

# ***Genesis of Blasphemy Laws in Colonial India***

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## **ABSTRACT**

*Blasphemy has been a sensitive issue throughout Indian Muslim history. Various Muslim rulers of India tackled it in a sheer delicate way. The modern blasphemy laws of Colonial India were born out of Indian Penal Code enacted by Legislative Council and applied in India in 1860. The Code undertakes the laws that define rights, impose duties and ensure protection. The aim of the Code was to create communal harmony among the diverse population of Indian Subcontinent by applying a uniform law on everyone. The 1920s witnessed a rise of communal tensions in India due to various Hindu and Muslim revivalist movements. The new realities compelled the British authorities to amend the laws relating to religious offences. These laws were partly successful in maintaining a delicate communal harmony with some exceptions in colonial India.*

## **Introduction**

The blasphemy laws of South Asia particularly in Pakistan have often been in the limelight for their misuse. Here a substantial question can be raised that is Pakistan with its inception in the mid twentieth century and being ruled by the military for more than three decades able to deliver a secular

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democracy with Islam as the basic code of life? An irony stands here that the politico-Islamic slogans got more voice than that of the universal political state apparatus, thus exploitation in the name of religion took over humanitarian rights.<sup>1</sup> Every year numerous people are charged under these laws yet overwhelming majority claims that they have never committed blasphemy at all and therefore these laws are mostly used against innocent people (especially the minorities). Critics of the laws are of the opinion that these laws are invoked to settle personal scores and have become a tool to repress the freedom of expression in Pakistan. So far, many people have been sentenced to death and prisoned for life under these laws yet no execution has been carried out.

Recently this issue of blasphemy got the world attention when two high profile intentional killings took place i.e. the sitting Governor of Punjab and an incumbent Federal Minister were killed to raise voice against the misuse of the law.<sup>2</sup> The laws related to blasphemy are viewed as a denial to the rights of the minorities. Thus a portrayal of more organised violence has been observed over the past years. The laws have thus become more controversial and various groups chanting about human rights and even political parties have raised voice against their misuse. The law of religious offense is not a new law as it has first been introduced by the British Empire of India in 1860.

Pakistan is a declared Islamic Republic and has claimed to be a champion of Islamic cause in International forums. There is repugnancy clause in the Constitution of Pakistan that no law can be enacted which is repugnant to the teachings of Quran and Sunnah. The Pakistan's blasphemy laws were introduced by the British Empire of India in 1860. General Zia ul Haq left an orthodox legacy by amending

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1 Shemeem Burney Abbas, *Pakistan's Blasphemy Laws: From Islamic Empires to Taliban* (US: University of Texas Press, 2013), 4.

2 Salaman Taseer and Shahbaz Bhatti were killed in span of three months in Islamabad as they raised their voice against the misuse of the Blasphemy Laws.

these laws from 1982 to 1986 and the changes remain in place today. After these amendments serious concerns were shown by the human rights groups and minorities against these laws.<sup>3</sup> On the other hand, the protagonists of these laws are of the opinion that these laws are consistent with the teachings of Islam and suit the culture of this part of the land.<sup>4</sup> These laws are for all the religions and guarantee the protection of minorities and settle the issue of blasphemy. The purpose of this paper is to trace the history and evolution of these laws which have become so controversial that many people are protesting to repeal or at least reform them.

### Historical Background

Blasphemy in Islam is a serious issue. The Muslims all over the world deeply respect the Holy Prophet (PBUH) and are always ready to even sacrifice their lives to protect the dignity and honour of Prophet Muhammad (PBUH). If we look at the Islamic history we will see many examples in the life of the Holy Prophet (PBUH) and his rightly guided Caliphs where the persons guilty of committing blasphemy were prosecuted.<sup>5</sup> Imam Ibne Tamiyyah (d.1328) wrote a classical account named *Al Saramul Maslool* in which he cited many instances from the life of Holy Prophet (PBUH) and the time of rightly guided Caliphs as well as the classical Islamic history. This book is considered to be the most comprehensive account of the issue of Blasphemy in Islam by majority of Sunni Ulema.<sup>6</sup>

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3 Minorities organizations and various Rights Groups want to reform the law and even some liberal elements also demand the repeal of these laws.

