



# UNPACKING THE BLASPHEMY LAWS OF PAKISTAN

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## Introduction

Pakistan's draconian blasphemy laws have been used to perpetrate legitimised violence, executed in the name of religion. These laws have been used particularly to reinforce the exclusion of religious minorities as well as Muslim-minority sects. Anyone convicted of defiling the sacred name of the Prophet Muhammad is to be awarded the mandatory death penalty.<sup>1</sup> Defiling a copy of the Holy Quran is punishable with mandatory life imprisonment.<sup>2</sup> A person may be imprisoned for three years if convicted of blaspheming against several other 'holy personages' traditionally venerated by the majority Sunni sect but disapproved of by the Shias.<sup>3</sup> Ahmadis, a relatively recent sect of Islam believed to be heretics by Sunnis, can be imprisoned for three years for simply posing as Muslims.<sup>4</sup> In recent years, far from prosecution or conviction, the very allegation of blasphemy in any of its myriad forms can lead to death by lynch mob.

Even if the death penalty for blaspheming against the Prophet Muhammad is not carried out by the state, the whole set of blasphemy laws cast a dark shadow over the daily lives of ordinary Pakistanis, especially minorities. For a Christian, the mere allegation of a blasphemous utterance in a casual conversation can lead to him being sentenced to death, or lynched. Allegations of blasphemy have resulted in the torching of settlements by fanatical mobs.<sup>5</sup> Judges who acquit Christians of

blasphemy have been threatened.<sup>6</sup> There have been cases where the mentally disabled and even children have been accused of committing blasphemy.<sup>7</sup> The law itself provides complainants, vigilantes and mobs the moral high ground. Although religious hate crimes were already punishable under the law,<sup>8</sup> in the 1980s, the Pakistani state in its quest for ‘Islamization’ introduced the aforementioned blasphemy laws based on an overtly sectarian and unforgiving interpretation of Islam. These new blasphemy laws, along with the general theocratisation of the state, have encouraged the idea of blasphemy as an offence worthy of death. The idea of a divinely sanctioned death penalty is widely supported, despite the fact that there is no such sanction in Islamic scriptures, as this paper will show later. For a large number of Pakistanis, blasphemy is not a pardonable offence and anyone who believes otherwise is also committing blasphemy. The worst illustration of such a concept is the case of Governor Salman Taseer, who was murdered by his own guard in January 2011.

### **Religious nationalism and a hybrid theocracy**

The question of Pakistani identity had not been properly addressed when the country was founded in 1947. The new nation was divided between pan-Islamism and the imperatives of a modern nation state. Successive governments capitalised on this, and used religion as a political tool. The religious right’s demands for the creation of an ‘Islamic’ state’ were pandered to, and Islam was invoked as the unifying factor between Pakistan’s disparate Western and Eastern Wings (now Bangladesh). Meanwhile, insufficient attention was paid to dividing political influence equally. As such, Pakistan’s dismemberment in 1971 was another watershed moment, when the more democratic and secular Eastern Wing – which disagreed with the Islamic nationalist project – disappeared to become the independent state of Bangladesh.

In 1973, Pakistan was declared an Islamic Republic and ‘secular’ Prime Minister Zulfikar Ali Bhutto initiated a process of Islamisation, as part of his electoral mandate of ‘Islamic Socialism’.<sup>9</sup> Acceding to the religious lobbies’ demands, the Ahmadiyya sect was declared ‘non-Muslim’ in 1974. Later, Friday was declared a holiday, and alcohol and gambling were banned. This process was continued by his successor, General Zia-ul-Haq. In his 11-year-long tenure, General Zia introduced a wide variety of ‘Islamic’ laws and ushered in an era of ideological statehood

– one that continues to date. Revision of the country’s blasphemy laws to make them more stringent was also a part of this agenda.

During the 1980s, the use of non-state religious fighters, or ‘jihadis’, also emerged as a legitimate policy tool. Thousands of such jihadis were employed to support the Afghan jihad and later the insurgency in Indian occupied Kashmir – a key dispute between the two neighbours. There is a wide consensus on this ‘national security’ agenda as civilian democrats espoused this policy. In plain terms this policy involves an alliance with both violent and non-violent religious, sectarian and extremist groups to bolster Pakistan’s defence against much-feared Indian aggression. Consequently, internal and external resources flowed to the religious right through charitable and private donations and foreign funding during the Afghan jihad project. During this period and afterwards, the religious right was able to strengthen its grassroots cadres and propaganda instruments to influence the functioning of the state. Over time, religious parties and sectarian-militant organisations have transformed into pressure groups with massive street power, gained through networks of mosques, religious seminaries and charities. Thus, the use of religion has become a legitimate strategy to further political objectives.

