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A Legal Study on Fatwa regarding Hilla Marriage in Bangladesh

Transnational State Responsibility for Violations of Human Rights

The Economic and Social Council and the Specialized Agencies

The Role of NGO'S in Protection and Promotion of Human Rights of Women in Bangladesh

Blasphemy and Criminality: An Islamic Perspective; Special Reference to Bangladesh

Sexual Harassment in Bangladesh: Law and Realities

Land Management in Islam: A Legal Study

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বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ

নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন

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Blasphemy and Criminality: An Islamic perspective; Special Reference to Bangladesh.

Md. Abdul Awal Khan*

Abstract

Every man holds his own religion. It is not possible to think a man without any religion. Religion is very sensitive and sacred thing for a man. Every one wants protection of his religion. Nobody expects and accepts any sort of attack or any activity against his religion. Freedom of religion is one of the fundamental rights in many countries. Even a man, who doesn't perform activity, also does not tolerate any thing, which is injurious to his religion. Every religion supports peace and solidarity and one of the instructions of all religions is not to hurt or insult any other religions at the same time not to do any thing which would degrade or hurt his own religion as well. Maximum religious crime generate from for blasphemy. This research aims to point out the issues constituting the grounds of blasphemy from the Islamic point of view and prescribes recommendations for the appropriate and viable blasphemy law to protect the society from the effects of offences generating from the commission of blasphemy.

1. Introduction

Blasphemy means behaviour or language that insults or shows lack of respect for God or religion.¹ It may include using sacred names as stress expletives without intention to pray or speak of sacred matters; it is also sometimes defined as language expressing disapproved beliefs, or disbelief. Sometimes blasphemy is used loosely to mean any profane language.² In a broader sense, blasphemy is irreverence towards something considered sacred or inviolable. In this broader sense the term is used to indicate something against learning.”³ Many cultures disapprove speech or writing which defame the deity or deities

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of their established religions, and these restrictions have the force of law in some countries.

1.1 Etymology and Meaning of Blasphemy

Blasphemy derived from English *blasfemen*, similiar to French *blasfemer*, Latin *blasphemare*, Greek *blasphemein*, which means 'to injure', and *pheme*, 'reputation'. Blasphemy, which was opposed to 'euphemy' and has also given 'blame' from old French *blasmer*.⁴ Blasphemy is disrespectful use of the name of one or more Gods. Blasphemy also means, *Kufr* (to hide the truth). It includes a denial of any of the essential principles of Islam.⁵ It also means "contemptuous and irreverent speech about God or Kings regarded as sacred."⁶ Blasphemy is used to mean "the public or criminal libel of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intending to wound the feelings of mankind or to excite contempt and hatred against the Church by law established, or to promote immorality. It is a common law misdemeanor."⁷

1.2 General determination of blasphemy

It is very difficult to determine the elements that constitute blasphemy and it is a more obscure matter to determine which constitute blasphemy generally. Mostly the determination of blasphemy depends on the instruction of the Holy books. Some academics are of the view that the crime has been expressed in many ways that it is hard to point out exactly what behaviour constitute blasphemy. During a private prosecution in 1977, the trial court said blasphemous libel was committed if a publication about God, Christ, the Christian religion or the Bible used words which were scurrilous, abusive or offensive, which vilified Christianity and might lead to a breach of the peace.⁸ Actually Blasphemy is a sin against the virtue of religion by which we render to God the honour due to Him.

2. Blasphemy laws in the world

Recently there is a tendency in the western countries towards the repeal or reform of blasphemy laws, and these laws are infrequently enforced where they exist. In the western there is a tendency to include some elements as blasphemous regardless of religion. Many countries of the world incorporated this law in their statute or constitution. Blasphemy laws exist in Austria,⁹ Denmark,¹⁰ Germany,¹¹ The Netherlands,¹² New Zealand,¹³ Norway,¹⁴ Pakistan,¹⁵ Spain,¹⁶ Switzerland,¹⁷ Bangladesh,¹⁸ UK and many other countries of the world.

