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A brief review of The Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020

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The Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020 passed by the Punjab Assembly on 22 July 2020 is a bad law which seeks to achieve two sinister objects. **One**, it attacks some of the fundamental tenets of Shi'ism which makes it sectarian in nature. Thus it seems to be aimed at curbing religious freedoms of the followers of Shi'ism in Punjab. **Two**, it prescribes unprecedented and insurmountable restrictions on the trade of book publishing, import and sale in Punjab, as well as on freedom of speech including academic freedom. The law prescribes a mandatory review by and permission from the government before import, distribution and sale of all books in any form whatsoever.

In prescribing a framework of prohibitions and questionable protocols to be followed for publishing, import, and sale of books, this law seeks to impose governmental, bureaucratic and theocratic control over academic freedoms in the province of Punjab. Therefore, the Tahaffuz-e-Bunyaad-e-Islam Act violates constitutional guarantees of freedom of trade and profession (article 18), freedom of speech which include the academic freedom (article 19), and freedom of religion (article 20) including the widely recognized freedom of thought and conscience.

The governor of Punjab, Ghulam Sarwar, has indicated that he would not grant assent to the law passed by the assembly unless “consensus” is achieved. This has happened mainly due to immediate reaction from Shia clergy. Pervaiz Ilahi, the speaker of the assembly, after meeting a delegation of Shia religious leaders, has reportedly assured that the bill shall not be sent to the governor till their reservations are addressed. But the fact is that no amount of jugglery with words can cure the evil this law contains. In order to understand this, consider a brief overview of the law as follows.

Section 2 of the Act defines different terms used in the Act. It defines “book” in the widest possible manner i.e. “book” includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, sign, map chart, or plan separately printed, or reprinted or reproduced, lithographed, or produce in any soft form, disc or any other similar device etc., used for digital or electronic storage. Newspapers and magazines are excluded as are textbooks which are covered in other laws.

Section 3 of the Tahaffuz-e-Bunyaad-e-Islam Act prohibits publication of any content in any book which (a) in any way tends to “glorify” terrorism; (b) promotes sectarianism; (c)

tends to incite violence; or (d) is prejudicial to the ideology of Pakistan or the sovereignty, integrity or security of Pakistan; (e) is in conflict with the “commonly accepted” standards of morality and decency; or (f) defames, criticizes, brings into ridicule Allah, or the Last Prophet Muhammad (pbuh) and his friends i.e. Ashaab-e-Rasul etc.

Sections 4-6 are of procedural nature. Section 7 grants several unprecedented powers to the Director General of Public Relations (DGPR) of the province which is currently a department of Ministry of Information and Culture headed by Minister Fayyaz Ul Hasan Chauhan.

Further, section 8 of the Act requires that all books including pamphlets etc. which anyone intends to publish or import in Punjab in any form, print or electronic including CDs / USBs etc., to follow a certain set of protocols in printing names Muslim holy personages including the Holy Prophet Muhammad (pbuh), his wives, his family members and his companions. For instance, it is prescribed that in every book to be published or to be imported, the name of the Holy Prophet Muhammad shall be preceded by the title Khataman-Nabiyyin خاتم النبيين يا خاتم النبيين (the Last Prophet) and shall be followed by only complete Arabic text حضرت صلى الله عليه وسلم يا صلى الله عليه وآله وسلم i.e. publishing ‘PBUH’ or ‘peace be upon him’ or any other combination of words expressing respect at the end won’t suffice.

Similarly, names of all four eminent companions of the Holy Prophet (pbuh) i.e. Khulfa-i-Rashideen, shall mandatorily be preceded by title Khalifa-e-Rashid خليفه راشد and necessarily followed by رضى الله عنه etc. etc. Similar guidelines are prescribed which relate to other Islamic holy personages who are not held in the same high esteem by Shi’as as they’re by Sunnis. This is what makes the law sectarian in nature.