The education system has not been able to escape this creeping Islamism. In fact, it is a veritable arm of state policy to propagate Islamic ‘ideology’ as a defining feature of citizenship. While Pakistan trained jihadis for U.S. security goals in Afghanistan, the state also revised textbooks within the country. The Zia regime declared Islamic studies and Pakistan studies as compulsory subjects for both schools and universities – even engineering and medicine students had to pass these subjects to obtain their technical degrees. This has resulted in influencing the minds of at least two generations of younger Pakistanis to accept peculiar (and often violent) interpretations of ‘jihad’ as legitimate and necessary for external security.<sup>10</sup> Concurrently, popular narratives cite blasphemy as an offence which must be avenged at all costs. The mob violence against alleged blasphemers can be understood in this context. Since the textbooks have inducted many into the narrative of victimhood, i.e. the Muslims, Islam and Pakistan are under threat from non-believers (non-Muslims), many accept violence to quell blasphemy.

Today, politicians fear the repercussions of attempting to revise the curriculum. Since the amendments to the Constitution in 2010, authority to set the curriculum has devolved to provincial governments. There has

been limited progress since then. Even private schools have been discouraged from teaching comparative religion as a subject. It is unlikely that anything will change any time soon.

## The national memory

The idea of committing violence to protect or perform a religious obligation is quite acceptable to many Pakistanis. This attitude has prevailed through the years, and manifests itself in popular culture and its various expressions. Its best expression is the heroic stature of Ghazi Ilam Din Shaheed.

In Islamabad – the country’s capital – the Foreign Service Hostel has been named after this early ‘hero’ of South Asian Muslims. Ilam Din is both a Ghazi (a surviving warrior) and a Shaheed (martyr) in Pakistan’s cultural memory. This interpretation of history has been reinforced and officially sanctioned by the state.

Ilam Din was a young carpenter from Lahore, who on the 6 April 1929, murdered Rajpal – a Hindu – for publishing a pamphlet which had allegedly shown disrespect to the Prophet Muhammad (PBUH). This ostensibly distasteful material, entitled *Rangila Rasul*, was published by Rajpal in 1924, five years before he was murdered. It first gained attention when it was mentioned by Mahatma Gandhi in a long article on Hindu-Muslim unity. Gandhi himself stated that publishing such material served no other purpose than to inflame passions. Rajpal – who argued that he had published the pamphlet to discourage polygamy, concubinage, *mutas* (temporary marriages) and gross disparity of age in marriage – was charged under the Indian Penal Code but was acquitted by the Lahore High Court in May 1927.

When the High Court could not punish him, Section 295 (the legal parent of the current blasphemy provisions in Pakistani statute) to the Indian Penal Code was amended to quell the Muslim community’s protests. Neeti Nair in a detailed article recounts the “particular circumstances that necessitated the amendment ... alongside the many ambiguities and ambivalences that attended the debates preceding the amendment”.<sup>11</sup> Legislative pragmatism in colonial India resulted in a revised and more punitive section. It is pertinent to mention here that since then, Section 295-A has been used to intimidate numerous artists and authors, including the painter M.F Husain and historian James Laine. In 1927, two

attempts were made on the life on Rajpal, both of which remained unsuccessful. Yet, this was not a burning issue until of course Ilam Din committed the murder and a trial ensued.

This trial took place in the context of communal tensions that had been brewing under British rule. Ilam Din was sentenced and for his appeal, Mohamed Ali Jinnah (later to become the founder of Pakistan) appeared in the High Court as a defence lawyer. The appeal was rejected and finally Ilam Din was hanged. Thereafter, the mythmaking ensued and Ilam Din was revered in the years to come as an outstanding hero of the Muslim community – one who had the courage to avenge the disrespect for Prophet Muhammad by a Hindu kafir (non-believer). Ilam Din had meted out the punishment which the British colonial government could not award.

Ilam Din's funeral demonstrated the convergence of community ownership of the symbol. The funeral was attended by key Muslim luminaries. Allama Iqbal (who was named as Pakistan's national poet after his death) was also present and reportedly said that a carpenter's son had done what others could not do to defend the faith. It is believed that Iqbal facilitated the return of Ilam Din's body to Lahore as the colonial administration intended to bury him elsewhere to avoid tensions. Another poet-intellectual, MD Taseer, was also supportive of Ilam Din. Decades later, as mentioned above, Taseer's only son, Governor Salmaan Taseer, was brutally murdered in Pakistan's capital Islamabad on 4 January 2011 due to false allegations of blasphemy.

The persona and achievements of Ilam Din are celebrated in Pakistani textbooks. As Pakistan drifted more into its self-defined ideological statehood, Ilam Din was the warrior-hero who had punished a Hindu offender. This was also a reaffirmation of the Two Nation Theory where the Muslim hero had liberated Muslims from the likes of Rajpal who were disrespectful of the Islamic faith.

Pakistan's popular cinema also popularised the Ilam Din myth. In 1978 the film *Ghazi Ilam Din Shaheed* portrayed an impassioned hero walking into martyrdom. The film showed the country's founder Jinnah (in a rebranded version) as a sympathiser of Ilam Din and he defends the latter pro bono. The film's finale highlighted that India's Hindus and Muslims could not have lived together. Popular cinema using Ilam Din as a device reinforced the pre-1947 communal politics and passions that resulted in the partition of British India.