3. Blasphemy and Apostacy in Islam

Blasphemy is the opposite of disregard of belief just as darkness is the opposite of light. In Islam it bears three meanings namely: "(1) *Tashbih* that is likening Allah to His creation that is "to say, or belief that Allah has legs" etc. (2) *Takdhib* that is contradicting the Quran or that was undoubtedly related from the Prophet Mohammad (SM) and known by every Muslims like negating the resurrection of the bodies and souls or negating the obligation of prayer, fasting or *zakah* (3) *Tatil* that is negating or denying the existence of Allah which is regarded as the most blasphemous. Blasphemers are two types: (a) original blasphemer who has been born to two blasphemous parents and has reached pubescence on a blasphemous belief (b) *Murtad* who is a Muslim but commits apostasy. Apostasy (Arabic, *Riddah*) is leaving Islam, and "the public abandoning of a religious faith, for another; a similar abandonment of a doctrine or party."¹⁹ "Apostasy in Muslim law means turning from Islam after being a Muslim. Not only does it occur when a person declares his conversion to some non-Islamic religion, but also when he refuses to believe in any and every basic article of the Islamic faith."²⁰

3.1 Constituent elements of blasphemy and apostasy in Islam

Generally speaking ill of God and any other Prophets mentioned in the Holy Quran constitutes blasphemy in Islam. The Qur'an also states that it is blasphemy to claim that there is more than one god or that Jesus Christ (the son

of Mary) is the son of God.²¹ In Islam, blasphemy is considered a sin. The Quran says "He forgives all sins, except disbelieving in God."²² In Islam if a person dies while in blasphemy, they will not enter heaven, except if he repents.²³ About blasphemy and apostasy, Quran says; The punishment of those who wage war against Allah and His Messenger, and strive with might for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter.²⁴ Those who blaspheme and prevent others from embracing Islam, then die, Allah will not forgive them.²⁵ Allah also says in Quran "O Mohammad say, do you mock at Allah and His Messenger? Do not offer excuse. Now you are judged as blasphemers after you are judged as Muslims."²⁶ Prophet Mohammad (SM) says, a slave may utter a word that he deems harmless that may result in his falling in the depth of seventy years into Hellfire.²⁷ Prophet Mohammad (SM) also says "Most of one's sins are from one's tongue."²⁸ Apostasy can be committed in two ways: (1) by uttering expressly by tongue that he is (or has become) a *Mushrik*, a polytheist (i.e. one who associates others with the One God and considers them to be worthy of worship) or, by saying something which is bound to connote in its meaning a denial of the existence of God, that is to say that God has corporeal (physical, material) existence just like any other corporeal object, or (2) by the performance of an act in which one cannot avoid the clear conclusion that it is tantamount to '*kufr*' (infidelity, denial of Islam), that is, to throw away with contempt the Holy Quran or any part of it or even a single word of it; or to throw it in the fire in an insulting, contemptuous manner; or to throw it in such a place as a garbage dump where there is the accumulation of filth, dust and repulsive things; or in a spittoon etc. These acts would be blasphemous and constitute apostasy. The same rules apply to the Most Beautiful Names of Allah as well as to books of Ahadith (Prophetic Traditions - i.e. records of the Prophet's sayings, doings and tacit approvals) and it would be considered blasphemy amounting to apostasy. At the same way the books of *Fiqh* (Muslim jurisprudence) provided the acts are done with the

intention of defaming or belittling with contempt the Islamic injunctions or the Islamic code of law also regarded as blasphemy/apostasy.

Other examples of blasphemy/apostasy are:

- To deny or reject something of which the whole Muslim Community (*Ummah*) is agreed upon, e.g. to hold that the obligatory ritual prayers or fasting are not obligatory or to deny legal permissibility (*halal*) of a thing on which the whole Muslim Community is agreed upon and which is definitely proven to be so on the basis of its proof from the Holy Quran and Hadith *mutawatir*.
- To call names and use swear-words in respect of all such Messengers of God, Apostles, Prophets, Angels who are accepted as such by the whole Muslim Community.
- This same rule applies to angels with regard to fault-finding using taunting or derogatory or sarcastic language against them even in respect of their physical/bodily defects.
- To use sarcasm and belittling words in respect of the moral character or the way of life (religion) of the Prophet Muhammad(SM) or other prophets.”²⁹

