

Getting justice for Asia Bibi

How Pakistan must win the battle of narratives to counter Islamist sectarians



A. FAIZUR RAHMAN

Last month, the Pakistan Supreme Court acquitted Asia Bibi, a Christian woman accused of blasphemy, citing lack of evidence. The verdict must rank as the boldest in the chequered history of Pakistan. The judges showed remarkable courage in going against the far-right ideology responsible for the extralegal lynching of an estimated 60 persons accused of blasphemy since 1990.

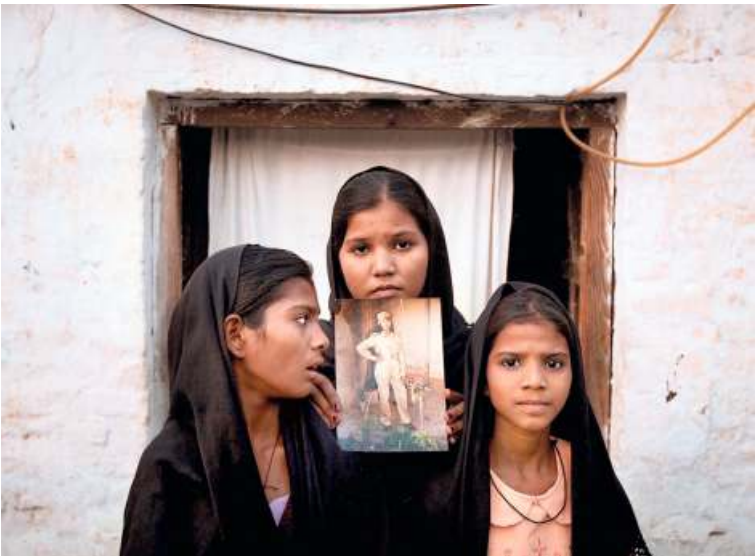
Indeed, in 1997, a judge of the Lahore High Court, Arif Iqbal Bhatti, who had dismissed a blasphemous case against two Christians, was killed. So were Salman Taseer, the outspoken Governor of Punjab, and Shahbaz Bhatti, Pakistan's Federal Minister for Minority Affairs, in January and March of 2011, respectively. Both of them were critical of the blasphemy laws and had defended Ms. Bibi.

Surrender of the Pakistani state

True to form, the Pakistani clerics' reaction to Ms. Bibi's acquittal was brutal. Thousands of their weapon-wielding henchmen blocked roads and burnt vehicles shouting "Hang Asia" slogans. Pir Muhammad Afzal Qadri, senior leader of the radical outfit Tehreek-e-Labbaik Pakistan (TLP), not only incited an insurrection against Pakistan Army Chief General Qamar Javed Bajwa, but also openly called for the assassination of the Supreme Court judges who discharged Ms. Bibi. If that was not horrific enough, he hurled an antisemitic slur at Prime Minister Imran Khan and sought the dismissal of his government. All this in the name of the Prophet whom the Quran calls *Rahmat al lil aalameen* (Mercy unto humanity)!

Such was the savageness of the clerical backlash that the government capitulated within two days of the verdict. This resulted in Pakistan's Religious Affairs Minister and the Law Minister of Punjab signing an agreement with the TLP. One of the two TLP signatories was Mr. Qadri.

Under the deal, the government agreed to take immediate steps to prevent Ms. Bibi from leaving the



"The savageness of the clerical backlash to the Asia Bibi judgment was such that the government capitulated within two days of the verdict." Ms. Bibi's daughters pose with an image of their mother outside their residence in Sheikhpura in Pakistan's Punjab Province in 2010. • REUTERS

country and promised not to contest the review petition filed against the verdict. Also, the arrested protesters would be released without delay and violence against them investigated. The only concession that could be extracted from the TLP was a deceitful *ma'azarat* (apology) to those who feel its activities had hurt them. The surrender of the Pakistani state could not have been more abject.

One fails to understand why Pakistan is constrained to pander to every whim of the extremists, especially when they do not enjoy popular support. The TLP, which has been consistently holding the state to ransom, did not win a single seat this year in the National Assembly despite fielding more than 170 candidates. The only inference that could be drawn from this is that an overwhelming majority of the Pakistani electorate does not subscribe to the medievalism of religious parties. Yet, the radicals can be seen dictating terms to even the powerful Pakistani military.