It is instructive to note that the modern legal definition and punishment for ‘blasphemy’ are located in Pakistan’s colonial experience. The British law became the template after 1947 for successive regimes that extended its scope. Furthermore, the idea of blasphemy as a marker of a land of the pure (a literal translation of ‘Pakistan’ itself) was effectively appropriated by the state for political ends. This is the very reason for it becoming more stringent over the years. The slaughter of blasphemers has become a rallying cry that incites passion, earns political mileage and, in some cases, neutralises anti-state elements by giving them a role in the state. Of late, blasphemy allegations have been used to quell dissent. Individuals and organisations critical of the state’s policies are portrayed as blasphemers and have been charged under these notorious laws.

### **Blasphemy laws in Pakistan**

The current blasphemy laws in Pakistan are contained in Chapter XV of the Pakistan Penal Code (PPC), which was originally enacted by the British in 1860 during the colonial era and amended from time to time. Chapter XI is titled “Of offences relating to religion” and currently contains 10 sections. As originally enacted in 1860, Chapter XV had only four sections, Sections 295 to 298. The Indian Law Commission Report of 1837, which drafted the Penal Code for India eventually enacted in 1860, had justified Chapter XV on the grounds that “[t]he religion may be false but the pain which such insults give to the professors of that religion is real” and that “[t]here is perhaps no country [other than India] in which the Government has so much to apprehend from religious excitement among the people”.<sup>12</sup> The four original sections therefore protected all religions in India from defilement of their places of worship, disturbance of their religious assemblies, defilement of their places of burial and wounding of their religious feelings.<sup>13</sup>

Three points may be noted about these provisions:

- (1) they are general in their application and provide equal protection to all religions;
- (2) intention is an integral part of the definitions of each of the four offences; and
- (3) the punishment is a maximum of one or two years of imprisonment, with or without fine.

Section 298 only protected blasphemous words or gestures spoken or made in the presence of a believer. This changed after 1927. Following certain incidents of communal violence, the need was felt to proscribe religiously insulting words and gestures generally and provide for a much stronger punishment for violation of this law – that is, ten years in prison, with or without a fine. What sets them apart from the law in its current form, however, is that the law is applicable to all religions and the requirement of intention to inflict religious insult was still retained.

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs:

Whoever, with *deliberate and malicious intention of outraging the religious feelings* of any class of the citizens of India, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to *ten years, or with fine, or with both.* (emphasis added)<sup>14</sup>

Pakistan adopted the entire 1860 Penal Code, including the offences related to religion, at the time of Partition (as did India and, from 1971, Bangladesh), and left them untouched until 1980, when additions were made to Chapter XV with a very different set of objectives. Five more sections were added between 1980 and 1986, that is, Sections 295B, 295C, 298A, 298B and 298C.

Of the six laws pertaining to blasphemy offences, the one that has the greatest negative impact and fallout is Section 295-C<sup>15</sup> of the Pakistan Penal Code. This provision, as interpreted by the Courts,<sup>16</sup> is the only one of the blasphemy laws that prescribes a mandatory death penalty, with no room whatsoever for a pardon, or even a lighter sentence. Since the introduction of the law, there has been an extraordinary 17,000 per cent increase in accusations, and an alarming 2,750 per cent increase in vigilante killings.<sup>17</sup>

This law was informed by the litigation of Advocate Ismail Qureshi, who made it his life's mission to make the law as unflinching as it is today. He achieved this primarily by "proving" that this law is decreed by Allah (blasphemy has a mandatory death punishment fixed by God and is therefore unchangeable, i.e. it is a *hudd* offence). The credibility of this assertion is built on an apparently universal consensus (*ijma*) on blasphemy across all four Sunni schools of thought. By maintaining this front of scholarly consensus, the religious leadership disallows any concept of an alternative position.

Other sections inserted under the reign of General Zia-ul-Haq included one (Sec. 298-A) that would sanction the use of “derogatory remarks, etc., in respect of holy personages”.<sup>18</sup> This has been one of the excuses to persecute the Shia minority that disagrees with the majoritarian Sunni Islam on the role and status of the companions of Prophet Muhammad.

Perhaps the most damning was the addition of Sections 298-B and 298-C that specifically targeted the Ahmadi community and prohibited them from portraying themselves as Muslims.<sup>19</sup> For instance, section 298-C states<sup>20</sup> that “Any person of the Qadiani group or the Lahori group (who call themselves ‘Ahmadis’ or by any other name), who directly or indirectly, poses as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith ... shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine”.

The Ahmadis consider themselves to be Muslims and believe in the prophethood of a late 19<sup>th</sup>-century Indian religious reformer, Mirza Ghulam Ahmad Qadiani, which is heresy according to most other sects of Islam, who believe in the finality of Muhammad’s Prophethood. Even before the introduction of Sections 298-B and 298-C in the Penal Code, Ahmadis had been officially declared non-Muslims in 1974 by the Constitution of Pakistan itself.<sup>21</sup>

Three of the new sections were aimed at protecting Islam, its revered figures and scriptures from blasphemy. The other two provisions expressly sanctioned the outright suppression, if not persecution, of Ahmadis. While punishment is up to three years in prison and a fine for anti-Ahmadi provisions and for defiling the sacred names of holy persons of Islam, defilement of the Quran entails an inflexible punishment of life imprisonment and defilement of the Prophet’s name is punishable by death. While defilement of the Quran has to be “wilful” to be considered an offence, there is no requirement of intention when it comes to defilement of the sacred name of Prophet Muhammad and his relatives and friends.