3.2 Penalty for Apostasy and Blasphemy in Islam

In Islam a male apostate, or *Murtadd*, is liable to be put to death if he continues obstinacy to the offence of blasphemy and it is said that a female apostate is exempted from death sentence, but she is subject to be confinement until she recants. If either the husband or the wife apostatizes from the faith of Islam, a divorce takes place *ipso facto*; the wife is entitled to her whole dower, but no sentence of divorce is necessary. If the husband and wife both apostatize together, their marriage is generally allowed to continue, although Imam Zufar says if either husband or wife were singly to return to Islam, then the marriage would be dissolved.³⁰ According to Abu Hanifah, a male apostate is disabled from selling or otherwise disposing of his property. But Abu Yusuf and Imam Muhammad differ from their master on this point, and considered a male

apostate to be as competent to exercise every right as if he was still in the faith. If a minor apostatizes, he is not to be put to death, but to be imprisoned until he attains majority, when, if he continues in the state of unbelief, he must be put to death. Neither lunatics nor drunkards are held to be responsible for their apostasy from Islam. If a person upon compulsion becomes an apostate, his wife is not divorced, nor is his lands forfeited. There is an opinion that if a person becomes a Muslim upon compulsion, and afterwards apostatizes, he is not to be put to death.³¹ The Arabic word *Irtidad* and *Ridda* imply the meaning 'turning back' from Islam to another religion or to unbelief and the person who commits such is called a *murtadd*. According to the provisions of the holy Quran, a *murtadd* is liable to undergo punishment in the life hereafter, after his/her death. The provisions of Hadith, which is adopted by the Sunnite and Shi'ite schools of Islam, a *murtadd* is liable to undergo death sentence.³² Although one who repents, not having by death a view which is upheld and detailed in both the Sunnite and Shi'ite law books.³³ However, the offender is usually granted an opportunity to recant. Only adult, sane, male apostates who have acted freely are to be executed (traditionally by the sword). Women are either imprisoned until they recant (Hannafites and Shi'ites) or are executed (Malikites, Shafi'ites, and Hanbalites). The death penalty is rarely carried out today, but there remains a powerful sense of outrage among Muslims when one of their member forsakes the community. The will of a male apostate is not valid, but that of a female apostate is valid. "To wage war against apostates is justified on the same principle as that on which the punishment of a solitary apostate is based. The basis of Muslim polity being religious and not ethnological or linguistic, it is not difficult to appreciate the reason for penalising the act of apostasy, for it constitutes a politico-religious rebellion. The greater the harm of a given rebellion to a polity, the greater is the severity of repression. Every civilisation, not the least the modern Western one - both in the communistic and capitalistic manifestations - has provided capital punishment for blasphemy."³⁴

In the case of apostasy, no distinction is made between a Muslim born of Muslim parents and a convert; and similarly there is no difference between accepting Judaism or Christianity, atheism or idol-worship or any other non-Islamic faith. Nevertheless, Muslim jurists emphasize that before prosecuting and condemning an apostate, it is necessary officially to discuss the matter with him and to remove his doubts regarding the soundness and reasonableness of the Islamic point of view in the matter concerned. Time is given him for reflection sometimes even for months before finally proceeding with the prosecution.³⁵ In case "an insane person, a delirious, a melancholy and perplexed man, a minor, or intoxicated, one who had declared his faith in Islam under coercion, and a person whose faith in Islam has not been known or established were to become apostate, they would not suffer the supreme penalty. So, too, an apostate woman, or a hermaphrodite, according to the Hanafi School of law, would not be condemned to death, but imprisoned and even physically tortured. An old man from whom no offspring is expected is also excepted."³⁶

3.3 Penalty for blasphemy under Bangladesh legal system

Penal Code of Bangladesh contains some provisions regarding the elements, which constitute the grounds of blasphemy and the punishment thereof. According to the provisions of the code, a person who intentionally injures or defiles place of worship, with intent to insult the religion of any class shall be punished with imprisonment for a term which may extend to two years or with fine or with both.³⁷ Again, if anybody, deliberately and maliciously does anything which intends to outrage religious feelings of any class by insulting its religion or religious belief shall be punished with for a term which may extend to two years, or with fine or with both³⁸ and for disturbing religious assembly shall be punished with imprisonment which may extend to one year or with fine or with both.³⁹ Besides, a person who wounds the religious feelings of any, community by word shall be punished with imprisonment, which may extend to one year or with fine or with both.⁴⁰

3.4 Treatment of an apostate

The apostate has to choose between Islam and the sword; he cannot be given quarter, nor will he be allowed to become a *dhimmi*, i.e. non-Muslim subject of the Muslim State, on payment of the yearly protection-tax.⁴¹ *De jure* he is dead. So if he does not re-embrace Islam, and escapes to some non-Muslim territory, his property in the Islamic territory will be distributed among his Muslim heirs as if he were dead. In addition to this, the debts owed to him will be wiped out if he has reached non-Muslim territory.⁴² "Muslims treat blasphemy to be as heinous as crime as of apostasy. In other words, by committing blasphemy, a Muslim takes himself out of the light of Islam and becomes an apostate."