4 Mehmood Ahmad Ghazi, "The Law of Tauheen e Risalat, in *Pakistan Between Secularism and Islam: Ideology, Issues and Conflict*, ed., Tarik Jan (Islamabad: Institute of Policy Studies, 1998).

5 Ibn e Tamyah, (Urdu Translation), Lahore: 2007. This book is considered to be the most authentic work on the issue of Blasphemy by Sunni Ulema and scholars. Almost every religious scholar referred to this book in his discussion and it contains many instances.

6 Some Sunni Ulema like Javid Ahmad Ghamdi and Waheeduddeen Khan do not agree with Ibn Tammyah and have a modern secular ideas regarding blasphemy.

Islam came to India soon after the departure of Holy Prophet (PBUH) as many of Arab sailors and merchants had been doing business in the coastal areas of India from pre-Islamic times. The political Islam came with the arrival of Muhammad Bin Qasim in 712 A.D who conquered Sindh and annexed the area upto Multan to the Ummayad Caliphate. After that Muslims slowly expanded their rule in India and many Muslim warriors attacked the Subcontinent from North western side and established great empires in Northern India. The establishment of Mughal Empire in the 16<sup>th</sup> Century was the apogee of Muslim rule in India which also ruled many parts of South India too.

The issue of blasphemy was surfaced in the time of King Akbar (1556-1605) when an influential Hindu merchant of Mathura committed blasphemy by not allowing construction of a mosque. The Qazi (local Muslim Judge) of Mathura referred the case to the Qazi ul Qaza (Chief Judge of the Empire) stating that the Muslims wanted to construct a mosque<sup>7</sup> and this Brahmin due to his influence stopped the construction work and uttered sacrilegious words for the founder of Islam thus committing blasphemy. The issue created unrest among the Muslims of the area as rich and influential traders were not easy to be apprehended. Since he committed blasphemy so a thorough action was demanded. The Chief Judge investigated the matter and it was transpired that the person had committed blasphemy so he must be given a death penalty. Akbar tried to save the life of the accused by putting him into the prison, but the chief judge continued his pressure on Akbar through different persons as he believed that there was only death sentence

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7 Mosques and Temple desecration was a common concern by both Hindus and Muslims in pre- modern India. For detailed discussion see Richard M. Eaton, "Temple Desecration and Indo Muslim States," in *Beyond Turk and Hindu: Rethinking Religious Identities in Islamicate South Asia*, ed., David Gilmartin and Bruce B. Lawrence (Gainesville: University of Florida Press, 2000), 246-84.

for blasphemy accused<sup>8</sup> and the person was eventually executed.

This incident shows how the issue of Blasphemy had been important and sensitive for the Muslims of the Subcontinent even in medieval times. Akbar despite all his pluralistic vision and power could not sustain the pressure of Ulema and eventually had to give in to their demand by allowing the execution of the convict. The reason was obvious that even a strong king like him could not afford to lose the sympathies of the millions of Muslims who formed the most powerful ruling group of Akbar and were very sensitive over the issue. Secondly, although the Mughal Emperors were despotic and arbitrary rulers yet they seldom challenged the religious authority of the Ulema.

Another incident which merits the attention here is an incident of young Hindu boys of Sialkot in 1834. Zakaria Khan was the governor of this region from 1810-1849 under the Sikh Government of Punjab. Haqeeqat Roy was a student of school, and when a Muslim teacher discussed the Hindu gods in derogatory manner, in response he reacted and uttered some blasphemous words for Prophet Muhammad (PBUH) and his daughter Fatima (R.A). These two are the most revered personalities of the Islam and Muslims as all sects hold them in great esteem. On this issue Haqeeqat Roy was arrested and sent to Lahore for prosecution. The Chief Judge sentenced him to death.<sup>9</sup> After that a delegation of Hindus visited Zakaria Khan, the then governor and requested him to condone the punishment. The governor refused their demands and the sentence was carried out accordingly.<sup>10</sup>

These two instances show the gravity of the blasphemy issue in Indian Subcontinent. The public pressure was so intense that even in those times when rulers were despotic

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8 Abdul Qadir Badayoun, *Muntakhib-ut-Tawareekh* (Karachi: Nafees Academy, 1980), 230.