### **Flagrant abuses and an archaic justice system**

Data<sup>22</sup> compiled by Centre for Research and Security Studies (CRSS) indicate that from 1953 to 2012 there were 434 offenders who had

violated blasphemy laws in Pakistan, and among them 258 were Muslims (Sunni/Shia), 114 Christians, 57 Ahmadis and four Hindus. “From zero Muslim offenders during British Raj, the figure went up to 258 Muslim offenders in a country that was created in the name of the very religion they follow”, the report adds.

The number of people charged under the laws has been rising since 1987. According to CRSS, from 1987 to July 2012, at least 426 persons were apprehended under this law, 251 of whom were Muslims. This estimate may be lower than the actual figures, as a national newspaper reported that the number of people accused of blasphemy until 2010 was 1,038.<sup>23</sup> From January 2011 to August 2012, 114 persons were accused of blasphemy according to CRSS.

Other than the increase in the number of blasphemy cases registered, at least 60 people have been killed “outside the Pakistani justice system” according to data compiled by CRSS. Currently, there are dozens of persons convicted of blasphemy on death row, with another 19 serving life sentences.

The first killing after registration of a case under section 295-C was that of Punjabi poet and school teacher Naimat Ahmer, a Christian, at the hands of Farooq Ahmad, a 20-year-old member of a Sunni militant group, Sipah-e-Sahaba.<sup>24</sup> This happened in 1992 after a 1990 Shariat Court ruling had declared any punishment less severe than death repugnant to Islam. Lynching and persecution in the name of punishing blasphemers have been rising ever since.

In several judgments, superior courts have pointed out that Pakistan’s blasphemy laws (Chapter XV of PPC) are being misused to the detriment of vulnerable segments of society. In a recent judgment, in a case registered under sections 295-A, 295-B, 295-C and 298-A of PPC, Justice Ibad-ur-Rehman Lodhi of Lahore High Court has pointed out that the Trial Court judge awarded punishment to the accused because he was under pressure even though the prosecution had miserably failed to prove the case to the required standard of proof, beyond reasonable doubt.<sup>25</sup>

Although the number of people belonging to minority communities accused of blasphemy appears to be lower than the number of Muslims, the percentage of the population turns this lower number into

a figure that is many times higher than the number of Muslim offenders of this law.

Recent research has also revealed that blasphemy laws are often invoked to settle personal disputes, especially those related to property. At least 40 per cent of cases where courts did not sentence the accused were related to private disputes.

The International Commission of Jurists (ICJ) has pointed out<sup>26</sup> that in addition to Pakistan's blasphemy laws being poorly worded, the problems in Pakistan's legal system create conditions that place those accused of blasphemy at a major disadvantage. Section 295-C of the PPC defines the elements of offence in a manner that is extremely vague, leaving cases open to subjective interpretation. They also make no reference to the potential offender's psychological state, mental health or intention. An analysis of case law on Pakistan's blasphemy laws by the ICJ found that out of 25 cases reviewed, *mala fides* were found in the complaints and testimonies of the witnesses in 15 cases.

For example, in March 2005, a shopkeeper accused a Muslim man (Sai-fullah Khan) of tearing up a copy of the Quran and throwing it into a dustbin. The accused claimed he suffered from psychosis and severe mental delusions. This was backed up in court by a report from the Standing Medical Board, which declared the accused "unfit to plead". However, the Sessions Court rejected the accused's bail application, on the grounds that "if the accused is released on bail that would not only cause disturbance to the public peace but would also endanger the life of the accused due to the mental attachment of the society with almighty Allah".

This shows that the judge in question failed to be impartial and fearless in the delivery of justice. While here it seems that the judge succumbed to pressure from extremist elements in society, there are numerous incidents of judges acting in an overtly hostile manner towards the accused. Often the judges behave more like an aggrieved party than an impartial arbiter. The fact that the judge presiding over a 295-C trial is required to be a Muslim practically invites partiality.

Threats to the lives of impartial judges and the accused's lawyers compound the problem. The killing of prominent lawyer Rashid Rahman during his defence of young scholar Junaid Hafeez in a blasphemy case on 7 May 2014 made this all too clear. Before his death, Rahman

himself had stated that defending a blasphemy accused in Pakistan was like “walking into the jaws of death”. The small pool of attorneys willing to defend individuals accused of blasphemy also makes the defendants vulnerable to unethical exploitative practices.

In a further travesty of justice, the courtrooms in blasphemy cases themselves are hostile arenas for the accused. Often they are flooded by angry mobs, which are likely to be associated with one armed extremist group or another. This creates even more partiality in the courtroom, and makes the defendant’s experience all the more traumatic. The fundamental human rights of persons accused of blasphemy are to all intents and purposes disregarded from the moment they are accused, and they spend the rest of their lives in danger.