4. Blasphemy, Freedom of Religion and Freedom of Speech

Freedom of speech and freedom of religion is one of the fundamental rights of the people. Subject to law, public order and morality every citizen has the right to profess, practise and propagate any religion; every religious community or denomination has the right to establish, maintain and manage its religious institutions.⁴³ Every country wants observance of different religions in peace and harmony.⁴⁴ At the same time "subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence the right of every citizen to freedom of speech and expression are given guarantee".⁴⁵ So lawfully there are no collision among Blasphemy, freedom of religion and freedom of speech but the tension which exists in political freedom, and certain examples of art, literature, speech or other acts which some consider to be blasphemous. The extent to which this tension has not been resolved is manifested in numerous instances of controversy and conflict around the world.

Although many laws prohibiting blasphemy have long been repealed, particularly in the West, they remain in place in some countries and other jurisdictions. In some cases such laws are still on the books, but are no longer actively enforced.

The issue of freedom of speech versus blasphemy cannot be seen in isolation from the role of religion as a source of political power in some societies. In such a society, to blaspheme is to threaten not only a religion, but also the entire political power order of the society, and hence, the official punishments tend to be more severe and violent.

5. Blasphemy and criminality in Bangladesh [1972-2007]⁴⁶

Secularism was one of four founding principles in the Constitution of Bangladesh of 1972. Consequently, all religion based political parties were banned. This was, in law, a blasphemous action taken by the Government of Bangladesh at that time as it stood against religious norms more particularly the religion Islam. In 1973 Daud Haider published a poem in 'The Daily Sangbad' where he allegedly insulted Prophet Mohammed (SM), Jesus Christ and Gautama Buddha. A college teacher filed a case in Dhaka court. Protests ignited, and Dhaka witnessed first procession by Islam loving people after 1971 liberation war. Haider was taken into protective custody and finally he left the country till now. In 1974 social worker engineer Enamul Haq published a leaflet which contained reference to the Prophet(SM)'s wives; although Haq said it was not meant in a negative way but death threats and processions were brought out all over the country at that time. In 1992 Dr. Ahmad Sharif faced two private complaints for having committed offences under sections 295A and 298 Penal Code-1860 following a report published in the "Daily Inquilab" of alleged remarks criticizing Islam that he made at a private seminar. People protested at that time and threatened of death were declared by some one. In 1994 '*Lajja*' (Shame), a novel, written by Taslima Nasreen set communal riots in Bangladesh. The last sentence of the book showed that the Hindu protagonist of family leaving Bangladesh for India and Muslim were oppressing them. The government immediately banned the book. Islamist groups announced a bounty on her head. In 1994 Islamic groups organized street demonstrations against Ahmadiyas and a case brought to stop all publications of Ahamadya group which misinterpreted rules of Islam and insulted Prophet Mohammad (SM). In 1995 Humayan Azad's book '*Nari*' (Woman), was banned by the government

as it wrongly analyzed religious doctrine that imposed chauvinism on women. In 1999 Taslima Nasreen released volume-1 of her autobiography, '*Amar Meyebela*' (My Girlhood), in India. Bangladesh government banned the book from being imported, sold or distributed as it insulted Islamic view life and chastity. In 2000 four senior editors of the 'Daily Jonokontho' were sued on blasphemy charges. In 2001 High Court declared issuing of *fatwas* illegal on January 1st. The Muslim all over the country began nationwide strikes. In ferocious street battles, seven people died and a police constable was lynched. Police were told to confiscate all copies of volume 2 of Nasreen's autobiography '*Utal Hawa*' (Wild Wind), after Home Ministry declared its publication, sale and distribution illegal. Indian editions were seized under section 99A Criminal Procedure Code- the ban extended to future editions published from Dhaka. Bangladesh Censor Board banned Tareque and Catherine Masud's film '*Matir Moina*' (Clay Bird), because its' madrasa setting in 1971 was deemed religiously sensitive. Members of an amateur theatre group in Faridpur, a number of whom were prominent in the local Hindu community, were arrested for 'causing hurt to religious sentiment' under section 295A Penal Code-, regarding their dramatization of a play.

