

Combating Hate Speech

beyond
administrative
measures



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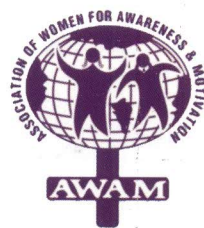
Analysis of laws and
policy dealing with hate speech

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Association of Women for Awareness and Motivation

Centre for Social Justice



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Combating hate speech beyond administrative measures

Analysis of laws and policy dealing with hate speech¹

Introduction

Hate speech has become a hot subject during 2015 in Pakistan notwithstanding some ambiguities that make hate speech conceptually and practically a complicated issue. The civil society organizations, Association of Women for Awareness and Motivation (AWAM) and Centre for Social Justice (CSJ), are publishing this analysis for better comprehension and to raise critical awareness about the dilemmas linked to hate speech.

This monograph discusses the phenomenon, manifestations, the laws and policies dealing with hate speech as well as some policy measures taken by the government recently, concluding with recommendations about plugging fissures in the response and reviewing the approach towards hate speech so that this battle for the revitalizations of Pakistan becomes more winnable in favour of people's progress, democratic process and peace.

Defining hate speech

Following up with the counterterrorism plan of action, the police arrested thousands of publishers and booksellers in the country along with material which allegedly contained religious and sectarian hate speech. However, the government could not detain some hardcore perpetrators for more than days.² The accused secured their release on bail on the grounds that the government never notified those books and printed materials as banned.³

Similarly, some persons arrested in connection with abuse of mosque loudspeakers were released on bail and the cases against them were not maintainable as they claimed that they had merely recited Darood Sharif and holy verses.

These examples point to the issues regarding; defining hate speech, consistency in National Plan of Action and clarity about objectives besides choice of law to be applied and use of forum for achieving the stated objectives of the drive against hate speech.

As far as definition, there isn't a single universally accepted definition of hate speech because the prejudices and motives of hate speech are manifested in a range of behaviours in different social contexts. Even so, hate speech has been defined frequently in a variety of ways in different academic work, jurisprudence, domestic and international laws.

The International Covenant on Civil and Political Rights defines hate speech as "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".⁴ So importantly, hate speech may or may not result in incitement or outraging feelings spontaneously though it may have a potential of incitement to violence.

Resolution 16/18 of the UN Human rights Council shows the connection between hate speech and intolerance as it demands the states to curb "religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief, ...any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence based on religion or belief."⁵

¹ Analysis was finalized by Peter Jacob on July 17, 2015.

² [Http://www.dawn.com/news/1183713](http://www.dawn.com/news/1183713)

³ Peter Jacob, "Curbing hate speech", daily The News International April 5, 2015.

⁴ [Http://tns.thenews.com.pk/curbing-hate-speech/#.VSCaYVWqqko](http://tns.thenews.com.pk/curbing-hate-speech/#.VSCaYVWqqko)

⁵ Article 20, International Covenant on Civil and Political Rights.

⁵ A/HRC/RES/16/18, "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief", Para 2, 12 April 2011.

For this review we shall look at religious motivated or religiously induced hate speech (sects included) which involves criminal liability. Though we shall not discuss here the merits or demerits of blasphemy laws or the other related issues, we will keep in view the abuse of these laws where it converges with hate speech.

Hate speech in Pakistan's laws

Law	Forms of hate speech dealt with in this law
Pakistan Penal Code, a) Section 153-A	Promoting enmity between different groups' offence. Promoting or inciting, or attempting to promote or incite , on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity , hatred or ill-will between different religious, racial, language or regional groups or castes or communities; causing fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment for a term which may extend to five years and with fine.
a) Sections 295-298 (Note ⁶)	295, Injuring or defiling place of worship , with intent to insult the religion of any class: Maximum punishment; two years imprisonment or fine or both. 295 A , Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Maximum punishment; ten years of imprisonment or fine or both. 296, Disturbing religious assembly : Maximum punishment; one year, or with fine, or both. 297. Trespassing on burial places, etc. Maximum punishment; one year, or with fine, or both. 298, Uttering words, etc., with deliberate intent to wound religious feelings : Maximum punishment; one year, or with fine, or both.
Maintenance of Public Order Ordinance 1960	Acts prejudicial to public safety or maintenance of public order. ⁷ Maximum punishment; three years, or fine or both.
Anti-Terrorism Act, 1997	"Hate speech means hatred against a group of persons defined by reference to religion, religious sect, religious persuasion, or religious belief; " ⁸ a) Acts intended to stir hatred as "threatening, abusive or