Speaking on the conditions he faced in pre-trial detention for blasphemy over two years, a man told the ICJ, “There are terrorists, serial killers and rapists in the same prison who have more rights than us – they have friends, they can chat over a game of cards or a cup of tea, they can feel the sun and breathe fresh air”,

before asking, “Is a mere allegation of blasphemy so bad, that we have been stripped of all our rights?”<sup>27</sup>

This socio-legal crisis is exacerbated by the outdated colonial justice system inherited by Pakistan. Designed by the British in the 19<sup>th</sup> century, mainly to assert colonial power, the abuse of blasphemy laws intersects with overcrowded prisons, unaccountable police and prosecution and an extremely dysfunctional judicial system. A detailed discussion on the postcolonial nature of the Pakistani state may be out of this paper’s scope, but the misuse of blasphemy laws and miscarriage of justice demands legal and judicial reform, along with the revision of blasphemy laws.

### **The ‘Islamic state’ quandary**

Pakistan’s identification as an Islamic state and its gradual move towards a theocratic legal framework necessitates a review of blasphemy laws in the religious context. Just like the divine scriptures of Judaism and Christianity, the Quran too frequently warns and censures blasphemers and deems blasphemy to be a major sin. Unlike Judaism and Christianity, however, where Leviticus 24 provides a clear incident of God ordering that a blasphemer be stoned to death, the Quran never specifies any

penalty in this world for blasphemers, whether it be the sacred name of Allah, his Prophet, or the Islamic religion that has been defiled. Scholars have highlighted this issue time and again. Heffening, for example, notes that “In the Kuran, the apostate is threatened with punishment in the next world only”.<sup>28</sup> Similarly, Wael Hallaq observes that “[t]he characterization and fate of those who commit apostasy vary in the Quran. What is striking ... is that although apostates are usually assigned a place in hell, there is no mention of any specific corporeal punishment to which they are to be subjected in this world”.<sup>29</sup>

From the point of Islamic criminal law, the absence of a specifically prescribed penalty raises doubts about the sin of blasphemy being a crime at all. However, these doubts are easily allayed by the numerous incidents of the Prophet ordering, permitting or approving punishment for a blasphemer.

There is a group of Muslim jurists who dispute the authenticity of these narrations, *hadith* or their mainstream interpretation, and, for that matter, the criminal nature of blasphemy, but theirs has seldom been the dominant view in Islamic history.<sup>30</sup>

The broader context for this debate is provided by the sociological theories about the withering away of religion and political separation of religion and the state under conditions of modernity. However, ever since the Rushdie affair in the late 1980s, and especially in the wake of the 11 September 2001 attacks, some of the most basic assumptions about modernity that had so far been taken for granted are now being challenged.

According to Riaz Hassan, modernity brings “institutional differentiation” and “functional rationalisation” to all aspects of society, including religion.<sup>31</sup> Thus, modern religion was supposed to be a relatively independent but self-contained institution that did not interfere too much with other institutionalised aspects of society – such as politics and the economy. However, as noted by Burns and White, “the bottom line is that religion does not disappear, as social scientists through the 1950s, 60s and 70s predicted”.<sup>32</sup>

The context of blasphemy laws within the religion of Islam hinges on two important propositions. Firstly, most adherents of Islam believe their religion to be a complete code of life, that is, Islam provides guidance not only in spiritual and personal matters but also in all sorts of worldly

matters, including culture, politics, economy, civil and criminal law and warfare.

For example, in a 1992 case before the Pakistan Federal Shariat Court, Justice Rahman commented that: “Islam is a complete code of life in which all the principles governing our individual as well as collective life stand predetermined in the light of the Qur’an and Sunnah”.<sup>33</sup> It is this understanding of Islam – as a complete code of life – that is relied upon to counter the arguments for separation of religion and state in Muslim-majority countries. After all, when the Quran and Sunnah have provided guiding principles for all matters, places and times, then it is impossible for most Muslims to accept that Islam may be incompatible with the dictates of a modern nation state. Indeed, fundamentalists such as the Taliban are willing to even completely redesign a modern nation state according to their understanding of what an Islamic state ought to be.

However, this all-encompassing view of Islam is complicated by the lack of a central authority in Islam. Consequently, on any given question, there are multiple, often violently contradictory, interpretations of Islam which make designing a sustainable theocratic framework that equally accommodates the various interpretations of Islam without victimising the minorities extremely complicated, if not impossible. The inherently communal and unsustainable nature of a theocratic state has been remarked upon elsewhere as well. In the seminal 1952 US Supreme Court case of *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495,<sup>34</sup> which effectively abolished sacrilege and blasphemy as a limitation on free speech protections under the First Amendment, Justice Clark, speaking for the Court, had remarked:

In seeking to apply the broad and all-inclusive definition of “sacrilegious” given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies.<sup>35</sup>

Similarly, in a widely different situation, the 1954 report of the Munir Commission<sup>36</sup> – which was established to inquire into the causes of riots against Ahmadis throughout the Punjab province in Pakistan – had solicited the views of Islamic scholars from different schools of thought about the definition of a Muslim and concluded that:

The net result of all this is that neither Shias nor Sunnis nor Deobandis nor Ahl-i-Hadith nor Barelvīs are Muslims and any change from one view to the other must

be accompanied in an Islamic State with the penalty of death if the Government of the State is in the hands of the party which considers the other party to be kafirs. And it does not require much imagination to judge of the consequences of this doctrine when it is remembered that no two ulama have agreed before us as to the definition of a Muslim. If the constituents of each of the definitions given by the ulama are given effect to, and subjected to the rule of “combination and permutation” and the form of charge in the Inquisition’s sentence on Galileo is adopted *mutatis mutandis* as a model, the grounds on which a person may be indicted for apostasy will be too numerous to count.<sup>37</sup>

Similarly, Al-Na’im notes that:

The role of Shari’a in the administration of justice probably worked well under the imperial states of the pre-colonial era, which had minimal involvement in the daily governance and administration of justice among local communities. But the situation has significantly changed with the introduction of the European model of the state and conceptions of law as a result of colonialism. All Muslims today live under the exclusive jurisdiction of territorial states, which exercise increasingly extensive powers in governing every aspect of the economic and social life of persons and communities. ... [T]o enact Shari’a into state law or to enforce it through state administration requires state institutions to choose among competing interpretations of Shari’a. The paradoxical consequence is that the more precise and definite such selectivity becomes, the less truly Shari’a-based the legal system will be, while allowing judges and administrators the degree of discretion assumed by the historical nature of Shari’a makes the whole system arbitrary and unstable.<sup>38</sup>

The possibility of an Islamic state in modern times is reinforced by the re-labelling of Western criminal and banking laws in Islamic terms, as is currently done in Pakistan, Malaysia and Saudi Arabia. However, upon closer scrutiny, more intriguing still is the fact that even most modern nation states of the West retained their blasphemy laws until quite recently, even after having severed most other associations with religion. This shows that blasphemy laws in particular are surely and definitely not just a question of theocracy versus democracy, but at their core they involve a curious junction between the inherently secular nature of modern democracies and the inevitably religious outlooks of the electorates in some of those democracies. In other words, while there may or may not be a mutually exclusive relationship between religion and the modern state, blasphemy laws in particular would remain relevant in either case, and would reflect not necessarily the religiosity of a modern state, but the strength in the beliefs of the people who form the majority in such states. As Riaz Hassan has shown, in at least seven countries, there are paradoxical relations between religion and modernity. The secularisation thesis, now debunked for some time, argued that with

modernisation came secularisation and privatisation of religious beliefs, leading to the reduced significance of religion. Studies such as the one conducted by Hassan suggest “higher levels of personal religious commitment” are associated with modernity.<sup>39</sup>

### **The dissent within**

Lastly, with respect to Islamic blasphemy laws in particular, it is worth noting that there is a considerable amount of dissent amongst Islamic scholars as well, although such dissent remains highly suppressed and persecuted. Some of this dissent was voiced in response to the murder of Punjab Governor Salmaan Taseer by his own security guard after he had called Section 295-C of the Pakistan Penal Code (protecting the sacred name of Prophet Muhammad) a “black law”. For example, a noted Islamic scholar, Javid Ahmad Ghamidi, could not have been clearer in his words. Reportedly, he stated, “The blasphemy laws have no justification in Islam. These ulema [council of clerics] are just telling lies to the people”, adding that the law had “no foundation in either the Qur’an or the Hadith – the sayings of the Prophet Muhammad” and that “[n]othing in Islam supports this law”.<sup>40</sup> Not too surprisingly, Ghamidi has received several death threats for his honest scholarship and had to flee Pakistan several years ago.

Similarly, another well-respected Indian scholar of Islam, Maulana Wahiduddin Khan, also responded to the murder of Salmaan Taseer and stated that:

In the Islamic scriptures, the Quran and the Hadith, there is no such injunction to deliver physical punishment to one who commits blasphemy. This law was only made during the Abbasid period and is an expression of the imperatives of that period. At that time, the Muslims had established their empire and were in political supremacy. Due to their sense of pride at having accomplished this, they made such a law. But it was a clear innovation. And according to the Hadith, every innovation in the religion of Islam must be rejected.<sup>41</sup>

Noting similar views on blasphemy in Islam, another reputable Islamic scholar, Kamali, noted that: “In the light of this, it is not surprising to find a number of prominent ‘ulama’, across the centuries, subscribing to the view that apostasy is not a punishable offense”.<sup>42</sup>

In contemporary Pakistan, younger activists have highlighted<sup>43</sup> how a 15<sup>th</sup>-century Hanafi (a major school of jurisprudence in Islamic history)

scholar, Al-Bazzazi, misquoted the Hanafi position on pardon that had been established since the time of Abu Hanifa. Al-Bazzazi's views on punishment for blasphemers have overshadowed the original stance maintained by scholarly giants and the founding father of the Hanafi school of thought, amongst other notables.<sup>44</sup> Imam Ibn e Abidin, one of the most revered scholars in South Asia in the 18<sup>th</sup> century, chancing upon al-Bazzazi's erroneous depiction, was moved to write an impassioned critique of this divergent position and summarily dismissed the idea of blasphemy being an unpardonable offence as "ridiculous".