While the foregoing aspect is definitely nefarious, what is even more draconian is the procedure prescribed for publication, import and sale of books. Every publisher and every importer of books is obliged to provide detailed information about the books printed or imported in Punjab to the authorized government officer. Under section 5, prescribed number of copies of each printed book shall have to be provided to the government’s authorized officer for review on the day the book is first printed before it is distributed. Omission to do so shall lead to imposition of fine. The law requires that all relevant information regarding an imported book meant to be distributed or reprinted in Punjab must be submitted to the authorized officer within fifteen days of import for the purpose of review and permission to be granted.

All bookshops and publishing houses must also necessarily be registered with the authorized office of the provincial government. This requirement will be in addition to the requirements under existing laws. No book seller /distributor or publishing house shall be permitted to keep or offer to sell a book in contravention of this Act.

The Director General of Public Relations (DGPR) of the province has been granted excessive powers for the purpose of enforcing the mandatory requirements. Such powers include the following.

DGPR can

- visit and inspect the premises of the printing presses, offices of the publication houses, book stores, and confiscate any book whether before or after printing including any material thereof;
- inquire into, investigate, assess or ascertain any act or omission on part of the publisher, printer, importer;
- check the record and books of accounts of the publication, on the spot or may require the management to produce the same before its designated official at any of its offices.

Our experience teaches us that such powers in the hands of government officials are likely to be abused. In fact, these powers are manifestly excessive and far beyond even the intended scope of the law. For instance, the DGPR shall not only be authorized visit and inspect printing presses and publishing houses, book shops, but also have the power to check books of accounts of the publication and of printers, publishers, book importers and sellers. DGPR is also bestowed enjoy the power the

It is unfathomable why such powers are even needed to be granted to DGPR. In light of our experience is it difficult to understand that this kind of search and seizure powers in the hands of a government official shall be abused for personal gain and/or ideological and religious /sectarian objectives?

Import of foreign books or their publication in Punjab shall also be severely constrained due to the restrictions imposed by the law. Sub-sections 2 to 4 of section 8 prescribe that no person shall be permitted to import, print or publish any book or work which is first printed or published in Pakistan or in any foreign country without first obtaining permission of the DGPR. The DGPR may decline permission to import, print or publish a book or work if the book or work is prejudicial to the national interest, culture, or religious and sectarian harmony. As if this wasn't enough the law further prescribes that the DGPR shall be bound to refer a book presented to him to "Muttahida Ulema Board" on any subject material related to religion. It would be relevant to mention that "Muttahida Ulema Board"

is a group of clergymen without any legal basis. We don't know what would be the composition of such a board. For some strange reason this law recognizes and assigns a significant and important role to a body of clergymen which is not legally constituted and would not be accountable to anyone. Are the Ulama beyond any accountability?

Section 3 of the Tahaffuz-e-Bunyaad-e-Islam Act prohibits publication of any content in any book which (a) in any way tends to “glorify” terrorism; (b) promotes sectarianism; (c) tends to incite violence; or (d) is prejudicial to the ideology of Pakistan or the sovereignty, integrity or security of Pakistan; (e) is in conflict with the “commonly accepted” standards of morality and decency; or (f) defames, criticizes, brings into ridicule Allah, or the Last Prophet Muhammad (pbuh) and his friends i.e. Ashaab-e-Rasul etc.

The prohibition based criteria laid in section 3 for review of books by the provincial authorities to decide whether permission for printing and publication, or import, and distribution and sale of books is to be granted or not are unnecessary as some of the prohibitions are already covered in the existing penal laws of Pakistan. Such as “glorification” of terrorism is already prohibited in the Anti-Terrorism Act 1997 (ATA). Reference may be made to section 11 W of the Anti-Terrorism Act 1997 (as amended to date). Similarly, incitement to violence and sectarianism both are prohibited in the penal laws. Examples of such laws include section 153A of the Pakistan Penal Code (PPC). Further, PPC also prohibits printing, publication, import, sale, distribution, exhibition of a “book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever”. Punishment can be imprisonment up to 5 years with fine up to five lac rupees. It would be relevant to mention here that sec. 11 of the Act prescribes punishment for violation of all the aforementioned prohibitions except the one under sub-section (f) which as the law acknowledges are already punishable in the penal code.

