

## Hart's Legal World and the Case of Asia Bibi

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While discussing the law and morality, H. L. A. Hart stated:

*“Reflection on this aspect of things reveals a sobering truth: the step from the simple form of society, where primary rules of obligation are the only means of social control, into the legal world with its centrally organized legislature, courts, officials, and sanctions brings its solid gains at a certain cost.”<sup>2</sup> (emphasis supplied)*

In contradistinction to Hart's 'legal world' that comprises legal institutions and procedures, the judgement in Asia Bibi Case<sup>3</sup> was pegged into religious reasoning. From a jurisprudential point of view, while there is no harm in the use of religious reasoning, the unintended consequence of it is that it imports normative assessment, and by implication, the Natural Law gets applied. Most interestingly, the authors of the judgement applied the Natural Law to invoke the jurisdiction, but during the course of the judgement, they applied the standards of the Positive Law to appraise the evidence. The use of both the Natural and the Positive Law devices has given rise to methodical problems leading to uncertainty and inconsistency, which might ultimately affect the *stare decisis* value of the judgement. To elaborate this premise, consider the following:

First, it must be noted that Pakistan is governed by a written Constitution<sup>4</sup> that constitutes the Supreme Court<sup>5</sup> and also confers it different types of jurisdiction<sup>6</sup>. The trials of criminal cases (blasphemy cases) takes place at district level and is finalized by the provincial High Courts with limited and regulated role of the Supreme Court. The role of the Supreme Court is regulated by listing the conditions in which its Appellate Jurisdiction can be invoked in criminal cases<sup>7</sup>. Clearly, the construct of the Appellate Jurisdiction and its regulation are a product of the Positive Law and belong to Hart's 'legal world'. In the instant case, the Supreme Court used the Natural Law to assume the jurisdiction.

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<sup>2</sup> Hart, H. L. A., *the Concept of Law*, (1961, Oxford University Press 2012) 202

<sup>3</sup> Mst. Asia Bibi vs. the State  
<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A. 39 L 2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A. 39 L 2015.pdf)> accessed 2December 2018

<sup>4</sup> The Constitution of Pakistan, 1973

<sup>5</sup> Article 176 of the Constitution of Pakistan, 1973

<sup>6</sup> Articles 184 (Original Jurisdiction), 185 (Appellate Jurisdiction) and 186 (Advisory Jurisdiction) of the Constitution of Pakistan, 1973

<sup>7</sup> Article 185(2) of the Constitution of Pakistan, 1973

Secondly, the judgement clearly records<sup>8</sup> that death as punishment of blasphemy in Islamic Law was not decided on its merits, but the ultimate forum (Shariat Appellate Bench of the Supreme Court of Pakistan<sup>9</sup>) for deciding the conformity of a law to the Quran and the Sunnah was not exhausted as the case was ‘dismissed for want of prosecution’. The observation is not merely declaratory; it affects the cardinal principles of ‘*Nullum crimen sine lege*’<sup>10</sup> and ‘*Nulla poena sine lege*’<sup>11</sup> that have also been guaranteed as Fundamental Rights in the Constitution of Pakistan<sup>12</sup>.

Thirdly, the case shows that the ‘legal world’ of the Islamic Law has not been addressed by Islamic lawyers. The Islamic Law relating to collection of evidence, investigation, institutions of police, prosecution and courts has not been discussed at all. The propensity to see Islamic Law within the framework of the ‘legal world’ of modern legal systems has given rise to compatibility as well as methodological issues. Notably, the evidence brought on record against Asia Bibi was all testimonial: this gives rise to many a question: what type of evidence is required in a blasphemy case under Islamic Law? What will be the legality of use of polygraph test in Islamic Law? Will a polygraph test favouring an accused mitigate his liability?

Finally, it may be stated that Asia Bibi case should not be taken as a statement on Islamic Law. With poor conviction rates, low investment on legal institutions, and confused nature of legal system in Pakistan, it was no surprise to practitioners in justice sector. It also evinced that the procedural reform of investigation of blasphemy cases by senior police officers as well as the role of prosecution department in such cases has failed. Nonetheless, it is hoped that the case would spur debate on the ‘legal world’ in which justice system of Pakistan operates and it might, as a consequence, start to get addressed for the good of public at large.

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<sup>8</sup>Mst. Asia Bibi vs. the State

<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A. 39 L 2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A. 39 L 2015.pdf)> accessed 2December 2018, para 10

<sup>9</sup> Article 203 F of the Constitution of Pakistan, 1973

<sup>10</sup> No crime without law (also included as General Principles of Criminal Law in the Rome Statute of the International Criminal Court (Article 22))

<sup>11</sup> No punishment without law (also included as General Principles of Criminal Law in the Rome Statute of the International Criminal Court (Article 23))

<sup>12</sup> Article 12 of the Constitution of Pakistan, 1973