The original position of the Hanafi School, re-iterated in a document signed by 450 top scholars in the 19<sup>th</sup> century, held that blasphemy was not punishable by death. In fact Al-Tahawi<sup>45</sup> said that the state had the discretion to let the blasphemer off with a warning – effectively translating to no punishment at all.

To conclude, there is serious and sound dissent within Islamic thought on whether Islam can run a modern nation state and whether, regardless of historical compulsions, Islam requires that blasphemy be regarded a punishable offence at all.

## **Conclusions and way forward**

Pakistan needs an open debate about its identity and future. As long as the state narrative creates the binary of an Islamic fortress pitted against the outsider-infidel, instruments such as blasphemy laws will be viewed as legitimate. To create a tolerant and humanistic society, Pakistan's elites have to start thinking of delinking religion from statehood. This will involve tackling the depiction of historical characters such as Ilam Din as our bona fide, certified heroes.

The gradual demise of blasphemy laws in the West during the last 500 years was accompanied by the separation of religion and state, but the process has been so slow and inconsistent that it cannot be fully attributed to the exclusively secular nature of modern Western states. This conclusion is corroborated by the strong feelings against blasphemy in several Muslim-majority countries such as Pakistan that are otherwise modern nation states in their structure and design. It may thus be inferred that the cultural attitudes of the general public towards blasphemy and shaping of those attitudes are equally crucial for a more rational attitude about blasphemy, and towards religious dissidents and minorities for that

matter, as well as the necessary political or legal changes in the state structure.

Whenever states incorporate religion into their agenda, increased religious persecution is one of the natural outcomes. This is valid for many countries that officially adopted one of the monotheistic religions. More importantly, in the context of modern nation states, it is also clear that there is no viable or sustainable way to allow a particular religion, which necessarily means its most powerful sect, to run a country in the 21<sup>st</sup> century.

Thus, the problem becomes two-fold from the point of view of a professedly Islamic state like Pakistan; firstly, it must recognise the long-term futility, as opposed to short-term utility, of using Islam as an essential, even central, tenet of its statecraft, and secondly, it must approach the question of blasphemy not from the religious but from a secular point of view, that is, not as an insult to God, but as an insult to the people who believe in a God, that is, from the point of view of regulating hate speech.

But this debate has to emerge from within Pakistani society, which is polarised between the avowedly secularist civil society and the religiously inclined majority who speak an altogether different language, resulting in a breakdown, or worse use of violence, in public conversations. In a country where 99 per cent of the population believes that ethics and morality are grounded in religion,<sup>46</sup> the relevance of religion as a rallying, mobilising, and even reformative, force should not be underestimated.

The overall reconfiguration of the Pakistani state is a long-term project and entails a complex process of political and economic change. But in the short term, the Parliament has to take up the long-pending agenda of legal reform. While repealing a blasphemy law like 295-C may be an unrealistic option, there are other things that the Parliament can do. First, Section 295-C must be amended to limit its scope only to direct and unambiguous expressions of blasphemy, and incorporate the requirement of intent as mandatory for conviction. Second, the mandatory death penalty must be done away with because the scholarly opinion is divided on this extreme punishment as an option. In addition to such safeguards, the Parliament must assess reasons for the failure of procedural safeguards provided by the Code of Criminal Procedure, designed to ensure fair and responsible investigation. Evidently, this is not

working. Blasphemy offences should be madeailable, and in the absence of compelling proof, bail should be made mandatory. There are numerous proposals prepared by a host of international and national actors that deal with how lawyers, judges and prosecutors should tackle the blasphemy cases.

What is missing in Pakistan is not the technical solutions but the will of a state that remains beholden to a variant religious nationalism that makes Islam an easy instrument of political control and public mobilisation.