9 Muhammad Ismail Qureshi, *Namoos-e-Rasool Aur Qanoon-e-Tauheen-e-Risalat* (Lahore: Al Faisal books, 2010), 274.

10 Qureshi, *Namoos-e-Rasool Aur Qanoon-e-Tauheen-e-Risalat*, 275.

and answerable to no one, had to succumb to the public pressure and carried out executions. In the modern Pakistan, we have seen so many instances that many judges refuse to hear the blasphemy cases due to its sensitive nature. Even a judge was gunned down in 1998 in Lahore who set free a blasphemy accused due to lack of evidence. The point is that since this issue runs very deep into emotional makeup of the people of South Asia that no one dares to raise voice for a person who is alleged to commit blasphemy.

### **The Colonial India**

The arrival of the British ushered the modern era of the Subcontinent. The East India Company captured power in Bengal in 1757 after defeating the Nawab of Bengal in the Battle of Plassey. The British slowly increased their influence and started annexing several areas from ailing Mughal Empire. It took East India Company less than hundred years for this parasitic empire to annex all what is now South Asia. By 1857, India became constitutional part of the British Empire after an abortive attempt by the locals to oust the Company's rule. This episode is remembered by South Asian historians as 'War of Independence' and 'Sepoy Mutiny' by the British historians.<sup>11</sup>

The British introduced drastic reforms in every walk of life in the wake of their so called "White Man's Burden". No previous ruler or rulers did so much work to formalize everything to make it a modern state thus revolutionizing every wake of life. An attempt was also made by the British Empire to act as neutral arbitrator and making it difficult for common man to take the law in his own hand and misuse it.

It is pertinent here to trace the history of these controversial laws in modern day South Asia which goes back to the time of the British Empire in Indo-Pak

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11 The event of 1857 is a watershed in Indian history. After that event India came under the direct rule of British Empire and a modern state structure was introduced at all level. India was no longer under any local king or sultan but under a government which work under a law abide by all stakeholders.

Subcontinent. The arrival of the British in India brought about modernity in every field of life. Before that India was governed under the Mughal Emperors who were despotic rulers and managed the affair of state with the help of many loosely associated local chiefs. Their main concern was holding power for a longer time without tailoring the State on the lines of modernity. There was no written constitution or criminal codes procedures in place and all major or minor decisions were taken not by any book of law but with the personal liking and disliking of the rulers and judges. There was no concept of an independent judiciary in Medieval India.<sup>12</sup>

The system of justice was not uniform in the Indian Subcontinent as it was a traditional society. The old system dispensed the justice in contextual term. People had to approach the village Panchayat for arbitration and if the issue was not solved, it was referred to the local Qazi Court of the major town nearby. Most of the cases were adjudicated at the local level and often justice was not done to the aggrieved party particularly when the party was socially and economically weak.

The British introduced many reforms in the dispensation of justice and for that matter the East India Company constituted an Indian Law Commission in 1833 to codify the laws that would govern the Indian area which came under English jurisdiction.<sup>13</sup> The law commission under the leadership of Lord Macaulay started its huge work to create a comprehensive body of law which would cater the need of the diverse and vast population which was socially and religiously divided by various castes and many religions. The writers of the Penal Code were conscious of the diverse nature of Indian society, so their primary aim was to make a law which could satisfy the aspirations and demands of all communities of India. The laws relating to religion gave birth

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12 Barrington Moor Jr, *Social Origin of Dictatorship and Democracy* (New York: Penguin Books, 1981), 319.

13 Government of India, *Indian Law Commission* (Calcutta: Bengal Military Orphan Press, 1837).

to the modern blasphemy laws of South Asia. There is a whole chapter in this Penal Code which deals with the offences related to the religion.

The writers of the law were conscious about the diversity of the population in India and were also witness of many clashes that took place among various religious communities in India. So, their primary aim was to safeguard the safety of all communities irrespective of majority or minority. The people under the rule of the company must be given full religious freedom to profess their rituals without any fear or disruption.