⁶ This analysis excludes Sections 295 B, 295 C, 298 A, 298, B and 298 C, because the first three sections are about protecting the respect of Holy Books and Holy personages who cannot be party to a dispute or proceedings in today's justice system, any damage to their status or profile is unimaginable. Thus counting or making a comparison of blasphemy laws together with other laws could be misleading. The last two sections are about prohibiting one faith community from using an identity and certain religious practices. These sections have features unique in the world, including the Muslim majority countries. Though any disrespect towards Holy personage of any religion may fall in outraging religious sentiments of a faith group, which is an aspect covered by the laws discussed here.

⁷ Section 3 (2), Maintenance of Public Order Ordinance Punjab (amended and adopted in other Provincial legislations also).

⁸ Section 2 (v), **The Anti-Terrorism Act, 1997 (XXVII OF 1997).**

	<p>insulting words or behavior; or (b) displaying, publishing or distributing any written material which is threatening, abusive or insulting; or (c) distributes or shows or plays a recording or visual images or sounds which are threatening, abusive or insulting; or (d) possessing written material or a recording or visual images or sounds which are threatening, abusive or insulting with a view to their being displayed or published by himself or another.⁹ Maximum punishment; Seven years rigorous imprisonment or with fine, or with both.¹⁰</p>
The Protection of Pakistan Act 2014	Crimes against ethnic, religious and political groups or minorities including offenses based on discrimination, hatred, creed and race. ¹¹ Maximum punishment; ten years, with fine and confiscation of property. ¹²
Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance in 2002	Licensees (media outlets), besides other things will “ensure that all programmes and advertisements do not <i>contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred</i> ”. ¹³ Maximum punishment; three years imprisonment and 10 million fine for licensee; Four years imprisonment and five for person without license. ¹⁴

While a new bill on controlling cyber crimes is still under scrutiny in a standing committee in the parliament, Pakistan Telecommunication Authority (PTA) is responsible for regulating the internet use. It deals with “unauthorized transmits through a telecommunication system or service which he (licensee) knows or has reason to believe to be false, fabricated, indecent or obscene,” or “commits mischief”.

Apparently, language in some of the laws is vague and open to misinterpretation and abuse, for instance, the language *injuring or wounding feelings* leaves a lot of room for interpretation. There is also inconsistency in meaning of hate speech in different laws dealing with hate speech. For instance, though Maintenance of Public Law Ordinance 1960 carries sweeping administrative power, used frequently to impose house arrest (preventive detentions), travel ban, prevent public gathering on the pretext of hate speech and apprehension of law and order situation, the law does not define hate speech clearly. It merely relies on enormously broad characterization of acts “*prejudicial to public safety or maintenance of public order.*”¹⁵

In sum, different laws dealing with hate speech were introduced in different times in Pakistan serving specific purposes. Each new law carried heavier penalties than earlier laws and laws became more focused on religiously motivated hate material. The meaning of hate speech in different laws (offenses) *ranges between promoting enmity, issuing threats, incitement to violence and propagating religious intolerance.*

⁹ Ibid, Section 8.

¹⁰ Ibid, Section 9.

¹¹ Section 2 (1), Scheduled Crimes, Protection of Pakistan Act 2014, (X of 2014).

¹² Section 16, Protection of Pakistan, 2014, Act No. X of 2014,

¹³ Section 20 (c), Pakistan Electronic Media Regulatory Authority Ordinance 2002, Amended by the PEMRA (AMENDMENT) Act, 2007.

