Hate speech and restricted speech: striking a balance

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The twenty-point National Action Plan, announced in the wake of Peshawar school attack, carries almost all aspects of countering terrorism, ranging from the all-out violence to extremism/radicalisation.

Much of the news about NAP these days revolves around the issues having short-term significance like special courts and military operation. The issues having impact beyond today are missed out. For example, issues of extremism and radicalisation that lie at the core of the problem of terrorism, are reflected negligibly when it comes to the action on ground.

This article intends to detangle NAP's provision number 5, i.e., countering hate speech and extremist materials.

Hating the "hate speech"

Hate speech is more or less defined as any speech that attacks a person or group on the basis of attributes such as gender, ethnic origin, religion, race, disability, sexual orientation etc.[1]

Hate speakers push societies and states towards devastation. The last century is stained with several marks of genocides – Holocaust, for instance – a process hastened by hate speeches.[2]

The menace of global terrorism is often attributed to hate speech and radicalisation, among other factors.[3] According to several studies on post-9/11 terrorism, hate speech mostly produces hate crime, which is often precursor to terrorism.

There is a reason why it is so, especially in the context of Pakistan. Terrorism is graduated upon the hate crimes of right-wing forces, indicating a build-up of anti-minority sentiments.[4]

It is thus absolutely urgent for a country like Pakistan to constrict the flow of terrorist ideologies. This can be achieved by breaking the

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[1] John T. Nockleby, "Hate speech," in Encyclopedia of the American Constitution, ed. Leonard W. Levy and Kenneth L. Karst, vol. 3, 2nd edition (Detroit: Macmillan Reference US, 2000), 1277-1279, quoted in Margaret Brown-Sica and Jeffrey Beall , "Library 2.0 and the Problem of Hate Speech," *Electronic Journal of Academic and Special Librarianship* 1, no. 2 (Summer 2008).

[2] "Countering dangerous speech, protecting free speech: practical strategies to prevent genocide" (Report of the 2014 Sudikoff Annual Interdisciplinary Seminar), http://www.ushmm.org/m/pdfs/20150512-sudikoff-report.pdf (accessed August 18, 2015).

[3] Kathleen Deloughery, Ryan D. King and Victor Asal, "Close cousins or distant relatives? The relationship between terrorism and hate crime," Crime and Delinquency, http://cad.sagepub.com/content/58/5/663 (accessed August 18, 2015).

[4] Ibid

fountainhead – the hate speech/extremist material. The fifth point of NAP rightly calls for countering hate speech and extremism material.

Existing codes

Even though hate speech is not definitively defined or enshrined in international law, there are provisions that identify expressions considered as hate speech. These provisions serve as bulwark against the spread of hate speech.

The Convention on the Prevention and Punishment of the Crime of Genocide criminalizes "direct and public incitement to commit genocide". Likewise, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) asks states to criminalize "all dissemination of ideas based on racial superiority or racial hatred as well as incitement to racial discrimination."[5]

Another prominent covenant is the International Covenant on Civil and Political Rights (ICCPR), which asks states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Soon after Pakistan ratified the ICCPR in 2009, a debate started in the parliament as to how can the country's laws be amended in compliance to the ICCPR.

It emerged that the existing Pakistan Penal Code (PPC) quite rigorously covers those offences that can be distinguished as "hate speech".

Take Section 153-A (a), for instance. It criminalises anyone who "by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites or attempts to promote and incite disharmony, enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, on grounds of religion, race, place of both, residence, language, caste or community or any other ground whatsoever."[6]

Similarly, Section 153-A (B), punishes anyone who "commits, or incites any other person to commit, any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities or any group of persons identifiable as such on any ground

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[5] Dr. Tarlach McGonagle, "The Council of Europe against online hate speech: Conundrums and challenges," Institute for Information Law (IViR), http://www.ivir.nl/publicaties/download/1088 (accessed August 18, 2015).

[6] Pakistan Penal Code, (XLV OF1860) [6th October, 1860].

whatsoever and which disturbs or is likely to disturb public tranquillity."[7]

Thus, the existing legal framework gives the state enough space to go after the miscreants. What is rather needed is that the law-enforcement agencies must be trained and given resources to track and handle hate-based crimes. That data should be publicly made available for continued public scrutiny.

Drawing line

From the human rights perspective, it is not always advisable to have watertight provisions of law in the name of hate speech, which the state may invoke to limit citizens' right to free expression.

In Pakistan's peculiar context, with a chequered history of democracy and democratic struggle, the dictatorial regimes as well as intermittent civilian governments have tried to clamp down people's right to expression. Legitimate concerns of human rights defenders and overall civil society representatives about the civil-military relations have been traditionally seen by the state with the lens of treason and infidelity.

Stringent and tight laws targeting hate-speech, hence, can be easily used by regimes for snubbing dissent and criticism in the name of hate-speech.