'The principle on which this chapter has been framed is a principal on which it would be desirable that all the governments should act, but from which the British Government of India cannot depart without risking dissolution of society. That every man should suffer to profess his own religion, and that no man should suffer by insulting the religion of another.'<sup>14</sup>

The relations between various religious communities were fluctuated in the history of Subcontinent. One can find instances of their cooperation and also find examples of their clashes. Most of the clashes were erupted due to religious reasons. Second problem was that the Indian society was too diverse. Even the biggest communities like Hindus and Muslims had many sub sects which differ considerably from one another. The Company government was also aware of the fragile nature of the relationship among various religious communities. The rationale behind Chapter XV is succinctly elaborated at the start of the Indian Penal Code:

All these considerations apply with a peculiar force in India. There is perhaps no country in which the Government has so much to apprehend from religious excitement among the people. The Christians are numerically a very small minority of the population, and in possession of all highest posts in the Government, in the tribunals, and in the army. Under their rule are placed millions of Mahommadans, of different sects, but all strongly attached to the

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14 Government of India, *Indian Penal Code* (Calcutta: Bengal Military Orphan Press, 1862).



fundamental articles of the Mahommadian creed, and tens of millions of Hindus, strongly attached to the doctrines and rites which Christian and Mohamadans join in reprobating. Such a state of things is pregnant with dangers which can only be averted by a firm adherence to the true principal of toleration. On these principles the British Government has hitherto acted with eminent judgment, and with no less eminent success: and on these principles, we purpose to frame this part of penal Code.<sup>15</sup>

The writers of the penal code spent years to understand the dynamics of the Indian society and then presented two reports to the English Parliament in 1838 and 1845 respectively. During the debate over these laws the members of the Parliament raised many questions on the content of the penal code and criticized according to their knowledge of Indian Society. Mr. J. F. Thomson was of the view that, "it appears to me a dangerous novelty liable to extensive abuse, that a man should be subjected to criminal prosecution for every gesture or sound that he may utter, offensive to the religious feelings or prejudices of another."<sup>16</sup>

Although the Penal Code tried to address many concerns of the communities but as mentioned earlier there was no tradition in Indian people to be regulated under a uniform law. There was always room of misusing the law related to the religious offense by the extremists of one religion against another. Meanwhile, the British annexed the Punjab, the most prosperous of Indian regions due to its agricultural and textile output, in 1849. After eight years the Whole of India came under the British Crown after the failure of 1857 uprising against the Company law. In her first address to the Indians, Queen Victoria stressed the need of a government with no specific religious orientation.<sup>17</sup> Thus, it made British Empire of India a truly secular state which would act as a neutral arbitrator at the time of conflict among the various religious groups of India. Soon after the War of Independence of 1857, the Empire started to expand the reforms to all India level. Here we are concerned about the

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15 Government of India, *Indian Penal Code*, 89.

16 Report on IPC. 1837.

17 Declaration of Queen in 1857.

codifications of the laws related to the religious offense. In 1860, the Indian Penal Code was promulgated throughout India. The first clause of the Chapter XV addressed the concern of the various religious communities.

Most of the time the Muslims and the Hindus, being two large communities, come in clash with each other on the religious festivals. The history of India is replete with the cases where both Hindus and Muslims vandalized each other's properties and lands. The Hindus used to sing songs with the all instruments in front of the mosques and Muslim sacrificed the cows on their Eid celebrations. Both acts were inflammatory in nature for both communities.<sup>18</sup> To check such type of activities the Penal Code proposed punishments for such offenses. It made such inflammatory activities as crime and punishable by code of law. The Clause 295 of Chapter 15 of Indian Penal Code thus deals the issue in this way:

Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of person or with the knowledge that any class of persons is likely to consider such destructions, damage or defilement as an insult to their religion, shall be punished with imprisonment of description for a term which may extend to two years, or with fine, or with both.<sup>19</sup>

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18 For discussion on the topic see *Community and Consensus*, 1990, Cambridge.