¹⁴ Section 33, **PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY ORDINANCE, 2002 (XIII of 2002).**

¹⁵ Section 3 (2), Maintenance of Public Order Ordinance Punjab (amended and adopted in other Provincial legislations also).

Therefore, apart from their compatibility with democratic rule and civil liberties, these laws embody a symptomatic treatment of the issues. Hate speech in recent legislations e.g. National Counter Terrorism Authority Act 2013 and Protection of Pakistan Act 2014 cover highest forms intolerance i.e. extremism / terrorism but do not cover simple forms like discrimination.

a) Hate speech; the pretext, extent and content

Hate speech has been found in printed material published regularly by hundreds of so called religious and sectarian outfits. Slogans, wall chalking, stickers, banner and billboards displayed without remorse or repercussion.

Print and electronic media advertise hatred on the basis of religion inadvertently. Thus over the decades the language and symbols of hatred became a norm to some extent because the narratives of organizations that specialize in hatred on the basis of religion were given coverage and space routinely.¹⁶

Hate speech against minority faith groups became socially and politically acceptable because a pretext was created by the discriminatory norms by the State unfortunately.¹⁷ Despite an agreement on equality of citizens in its chapter on fundamental rights (Articles 8 to 28) the constitution of Pakistan treated the majority faith as preferred citizens in its operational sections.¹⁸ Therefore the constitutional preference with a religion is also a factor in hate speech.

Education and other policies have condoned the two interlinked trends that provide a pretext to religion based hatred in public life. Hate speech in educational textbooks¹⁹ and seminaries, coupled with state imposed restriction against the smaller faith-groups²⁰ created a cycle of social hostility²¹ which manifested in different forms of religious intolerance and faith based violence in Pakistan.

A recent study conducted shows groups targeted for hatred on Pakistani websites in the following order: 1. Shias, 2. Muslims, 3. Ahmadis, 4. Indian/ Hindus, 5. Atheists/ non-believers, 6. State Institutions, 7. Women, 8. LGBT, 9. Jews, 10. Local Ethnicities, 11. Americans, 12. Pakistanis.²²

Significantly, the data shows religious hatred is most common among hate speech (first five) though the hate material is aimed at a range of identities including ethnicity and sex. Importantly, the Muslims and Pakistanis are target of hate speech, while the haters also include the Pakistani and Muslims.

A UNICEF study in 2013 showed the 85 % married women had experienced domestic violence. Furthermore, 53 % girls and 43 % boys between the age of 15 and 19 condoned a degree of violence against women which made Pakistan the highest in domestic violence in

¹⁶ All banned outfits, and some religio-political groups, Dr. Zakir Naik, TV channels such as QTV.

¹⁷ Broadly, the culture of majority religion has become a standard. Pakistan's raison d'etre has come to be religious than political and state is assigned to serve a religion rather than protecting rights of all citizens e.g. religion-specific insult laws in Pakistan Penal Code.

¹⁸ State religion, reservation of the office of President and Prime Minister for Muslims, government to promote Islamic way of life; Articles 2 A and B, 41, 91, and 31 of the Constitution of Pakistan, respectively.

¹⁹ Education Vs. Fanatic literacy, National Commission for Justice and Peace, 2013. <http://www.worldcat.org/title/education-vs-fanatic-literacy-a-study-on-the-hate-content-in-the-textbooks-in-punjab-and-sindh-provinces/oclc/873238400>

²⁰ The De jure restrictions are against Ahmadis alone though citizens belonging to all lose their freedom of religion and belief, except those whose activities the successive governments chose to ignore.

²¹ Grim and Finke, *The Price of Freedom Denied; religious persecution and conflict in twenty first century*, Cambridge University Press, 2011.

²² Hate speech, A study on Pakistan's Cyberspace, Bytes For All, June 2014, http://content.bytesforall.pk/sites/default/files/Pakistan_Hate_Speech_Report_2014.pdf