Some commentators attribute this to the belief that Pakistani citizens are not moderate. The argument is, if the extremists are not winning seats, it is because the mainstream parties have appropriated the discourse of the religious right on issues like blasphemy and women's rights. This reasoning is too simplistic. If, as alleged, the people of Pakistan had really been comfortable with radicalism, they would have backed authentic re-

ligious groups which hope to desecularise Pakistan. They would not have voted to power a mainstream party which only opportunistically resorts to the language of political Islam.

A conundrum explained

What explains this conundrum? The answer could lie in the Constitution which declared Pakistan to be an "Islamic Republic" perhaps without fully ascertaining if that was really "the will of the people of Pakistan" as the Preamble claims. The fact is, even Mohammad Ali Jinnah did not envision the state he was creating as a theodemocracy although he wanted Pakistan's Constitution to embody the "essential principles of Islam" such as equality, justice and fair play, which is totally different from making Islam the state religion.

In *Creating a New Medina*, Venkat Dhulipala points out that Jinnah considered Muslims in the "majority provinces" a nation only because they constituted a numerical majority in a contiguous piece of territory. On the other hand, he refused to accord the status of a "national group" to Muslims in the United Provinces because they were "scattered". In other words, there is no evidence to claim that Jinnah's definition of a nation was based on religion.

Yet, soon after his death, the Objectives Resolution (adopted in March 1949 and now part of the Pakistan Constitution) proclaimed inter

alia that "sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust." Several provisions of the Constitution echo these views. Article 31, for instance, expects the state to take steps to enable Pakistani Muslims to live in accordance with the basic concepts of Islam and help them understand "the meaning of life according to the Holy Quran and Sunnah." From a Muslim point of view these assertions are justified. But the question is, on whose interpretation of the Quran and the Sunnah would "the limits" prescribed by Allah be determined and enforced? Who has authorised Pakistani theologians to hang a person for a crime she has not committed, especially when that crime does not carry the death penalty in Islam?

With fatwas of *kufr* (apostasy) and threats of assassination hanging over them like a sword of Damocles, the people and secular politicians of Pakistan cannot be expected to boldly speak out against the views of the rampaging clerics. Even the Supreme Court judges who acquitted Ms. Bibi thoughtfully began their ruling with the *Kalima-e-shahaadat* (the testimony of faith). But it was of no avail. The fatwa of apostasy was nevertheless issued against them.

The only way to reclaim Islam from the radicals is to dismantle their blinkered narrative by questioning the juristic devices of abrogation, sectarian consensus, exegetic rationales, and eisegesis. Through these instruments, Quranic verses and Prophetic *hadees* are either arrogantly repealed, semantically stifled, or gratuitously expanded to rationalise narrow sectarianism in the name of preserving the Shariah.

Simultaneously, a massive intellectual effort must be mounted to mainstream a concept of Quranic hermeneutics that is consistent with the core values of Islam: justice, fairness, equality, freedom of religion, moderation, kindness and mercy. The subjugation of the medievalists is almost entirely dependent on winning this battle of narratives.

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The post and the person

Safeguards are needed to ensure that institutions like the Election Commission are headed by capable people



RASHMI SHARMA

The Constitution Bench of the Supreme Court is examining a public interest litigation (PIL) that could be critical for Indian democracy. The PIL, which seeks the strengthening of the Election Commission of India (ECI), includes a proposal to create an independent mechanism to appoint the Chief Election Commissioner (CEC) and Election Commissioners (ECs) who are, at present, simply appointed by the government of the day, without any defined criteria or processes.

Three critical decisions

That electoral democracy became a reality in India owes a great deal to the foresight of the Constituent Assembly. However, the Assembly could not have anticipated the extent to which the very political class that framed the Constitution would later attempt to subvert it. As this political dynamic unfolded, at certain crucial junctures, the judiciary and the leadership of the ECI saved democracy.

When the Constituent Assembly debated how free and fair elections should be ensured, three important questions arose. The first was whether free and fair elections should be made a part of fundamental rights or an independent institution, outside the executive, should be established to conduct the elections. The Assembly opted for the latter and created the ECI. With legal back up and the resources to develop and enforce a transparent electoral system, the ECI made free and fair elections a reality.

The second critical decision was to have a single, centralised body for elections to the Lok Sabha and State legislatures. One proposal was that the ECI be confined to federal elections, and separate institutions be set up to conduct elections to State legislatures. However, with increasing tension among communities, the Assembly feared partisan action in the States and opted for a single national institution, the ECI. The implications of this decision were complex. On the one hand, Central institutions have generally been more robust than State institutions. For example, State Election Commissions lack autonomy, are short on manpower and funds, and are frequently subject to attempts by State governments to manipulate elections. On the other, this decision could have led to an autocratic institution being established and possibly manipulated by powerful national actors. But this possibility was contained because elections became subject

to judicial review. Originally, the Constitution had provided for tribunals set up by the ECI to hear election petitions. But aggrieved parties approached the courts, and the courts decided to hear election petitions. Then the ECI itself recommended that election petitions be heard by the judiciary, and in 1966, the law was changed accordingly.