Other terms and standards prescribed for judging appropriateness of a book for publication and sale are undefined, uncertain, vague and subjective. Such terms and standards include ‘ideology of Pakistan’ which is not defined in any law. Similarly, morality, decency, national interest, and culture are neither defined nor can they be objectively defined with any degree of certainty. Can publication and sale of books be left to such subjective criteria? Would not judging books on the touchstone of such vague and undefined terms be an unreasonable restriction and violate article 19?

It would also be relevant to mention that the Act does not provide any remedy either of appeal or review against the orders passed by the authorized officer(s) or DGPR. This is in addition to the absence of an express requirement that an authorized officer or the DGPR would only pass an order against a publisher, printer, importer or bookseller after giving

the affected book importer, publisher, or seller an opportunity to be heard. Therefore, there is a major gap in the Act which denies publishers, printers, importers and booksellers a right to be heard before a decision is announced against them by government officers. This is major departure in a legislation from an important principle of natural justice of “audi altram partem”. One could, therefore, argue that the Act violates the right to fair trial and due process as guaranteed under article 10-A of the constitution of Pakistan.

The net effect of the restrictions imposed by this law would be that publishers, printers, importers and sellers would prefer to have books reviewed from the government before they make financial investment in any proposal to publish a book. This means that the Act under review is effectively imposing prior restraint on freedom of speech and by necessary corollary on academic freedoms ostensibly in the name of religion. Censorship by way of prior restraint is considered to be a serious infringement on freedom of speech. Even if it is granted that prior restraint is necessary to prevent public disorder, the test of clear and present danger would have to be applied. Where is the need for such a restraint to be imposed on book publishing industry? Is there any evidence that the prohibitions and control mechanism provided in the law is not imposed there is a clear and present danger of public disorder to follow? Proportionality of measures to be taken is also considered to be an important test. The powers granted to the DGPR do not fulfill the test of proportionality. Article 19 allows restrictions to be imposed only “in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence”. The restrictions the Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020 seeks to impose are needed to achieve none.

On the other hand, the Act in fact would result in imposing restrictions which will infringe the freedom of trade, business and profession as guaranteed under Article 18 of the constitution of Pakistan.

But it isn't just articles 18-19 which this Act would violate. The Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020 shall also infringe on the freedom of religion. As mentioned at the outset that the Act clearly targets the freedom of religion of the followers of Shi'ism. But it is not just the Shias who would be affected. Other religious minorities who are often broadly categorized as “non-Muslims” would also be affected by this law. We are aware that except for Sunni Muslims, followers of all other religions do not accord the same reverence to the holy personages of early Islam mentioned in the Act. Forcing them to follow the governmental control framework prescribed in the Act would clearly be a major violation of article 20 of the constitution which guarantees religious freedom. According

to the supreme court of Pakistan the freedom of religion includes freedom of thought and conscience as also upheld in international covenants like the International Covenant on Civil and Political Rights (ICCPR) which Pakistan is a party to and under obligation to follow.

Conclusion:

In view of the foregoing, it may be concluded that the Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020 seeks to create an unnecessary and wholly undue governmental system parallel to the already existing regulatory framework for the book industry. It will create a system which will open new ways and means of financial corruption in the Punjab officialdom. As a result, it is likely to undermine growth of scholarship by stifling publication, import and sale of books.

Most importantly, the Act imposes undue restrictions on constitutionally guaranteed fundamental freedoms of religion, thought and conscience, speech and trade. Punjab Tahaffuz-e-Bunyaad-e-Islam Act 2020 should not be enacted and enforced.

About the Author:

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