minister, he declared: "I want to share the kind of Pakistan I envision – the type of state that was established in Medina, where widows and the poor were taken care of ... My inspiration comes from the last Prophet who set up an ideal welfare state in Medina. I want Pakistan to become like that". "Will set up Medina-like welfare state in Pakistan: Imran", *Press Trust of India*, 26 July 2018. http://www.ptinews.com/news/9911434_Will-set-up-Medina-like-welfare-state-in-Pakistan--Imran. Accessed 24 September 2020.

⁷ "CM terms Tahaffuz-e-Bunad-e-Islam legislation a historic step", *The Nation*, 24 July 2020. <https://nation.com.pk/24-Jul-2020/cm-terms-tahaffuz-e-bunad-e-islam-legislation-a-historic-step>. Accessed 23 September 2020.

the Bill's provisions and ensuring that publishers and presses follow the proposed law to the letter. The DGPR, furthermore, is vested with the authority to refuse permission to import, print or publish a book if it determines that the book poses a threat to national interest, culture, religious and sectarian harmony. The Bill, however, leaves these categories ambiguous and ill defined. Moreover, the DGPR has the power to visit and inspect the premises of any printing press, publication house or bookstore and confiscate any book before or after printing. The punishment for violating the mandate of the Bill is a maximum jail term of five years with up to a fine of Rs500,000 (\$4,127).

Connections to Blasphemy Laws

Despite the fact that laws designed to protect religious feelings have a long history in South Asia, there are particular features in the design of the Tahaffuz-e-Bunyad-e-Islam Bill that raise concerns for minorities across Pakistan. The Pakistan Penal Code inherited a collection of laws from the colonial legal order under the category of 'Of Offences Relating to Religion'.⁸ These laws were all general in their scope, protected all religions, required a proof of intention for the occurrence of an offence and assigned the same penalty – jail terms of one to two years with or without a fine.⁹

The Tahaffuz-e-Bunyad-e-Islam Bill, however, follows closer to the five laws introduced during the 1980s as part of Zia ul-Haq's Islamisation programme which are known as Pakistan's blasphemy laws. Unlike the colonial laws relating to religious offences which sought to deal with issues of law and order, and framed the British as indispensable and neutral peacekeepers of their religiously divided subjects, Zia's Islamisation programme sought to construct his regime as the guardian of Islam, arbiter of religious and theological conflicts, and the defender of the religious and political interests of Muslims. His laws sought to protect not just Islam – but Sunni Islam – and it targetted religious minorities (Islamic or otherwise) in Pakistan.¹⁰ He made defiling or the desecration of the Quran punishable with life imprisonment (Section 295-B), rendered the use of derogatory remarks towards Prophet Muhammad punishable with life imprisonment and liable to a fine (Section 295-C), proscribed derogatory remarks against the Prophet's family, companions and the first four caliphs (Section 298-A), reprimanded Ahmadis from using honorific titles and epithets for the founder and the spiritual leadership of the sect (Section 298-B) and made it

⁸ The Indian Penal Code (Act XLV of 1860). <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>.

⁹ Chapter XV of the Indian Penal Code of 1860 was entitled "Of Offences Relating to Religion". It contained four provisions which set the injury or defilement of a place of worship, the voluntary disturbance of a religious assembly, the deliberate trespass of places of worship or the utterance of words or performing gestures with the deliberate intention to wound religious feelings of any persons as punishable offences. A new section was introduced into Chapter XV in 1927 which outlawed words, either spoken or written, or visual representations which insulted or outraged religious sensitivities.

¹⁰ On the substantive differences between the laws, Shayan Malik explains: "the wordings in the pre-1980 blasphemy laws place a great emphasis on the intent of the defendant, a requirement for one to be liable ... This is in contrast to the post-1980 blasphemy law where the intention of an accused plays a substantially lesser role". Shayan Azamat Malik, "Blasphemy: A Crime in Pakistan Penal Code versus the Traditional Perspective", *Pakistan Law Review*, Vol. 8, 2017, p. 40.

unlawful for Ahmadis to refer to themselves as Muslims and preach or propagate their faith (Section 298-C).¹¹