19 Indian Penal Code 1860. Other clauses are: 275. Whoever destroys, damages, or defile any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons are likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may be extended to 7 year and must not be less than one year, and shall also be liable to fine;

276. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, if causing such disturbance he assaults any person, or make shew of any person, or threaten to assault any person engaged in such worship or ceremonies, shall be punished with imprisonment of either description for a term which may extend to three years and must not be less than six months, and shall also be liable to fine;

These laws served their purpose well and effectively controlled the incidents of religious vandalism and violence. Whenever there were such incidents the law took its course and in most of the cases people were made understood the grave consequences of breaching the law. But the increasing tide of the modernity had its own disadvantages particularly in a society where it is imposed rather a result of historical experience. The British efforts to modernize India resulted in the communal consciousness.<sup>20</sup>

The era of 1920s witnessed a rise of the communal tension in India due to multiple factors. The First World War and its repercussions on the Muslim world particularly on Turkey being the seat of Ottoman Caliph awakened the Muslims of the Subcontinent politically. The Khilafat Movement was started to save the institution of Ottoman Caliphate, but it turned out to be a mass movement of Indian Muslims.<sup>21</sup> The Muslims gained much awaited confidence and this movement became an engine of their revivalism in India. The Khilafat agitation infused dynamism in Muslim

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280. Whoever, with the intention of wounding the feelings or insulting the religion of any person, commits any trespass on any place of sepulchre, offers any indignity to any human corpse, or causes disturbance, to any assembly assembled for the performance of the funeral ceremonies, shall be punished with imprisonment of either description for a term which may be extended to one year or fine or both;

282. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any words or make any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may be extended to one year or fine or both.

283. Whoever, does any act with the intention of causing it to be believed in any quarter that, by doing that act, he renders some other person an object of divine displeasure, or of causing it to be believed that by doing that act he obliges some other person, on pain of the divine displeasure, to do anything which that person is not legally bound to do, or threaten any person with doing any act which would, in any quarter, be believed to render the person threatened an object of divine displeasure, shall be punished with the 1 year 1000 rupees or both.

20 S. M. Burke and Salim-Al-Din Quraishi, *The British Raj in India: An Historical Review* (Karachi: Oxford University Press, 2001), 59.

21 Burke and Qureshi, *The British Raj in India*, 79.

politics and countrywide Khilafat Committee's gatherings politicized the urban Muslim population of India. The movement was a watershed in the politics of Muslims in British India. Muslim leaders were able to mobilize masses in the name of religion. The movement also gave birth to first religio-political party i.e. the Jamiat Ulma e Hind in 1919. This organization largely played an active role in mobilizing Muslims in the name of religion against British Raj.

Similarly, such revivalist movements were also flourishing in Hindu community. The activities of Arya Samaj were reaching peak in Muslim urban centres particularly in Punjab where it was established in Lahore in 1875. The Shudhi and Sanghaton movements were out to reconvert the Muslims of India to Hinduism. This made the communal relations between Hindus and Muslims very strained and volatile. According to Asad Ahmad Ali, two judgments gave a new dimension to the Hindu Muslim relations of India; one is denial of court to designate the sacred status to cow and, the other one was the case of Rajpal who published the scurrilous book *Rangila Rasool*. These two incidents created much hype in the deposition of Hindu Muslim relation.<sup>22</sup>

The publication of *Rangila Rasool*, written by Pandat Chamupatti, an active member of Arya Samaj, was considered to be blasphemous by Muslims, and it created lots of discontentment among the Muslims of Subcontinent due to its scurrilous contents against the Holy Prophet (PBUH). A Muslim youngman, Ilmudeen, killed the publisher of that book Named Rajpal.<sup>23</sup> The case was famous due to its nature and a Sikh Judge dismissed the case on technical grounds. This case is significant in many ways; first it happened in Lahore, the biggest urban centre of North-western Indian Muslims, so it was obvious that this case would send the vibes throughout this important Muslim

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22 Asad Ali Ahamd, "Spectres of Macaulay: Blasphemy, The Indian Penal Code, and Pakistan's Postcolonial Predicament," in *Censorship in South Asia: Cultural Regulation from Sedition to Seduction*, by Raminder Kaur and William Mazzarala (Indiana: University of Indiana Press, 2009), 178.