The third question concerned ensuring the independence of the ECI. As the manner of appointment of the CEC and ECs was debated, Shibban Lal Saxena presciently argued that while the then Prime Minister was a man of independence, this may not always be the case, and proposed ratification of the CEC's appointment by the legislature. But the Assembly disagreed, and provided simply for the CEC to be appointed by the President, leaving it to the legislature to enact a suitable law, which never happened. The Constituent Assembly did provide, though, that the CEC could only be removed through impeachment. For the ECs, even this safeguard was not provided, which is also a subject of the above-mentioned PIL.

A major shortcoming

The history of elections shows that this remains a major shortcoming of the ECI. From 1967 to 1991, the election process deteriorated as the Congress lost its dominance, political competition intensified, and political actors stepped up violence and electoral malpractices. The ECI could not arrest this deterioration. Several State governments made large-scale transfers on the eve of elections and posted pliable officials in key positions, who sometimes flouted the ECI's orders. This deterioration could have continued. Instead, during the 1996 general election, the ECI restored the credibility of the election process. The CEC, T.N. Seshan, reinterpreted the ECI's role and powers, and provided combative, forceful leadership. He publicly reprimanded politicians for violating the Model Code of Conduct, postponed/cancelled elections if their credibility was compromised, intensified supervision of elections, and insisted on action against errant officials. Because of constitutional safeguards, he could not be removed. But the ECI got the right leadership accidentally, not by design. Though the ECI has since become an institution of some authority, there have been controversies over appointments of ECs, allegations of partisanship, and new problems such as of voter bribery and paid news, which the ECI has not been able to address so far.

As history shows, inadequate leadership is the bane of our public institutions. Safeguards to ensure that ethical and capable people head them are crucial.

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SINGLE FILE

The notion of purity

The law alone cannot shatter a myth that has been built upon and aggrandised with every generation

ANJALI THOMAS



The focus on female bodily functions has never been more critical or as intense than it is now. The Sabarimala judgment has sparked a clash between culture and nature, an amplification of a battle cry that began when women started questioning why they were barred from some places of worship. In 2016, a PIL was filed challenging the temple entry ban. That same year, women were allowed into Shani Shingnapur temple's sanctum sanctorum, in Maharashtra.

But equality will remain elusive as long as menstruation is considered taboo and linked to the idea of purity, or rather, the lack of it. Menstrual period is part of the female reproductive cycle when the body sheds the uterine lining if an egg is not fertilised. It is a rather mundane occurrence that is shrouded in a culture of shame.

In her essay, 'Is Female to Male as Nature is to Culture', American anthropologist Sherry B. Ortner argues that a woman's secondary status to man stems from the fact that the female physiology with its procreative functions is seen as closer to nature. The male body, on the other hand, is free from such restrictions. The dominant patriarchal view accords 'nature' far less value than 'culture' as the latter is associated with the creation of ideas and technology. For most women, menstruation can be uncomfortable and painful, and as Ms. Ortner points out, involves tasks of cleansing and waste disposal. "In many cultures it interrupts a woman's routine, putting her in a stigmatised state involving various restrictions on her activities and social contacts," she writes. So when Union Minister Smriti Irani questioned whether a woman would carry a "napkin seeped with menstrual blood into a friend's house," she was reinforcing ideas of purity that took root in society thousands of years ago. "Would you think it is respectful to do the same when you walk into the house of God? I have the right to pray, but no right to desecrate," she said at the time.

Most religions subscribe to this view. The *Book of Leviticus* in the Old Testament talks about purity and desecration in this context: "When a woman has a discharge consisting of blood from her body, for seven days she will be unclean due to menstruation, and anyone who touches her will be unclean until evening."

And when U.S. President Donald Trump said in 2015 that journalist Megyn Kelly had "blood coming out of her wherever" after she questioned his misogyny, he was reinforcing a stereotype that women everywhere are now challenging.

Desecration, impurity and defilement are powerful, negative words for a biological function that predates the evolution of culture. Increasingly, the legal system in India has been trying to address this imbalance, but the law alone cannot shatter a myth that has been built upon and aggrandised with every generation.