This struggle between human rights defenders opposing hate-speech laws and counter-terrorism communities lobbying for such laws is fairly global and not limited to Pakistan.[8]

While scholars deem free speech as inalienable right of the individual, an overwhelming majority of them limit free speech at a certain point, where it offends communities and individuals through a variety of expressions, which endangers them.[9]

In Pakistan, the free speech vs. hate speech debate is reflected in some contradicting laws. Resultantly, one law in certain cases limits or completely cancels the other laws that may provide relief to the powerless communities.

For instance, the provisions, which penalize enmity between groups

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[7] Ibid

[8] William Saletan, "Hate-speech hypocrites: How can we ban hate speech against Jews while not Muslims?," *Slate,* September 28, 2012.

[9] Natan Lerner, "Is there a right to hate speech," *The Human Rights Brief* (The Center for Human Rights and Humanitarian Law, Washington College of Law)3, no. 2 (1996): 41; Sandra Coliver, "striking a balance: Hate speech, freedom of expression and non-discrimination," Human Rights Center, University of Sussex, https://www.article19.org/data/files/pdfs/publications/striking-a-balance.pdf (accessed August 18, 2015).

(like 153-A of PPC, as discussed) and those that criminalize blasphemy (295 and 298 of PPC) sometimes go together, but at other instances, collide with each other. The speeches and sermons of a section of religious leaders against other religious communities, for example, Ahmadis, would be prohibited by Section 153-A, on grounds of enmity, but protected by Section 298, on grounds of blasphemy, and by other freedom of speech provisions of the Constitution.

Additionally, Pakistan's numerous social fissures, based on religion, sect, ethnicity, political ideology and social status, thrive on hate speech and extremist material. It is the friction underlining these fissures that ends up producing foot soldiers whose hatred gradually morphs into violent extremism and, in extreme cases, to terrorism.

In such a situation, countering hate speech might not be too easy, or even practical, at times. Touching the historical sectarian baggage might prove to be a hornet's nest, for instance.

That said, such limitations do not stop the governments from enforcing the basic principles of a pluralist – if not secular – society, one that truly appreciates rights and freedom of everyone, irrespective of their backgrounds.

Progress under NAP

Implementation mechanism

On December 26th, 2014, two days after NAP was announced, Prime Minister Nawaz Sharif constituted subcommittees for implementing is different points.[10] The same day, the subcommittee on "countering hate speech and extremist material" was formed and assigned to the interior minister.

The committee's other members were ministers of religious affairs, planning and development, information and broadcasting; director generals of Inter-Services Intelligence (ISI) and Intelligence Bureau (IB); Managing Director of Pakistan Television; all provincial Home Secretaries; Secretaries of provincial Auqaf Departments; National Coordinator of NACTA; and Secretary of Interior Division.[11]

This committee was tasked to furnish recommendations within the next three days, that is, by December 29th, 2015. The deadline was perhaps missed. That is why the committee was tasked to come up with a comprehensive strategy by January 15th, 2015.[12] Again, the Ministry failed

[10] "PM finalizes panel for ensuring implementation of National Action Plan," *Express Tribune*, December 27, 2014.

[11] Ibid.

[12] "Govt combating terror – one meeting at a time," *Pakistan Today*, December 31, 2014.

to meet the deadline.[13] Whether or not the strategy was submitted at all is unclear. At least publicly, no material was released.

Strategy

The government's strategy of combating hate speech/extremist material can be deduced from the periodic reviews the ministry submitted to the Prime Minister after every few months.

That strategy involves two-pronged measures: regulating public order and checking systemic dissemination of hate material.

Many hate speakers have been arrested and shops closed, according to government circles. By mid-January, for instance, 251 people were arrested for hate speech, rising to 1,799 by the end of July, government's progress reports in those two months show.[14][15][16]

Numbers, however, could be deceptive. Despite the overdrive to arrest hate speakers, the loud-mouthed sectarian leaders stay untouched.

Most of the arrests have been made for misusing loud speakers or sound amplifiers, under a 1965 law regulating their usage.[17] The administration has reportedly clamped down on public use of loudspeakers albeit selectively. According to the January report, 1,100 people were arrested for misusing loudspeakers.[18] Many non-hate-speakers were also arrested for violating the law. For example, the recent arrests in Islamabad were made on loudspeaker violations when human rights defenders protested the demolition of an informal settlement in I-11 sector of Islamabad.