23 Zafar Iqbal Nagena, *Ghazi Ilmudeen Shaheed* (Lahore: n.d.), 30.

majority province. Secondly, the Ulema and religious segments projected Ilmudeen as Ghazi (a religious title conferred on those who stand victorious in Jihad). He was hanged in Mianwali Jail on October 6, 1929. After that a Muslim delegation comprising prominent Muslims such as Sir Muhammad Iqbal and Sir Muhammad Shafi requested the government to shift the body to Lahore.<sup>24</sup> The government allowed the shifting of body and he was buried in famous Miani Sahib Graveyard in Lahore with much religious enthusiasm.<sup>25</sup>

As law at that time did not include written words but spoken words, so the offenders could not be prosecuted under Section 298. So due to this the British Empire introduced first amendment in the law and verbal and pictorial symbols which might cause offense against the sacred were also included in the law:

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens, by words, either spoken or written, or by visible representations insults the religion or religious belief of that class, shall be punished with imprisonment of either description for a term which may be extended to two years, or with fine or with both.<sup>26</sup>

This amendment tried to address the concerns of the Muslims but overall political environment of the Subcontinent was getting more communal in outlook. Further, the figure of Ilmudeen had become an iconic figure to lay his life to save the dignity and honour of the Holy Prophet (PBUH). He became an inspiration for many young Muslims who subsequently attacked and injured those who committed blasphemy against the Holy Prophet (PBUH).<sup>27</sup>

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24 Qureshi, *Namoos e Risalat Aur Qanoon e Tauheen e Risalat*, 279.

25 The Ghazi Ilmudeen has become an inspiration for many and frequently referred in the discourse of Blasphemy laws in Pakistan. Hundreds of devotees visit his grave on the eve of annual Urs at Miani Sahib Graveyard in Lahore.

26 Government of India, *Indian Penal Code*, Government Press Delhi 1930.

27 M. Ismaeel Qureshi and Mehmood Ahmad Ghazi give a list of those people in their work. They are of the opinion that there were four more people who attacked the blasphemers in Punjab.

The next reported case was in Karachi during March 1934, when a man named Abdul Qayum who belonged to Hazara area of North West Frontier Province (now Khyber Pakhtunkhwa), attacked and stabbed Nathu Ram, an active member of Arya Samaj, to death. He allegedly wrote a book *History of Islam* and according to the local Ulema, the book contained objectionable material regarding Islam and its Prophet (PBUH), thus committed blasphemy. The Muslim community was infuriated over it and took out many processions to register their protest. A case was registered against him under the law related to the offense of the religion. The court of law handed Nathu Ram one-year imprisonment and fine for inciting the religious feelings of Muslim community. He appealed to the higher court and it was submitted for hearing. But in March 1936 in the court premises Abdul Qayum attacked the author and killed Nathu Ram on the spot.<sup>28</sup>

Abdul Qayum also become a symbol of reverence and had acquired a status of Ghazi. His shrine is also frequently visited by the devotees and all hold him in very high esteem. The incident again shows the sensitivity of the issue of blasphemy in colonial India. Even the colonial legislation could not stop the person like Abdul Qayum to take the law into his own hands.

The British Government of India introduced the Chapter XV of Indian Penal Code to create communal harmony. The authors of the Code tried to understand the dynamics of multi-cultural society of India and devised a law which could be applicable to all communities. The subsequent history of India witnessed the rise of communalism to a great extent in 1920s partly due to the British overseas policy regarding Muslim world and partly due to the rise of religious groups among both Hindu and Muslim communities.

### **Conclusion**

The British Empire somehow managed the blasphemy issue in a remarkable way as there were few cases reported

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28 Ghazi, "The Law of Tauheen e Risalat," 178.

during their rule in India till 1947. The episodes of Ilmudeen and Abdul Qayum were not the norms but exceptions. The empire's biggest achievement was that it ruled the diverse population of India with uniform law which was applicable to everyone. They introduced independent judiciary which worked independent of executive and state acted as neutral arbitrator for everyone.