While 295-C targetted non-Muslim minorities, 298-A targetted the Shia and 298-B and 298-C aimed at distancing the Ahmadis from Sunni Islam. The Tahaffuz-e-Bunyad-e-Islam Bill replicates this formula. It proposes to punish theological deviations from orthodox Sunni beliefs. The Bill seeks to criminalise the beliefs of Islamic sects such as the Shia who view three out of the first four caliphs as usurpers and the Prophet's wife Aisha as a traitor. The Bill also criminalises the Ahmadis, some of whom take their founder Ghulam Mirza Ahmad to be a prophet after Prophet Muhammad. The tacit sectarian nature of the Bill equates Sunni Islam with Islam. Punjab Assembly Speaker Chaudhry Pervaiz Elahi, for instance, declared that "this bill will prove to be a milestone in the protection of Islam and its supremacy".¹² He also urged that the Bill be read with 295-C of the Pakistan Penal Code.¹³

Implications and Concerns

The Tahaffuz-e-Bunyad-e-Islam Bill politicises Islam and the theological divisions that have long existed between Sunni Islam and other Islamic sects. The Bill also centres the defence of Islam and the theological station of the Prophet and other significant Muslim personages of spiritual, political or religious significance as the focus of the debate. The debate is polarising since it frames those who oppose the Bill or its provisions to be against Islam.¹⁴ It allows some politicians like Elahi to appear as committed advocates of an Islamic Pakistan and score political points without needing to consult religious scholars regarding whether the Bill conforms to the objectives and principles of the sharia.

Furthermore, defending the Bill provides space for Islamist politicians to weigh in on a dispute of national and constitutional significance.¹⁵ While upholding the honour of the Prophet is a cornerstone of the political campaigns of a number of Islamic parties, ensuring that his honour is protected along with other issues which injure Sunni sensitivities seems to be largely covered by the existing blasphemy laws. It beckons the question of why the Tahaffuz-e-Bunyad-e-Islam Bill was necessary at all other than to capitalise politically on Islam.

The debate on the Bill also frames religious minorities opposing the Bill as enemies of Islam – and Pakistan – more broadly. While hardline Sunni Islamists look to scripture to defend the Bill from repeal or reform, religious minorities look to the Constitution to oppose the Bill. Shia ulema, for instance, argue that the Bill contravenes Articles 19 (Freedom of

¹¹ These are sections in the Pakistan Penal Code.

¹² Azam Malik, "Punjab Assembly passes Tahaffuz-e-Bunyad-e-Islam Bill", *Geo News*, 23 July 2020. <https://www.geo.tv/latest/299423-punjab-passes-tahaffuz-e-bunyad-e-islam-bill>. Accessed 24 September 2020.

¹³ "PA passes bill protecting foundation of Islam", *Dawn*, 23 July 2020. <https://www.dawn.com/news/1570534>. Accessed 25 September 2020.

¹⁴ Sunni ulema, for instance, declared that opposition to the Bill was an intolerable act. "Clerics to get Tahaffuz bill implemented", *Dawn*, 10 August 2020. <https://www.dawn.com/news/1573539>. Accessed 28 September 2020.

¹⁵ Ibid.

Speech)¹⁶ and 20 (Freedom to Profess Religion).¹⁷ Alongside the discriminatory nature of the proposed law, numerous other concerns emerge about its design. The Bill features vague clauses and no clear appeals procedure leaving the door open for abuse, extremism and vigilante violence.¹⁸ This problem is all too familiar from the social effects of the blasphemy laws which have been used to persecute religious minorities and carry out extra-judicial killings. Another issue which arises is not just whether a public relations department should have such unfettered powers, but also whether secular authorities should be in charge of determining when religious offences occur. As Syed Hassan Murtaza, a Pakistan Peoples Party member of the Punjab Assembly, asked: “Will an 18-grade officer of DGPR teach us religion? Will he interpret my beliefs?”¹⁹ His questions raise important concerns regarding the dangers of not only entwining the religious and the secular, but also the problems associated with rendering the state as theologian supreme.

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¹⁶ Article 19: Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.

¹⁷ Article 20: Subject to law, public order and morality, -
a. every citizen shall have the right to profess, practice and propagate his religion; and
b. every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

¹⁸ “Letter to PA on concerns regarding Tahaffuz-e-Bunyad-e-Islam Bill”, *The News*, 6 August 2020. <https://www.thenews.com.pk/print/696696-letter-to-pa-on-concerns-regarding-tahaffuz-e-bunyad-e-islam-bill>. Accessed on 29 September 2020.

¹⁹ Faizan Bangash, “Need for amendment after consensus: Tahaffuz-e-Bunyad-Islam Bill stopped in its tracks”, *The News*, 8 August 2020. <https://www.thenews.com.pk/print/697422-need-for-amendment-after-consensus-tahaffuz-e-bunyad-islam-bill-stopped-in-its-tracks>. Accessed on 29 September 2020.