In an exclusive interview with the author, a senior member of ruling PML-N Sheikh Waqas Akram, who has been at the forefront in snubbing sectarian terrorist outfits in his own constituency in district Jhang, discussed other angles of these arrests.[19] Shia and Barelvis, he observed, have been main targets of the arrests for violating act related to loudspeaker usage. He detangles this

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[13] "Govt misses four deadlines set for NAP," *Pakistan Today*, January 25, 2015.
[14] "251 arrested for hate speech, NAP meeting informed," *Dawn*, January 14, 2015.
[15] Ibid.
[16] "Over 20,000 terrorists killed after NAP implementation," Geo TV (website), July 30, 2015.
[17] "Regulation and Control of Loud Speakers and Sound Amplifiers Ordinance 1965.
[18] "251 arrested for hate speech, NAP meeting informed," *Dawn*, January 14, 2015.
[19] Author's interview with Sheikh Waqas Akram.

trend as the weakness of law-enforcing agencies (LEA) to carry out an all-out campaign against the more powerful mosques being run by the *takfiri* schools of thought, who are main culprits of hate-speech against other sects and religions. The LEAs try, Mr. Waqas said, to balance the small number of the arrests of real problem makers by arresting the clerics of other sects, who are largely the victims of the hate campaigns run by the aggressive elements of puritanical Deobandi clerics.

Mechanism for identifying and curbing by taking appropriate punitive measures on hate speech/extremist material in digital realm, too, has not been developed so far. There isn't even a proper platform to which people can file complaints and seek redress. The government has rather been emphasizing too much on curbing and censoring speech. Even a controversial cybercrime law is being proposed, to the resistance of opposition parties and rights activists.

Another missing aspect is a clear stance against the hate-mongering pulpit. A certain section of mosque elite relay hate during religiously-ordained days. Friday is one of them, when sermons before collective prayer are deliberately titled along sectarian lines. Yet, the state doesn't seem to be taking on against them. And they continue with their hatred.

Overall, there is little scrutiny of the entire process of NAP, including on hate speech/extremist material, by the citizens and parliament.

Immunization campaign - needed

The government's strategy of fighting hate speech/extremist material can be classified as "restrictive" in nature, one of the two approaches of countering hate speech.[20] This approach mainly targets the hate-speaker, the materials and the means of dissemination of those materials.

This approach has its costs too, as it can end up tramping the right to free speech and freedom of expression as explained above under the section, 'Drawing Line'. Some critics even warn that this approach has the potential of pitching the governments against the citizens if people's right to dissent is violated. In such cases, the governments may find themselves at an adversarial position with their citizens. Killing the dissent is dangerous for the societies infested with radicalisation and hate-speech otherwise too,

[20] "Countering dangerous speech, protecting free speech: practical strategies to prevent genocide" (Report of the 2014 Sudikoff Annual Interdisciplinary Seminar), http://www.ushmm.org/m/pdfs/20150512-sudikoff-report.pdf (accessed August 18, 2015).

because it is one strong tool against the prevalent hate-speech.[21]

There is another approach too, the non-restrictive one, which reaches out to the audience of hate speech by preventing them from being receptive to the speech. Under this approach, the state undertakes rigorous 'immunisation' of the populace against hate messages.[22]Non-restrictive method is akin to polio immunisation campaign. Even though the polio virus stays around, the people turn resistant to it.

The most suitable course of action would be to follow a careful mix of both approaches – restrict and non-restrictive – without snatching any rights from the people that the Constitution of Islamic Republic of Pakistan has guaranteed.

This careful mixture of both approaches might involve some degree of regulation for the religious sermons and speeches as well as standardisation of madrassa curriculum. Although it is against secular ideals that the state intervenes in the affairs related to religion, it nevertheless could be followed dispassionately for checking inter and intra religious hate-speech.

Strong libel laws can be one measure for restricting political and religious leaders from accusatory hate speech against the opponents. This would water down their otherwise fiery and offensive speeches during political rallies and religious congregations in addition to neutralising the existing incentive to misuse the blasphemy laws.

One innovative measure under non-restive approach could be a 'Hate Speech Immunisation Program' across the country. This program, while working through different platforms, should follow Zero-Tolerance policy for stereotypes and biased description of or attitude towards different religious, sectarian, ethnic communities and women. Programs like this are usually aimed at increasing people's resistance to the hate-speech by mainly three broad measures. These include; (1) reforming educational system that focuses inculcating habits of critical thinking and healthy scepticism among the pupils; (2) enabling the populace to empathise for the vulnerable communities and groups as well as adopting and propagating pluralist values; (3) encouraging and inspiring the citizens to speak out on injustices and voice dissent whenever they have to.

Under such a program, teachers of all educational levels, especially at the primary level and in madrassa, may be engaged on de-radicalisation and anti-hate-speech training programs. Moreover, mega programs using film, TV, radio, social media,

[21]Ibid.

[22] Ibid

newspapers and other non-conventional media should be launched, to 'inoculate' the populace strong resistance against all kinds of messages based on hate and prejudice. Likewise, curriculum of regular educational institutions needs to be thoroughly reviewed and revised in consultation and collaboration with progressive sections of civil society.

Of course, the state must not make use of radical ideologies, prejudiced messages and hate speech and materials for its own strategic ends. This might serve some short-term interests but in medium to long term, it proves lethal for the country

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