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FAQ

Limits of CBI jurisdiction

A provision that allows States to show their strength

DEVESH KUMAR PANDEY

Can States bar the Central Bureau of Investigation (CBI) from functioning in their territory?

Yes. The CBI is a national agency with police powers. Its primary jurisdiction is confined to Delhi and Union Territories. As policing (detecting crime and maintaining law and order) is a State subject, the law allows the agency to function outside only with the consent of the States. Andhra Pradesh and West Bengal have withdrawn their general consent to the CBI to operate within their territories.

Has it happened before? And why?

There are several instances of State governments withdrawing their consent. There was even an instance in Sikkim, when the State withdrew its consent after the CBI registered a case

against former Chief Minister Nar Bahadur Bhandari, and before it could file a charge sheet. The most common reason for withdrawal of consent is a strain in Centre-State relations, and the oft-repeated allegation that the agency is being misused against Opposition parties. The decision by Andhra Pradesh and West Bengal has come amid concerns being voiced by Opposition parties that Central agencies such as the CBI, Enforcement Directorate and Income Tax Department are being used against them.

Under what law is it done?

The CBI draws its power from the Delhi Special Police Establishment (DSPE) Act. The Home Ministry, through a resolution, set up the agency in April 1963. Under Section 5 of the Act, the Central government can

extend its powers and jurisdiction to the States, for investigation of specified offences. However, this power is restricted by Section 6, which says its powers and jurisdiction cannot be extended to any State without the consent of the government of that State.

What is the impact of States taking back their consent?

The withdrawal of general consent restricts the CBI from instituting new cases in the State concerned. However, as decided by the Supreme Court in *Kazi Lhendup Dorji* (1994), the withdrawal of consent applies prospectively and therefore, existing cases will be allowed to reach their logical conclusion. The CBI can also seek or get specific consent in individual cases from the State government.

How has the consent

issue played out?

In most cases, States have given consent for a CBI probe against only Central government employees. The agency can also investigate a Member of Parliament. Apart from Mizoram, West Bengal and Andhra Pradesh, the agency has consent in one form or the other for carrying out investigations across the country.

What happens to cases in which there is a demand for a CBI probe?

The Supreme Court has made it clear that when it or a High Court directs that a particular investigation be handed over to the CBI, there is no need for any consent under the DSPE Act. A landmark judgment in this regard was the 2010 Supreme Court decision by which the killing of 11 Trinamool Congress workers in West Bengal in 2001 was handed over to the CBI.

FROM The Hindu. ARCHIVES

FIFTY YEARS AGO NOVEMBER 22, 1968

World monetary crisis: 'Group of Ten' meet

West German Economics Minister Karl Schiller said to-day [November 21, Bonn] that financial leaders of the 10 major non-Communist industrial countries were facing very difficult problems in their efforts to solve the current international monetary crisis. He told reporters after a three-hour session on the second day of the conference of Ministers and Central Bank Governors of the 'Group of Ten' that a lot of time would still be required to work out solutions. More than 100 delegates of the group began an emergency conference yesterday in a bid to end recent massive speculation against the French franc. The Group of Ten are the United States, Canada, Britain, France, West Germany, Belgium, the Netherlands, Italy, Sweden and Japan.

A HUNDRED YEARS AGO NOVEMBER 22, 1918.

Post-War Trade Policy.

The Committee of the Bengal Chamber of Commerce has issued a report on the future trade policy of India concerning tariffs. After considering the opinion expressed by individual firms the Committee came to the following decision. The policy to be followed in this connection should be, the special Sub-Committee think, based on the principle of reciprocity with preference within the British Empire. In other words the treatment of imports into and exports from the British Empire should be made to depend mainly on the treatment accorded by foreign nations to exports to and imports from British possessions. If a country is willing to extend to British Empire the advantages of free trade then the Empire should be willing to trade with that country on the same terms. On the other hand, tariffs should be imposed as against those countries into heavy import duties on the British Empire.

CONCEPTUAL

Compassion fatigue

PSYCHOLOGY

Also known as secondary traumatic stress, this refers to a state of psychological fatigue that is experienced by people who invest a lot of time and effort into charity and social rescue activities. Compassion fatigue can cause victims to slowly lose any feeling of compassion towards people who may be in need of their assistance. This happens because of repeated exposure to people in need of help, leading them to develop a feeling of numbness. Compassion fatigue is said to affect professional assistance providers like doctors, nurses, firefighters and other emergency service personnel who are constantly exposed to people who need help.

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My WhatsApp nightmare

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