Ahmadis faced 'excommunication' 'house arrest' and occupation of their homes. One Ahmadi Imam was killed, and several others were beaten and assaulted. In 2004 a day before the declared ultimatum to declare Ahmadiyas as non-Muslim, the government banned all publications of the Ahmadiyya. In February 27, 2004 Humayun Azad was savagely attacked by machete wielding attackers outside the annual Ekushe Book Fair. Case initiated by Rafiqul Islam Rony, MP against Prof. Ali Asghar for causing hurt to religious sentiment, regarding his alleged remarks that religious instruction need not be compulsory. In 2006 The 'Daily Star' reported that the leader of the Comilla branch of Jamaatul Mujahideen Bangladesh (JMB), the Islamist terror group admitted that he killed one writer and seriously wounded another on account of "blasphemy" against Islam. Shaon (an arrested terror) confessed to security officers that he had killed a writer in Tangail district in 2000 for his "*Nari Tumi Manush Chhile*

Kobey (woman when you were human) " where he insulted Islam. Abdur Rahman, chief of JMB, had earlier admitted to his interrogators that he had ordered the murder of an economics professor at Rajshahi University, Mohammad Yunus. Yunus was stabbed to death on December 24, 2004. Rahman also admitted ordering the murder of a prominent Bangladeshi author, Humayun Azad. Shaon confessed to interrogators that he had shown a copy of Azad's book "*Pak Sar Zamin Sad Baad*" to Abdur Rahman in January 2004.⁴⁷ Parliament of Bangladesh unanimously passed censure motion on Cartoons on prophet Hazrat Muhammad (SM) published in a Danish newspaper and other newspapers in the West.⁴⁸ In 2007 cartoon appears in the satire magazine '*Alpin*' (Pin), depicting a conversation between a madrasa teacher and a young boy. In the final panel, the little boy called his cat "Mohammad Biral" (Mohammad Cat). Cartoonist Arifur Rahman was arrested and Editor Sumanta Aslam was fired. Hizbut Tahrir leads campaign demanding closure of *Alpin's* parent newspaper, the Daily '*Prothom Alo*'. Government banned Eid issue of weekly '*Shaptahik 2000*', because of an autobiographical article written by Daud Haider with a blasphemous reference.

6. Necessity of appropriate and viable blasphemy law

It is not possible to check religious insult or blasphemy without appropriate law, although many people did not support or will not support hard blasphemy law but the history says that without appropriate law it is not possible to protect religion from any sort of attack. Many countries of the world are taking initiative to enact blasphemy laws in their land to avoid social and political anarchy and crime. The Parliamentary Assembly of the Council of Europe in Strasbourg adopted on 29 June 2007 Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion. This recommendations set a number of guidelines for member states of the Council of Europe in view of Articles 10 (freedom of expression) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.⁴⁹ UK, France, Germany and many other secular countries of the world are making blasphemy rigid and tight. In Pakistan highest punishment for

blasphemy is death sentence.⁵⁰ Punishment for blasphemy in Bangladesh is very nominal for these reason blasphemous incidents are increasing in the country and ultimate result is that, we have loosed valuable literature asset like Humayun Azad. Appropriate laws are required to be enacted in Bangladesh in line with religious tenets to avoid social and political anarchy and to cheque against religion and sacred faith of the people.

7. Conclusion

Criminality for blasphemy is at present an alarming matter for Bangladesh. To commit offence and to give scope for committing offences should be treated in same footing. Special, proper and just law can protect the country from the crime of blasphemy where grounds of blasphemy will be clear, punishment will be remarkable. If it is so then it can be hoped that the people of the country will not be able to dare to do anything that will amount to blasphemy.

¹ Oxford Advanced Learners Dictionary, 7th Edition.

² <http://en.wikipedia.org/wiki/Blasphemy>

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⁹ Articles 188, 189 of the Penal Code

¹⁰ Paragraph 140 of the Penal Code

¹¹ Article 166 of the Penal Code

¹² Article 147 of the Penal Code of Netherland

¹³ Section 123 of the Crimes Act 1961

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