## NOTES

1. Section 295-C of Pakistan Penal Code. [www.punjabcode.punjab.gov.pk/public/dr/PAKISTAN%20PENAL%20CODE.doc.pdf](http://www.punjabcode.punjab.gov.pk/public/dr/PAKISTAN%20PENAL%20CODE.doc.pdf).
2. Section 295-B of Pakistan Penal Code.
3. Section 298-A of Pakistan Penal Code.
4. Sections 298-B and 298-C of Pakistan Penal Code.
5. As in the case of Sawan Masih, in March 2013. [www.bbc.com/news/world-asia-26781731](http://www.bbc.com/news/world-asia-26781731).
6. As in the case of Lahore High Court Judge Arif Iqbal Bhatti in 1997. [www.dawn.com/news/589587/high-profile-blasphemy-cases-in-the-last-63-years](http://www.dawn.com/news/589587/high-profile-blasphemy-cases-in-the-last-63-years).
7. As in the case of Rimsha. [www.nytimes.com/2012/08/21/world/asia/christian-girls-blasphemy-arrest-incites-a-furor-in-pakistan.html](http://www.nytimes.com/2012/08/21/world/asia/christian-girls-blasphemy-arrest-incites-a-furor-in-pakistan.html).
8. Sections 153-A, 295, 295-A, 296, 297, 298 and 505 of the Penal Code.
9. ‘Zulfikar Ali Bhutto: A Dominant Force in Pakistan for Two Decades’. *New York Times*, April 4, 1979. [www.nytimes.com/1979/04/04/archives/zulfikar-ali-bhutto-a-dominant-force-in-pakistan-for-two-decades.html](http://www.nytimes.com/1979/04/04/archives/zulfikar-ali-bhutto-a-dominant-force-in-pakistan-for-two-decades.html).
10. Awan, Safeer Muhammad, ‘Impact of Radical Islamisation of Education on Pakistani Society’. *Pakistaniaat: A Journal of Pakistan Studies* Vol. 4. Issue 2 (2012). <http://pakistaniaat.org/index.php/pak/article/view/163/163>.
11. Neeti Nair, ‘Beyond the ‘Communal’ 1920s: The Problem of Intention, Legislative Pragmatism, and the Making of Section 295A of the Indian Penal Code’. *Indian Economic Social History Review* Vol. 50 (2013): 317.
12. *A Penal Code Prepared by the Indian Law Commissioners and Published by Command of the Governor General of India in Council*. Calcutta: Bengal Military Orphan Press, 1837, Note J, p. 49.
13. The text of these four provisions may be reproduced for reference:

**295. Injuring or defiling place of worship, with Intent to insult the religion of any class:** 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 persons or with the knowledge that any class of persons is 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 extend to two years, or with fine, or with both.*

**296. Disturbing religious assembly:** Whoever *voluntarily* causes disturbance to any *assembly lawfully engaged in the performance of religious worship, or religious ceremonies*, shall be punished with imprisonment of either description for a term which *may extend to one year, or with fine, or with both.*

**297. Trespassing on burial places, etc.:** Whoever, *with the intention of wounding the feelings of any person, or of insulting the religion of any person*, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which *may extend to one year, or with fine, or with both.*

**298. Uttering words, etc., with deliberate intent to wound religious feelings:** Whoever, *with the deliberate intention of wounding the religious feelings of any person*, utters any word or makes 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 extend to one year or with fine, or with both.* Source: Pakistan Penal Code 1860, available at the website of Pakistan's Federal Investigation Agency, [www.fia.gov.pk/default\\_files/ppc.pdf](http://www.fia.gov.pk/default_files/ppc.pdf); accessed 23 August 2013.

14. Ibid.

15. **295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet:**

Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, *directly or indirectly*, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be *punished with death, or imprisonment for life, and shall also be liable to fine.*

16. Para 67 of Federal Shariat Court's 1990 judgment in *Muhammad Ismail Qureshi v. Pakistan*. <http://khatm-e-nubuwwat.org/lawyers/data/english/8/fed-shariat-court-1990.pdf>.

17. [www.dawn.com/news/1163596](http://www.dawn.com/news/1163596).

18. Sec. 298-A added by the Pakistan Penal Code (Second Amendment) Ordinance, XLIV of 1980.

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, *directly or indirectly*, defiles the

sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with *imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

19. Sec. 298-B ins. by Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, XX of 1984.
20. Sec. 298-C. ins. by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, XX of 1984.
21. Article 260(3) of the Constitution of Islamic Republic of Pakistan, 1973. This provision was introduced in 1974 and substituted with a more clarified version in 1985, available at the website of the National Assembly of Pakistan, [www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf); accessed 23 August 2013.
22. *Blasphemy Laws in Pakistan: A Historical Overview*, Center for Research and Security Studies (CRSS), Islamabad, 2014. <http://crss.pk/wp-content/uploads/2010/07/Report-on-Blasphemy-Laws-.pdf>.
23. 'Blasphemy Cases: False Accusers Escape Punishment'. *Report, Express Tribune*, December 13, 2010. <http://tribune.com.pk/story/89376/blasphemy-cases-false-accusers-escape-punishment/>.
24. [www.pakistanchristianpost.com/viewnews.php?newsid=502](http://www.pakistanchristianpost.com/viewnews.php?newsid=502).
25. Ghulam Ali Asghar v The State, paragraph 8 of the judgment by Justice Lodhi announced on 18 December 2015. <http://sys.lhc.gov.pk/appjudgments/2015LHC8087.pdf>.
26. On Trial: The Implementation of Pakistan's Blasphemy Laws, Nov. 2015, ICJ Geneva.
27. [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT\\_CCPR\\_CSS\\_PAK\\_27600\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_CSS_PAK_27600_E.pdf).
28. W. Heffening, 'Murtadd', in *The Encyclopaedia of Islam*, Volume VII. Leiden: Brill, 1997, p. 635.
29. W. Hallaq, 'Apostasy', in Jane Dammen McAuliffe (Ed.), *Encyclopaedia of the Quran*, Vol. I. Leiden: Brill, 2006, p. 120.
30. See below the section titled "The dissent within".
31. R. Hassan, 'Expressions of Religiosity and Blasphemy in Modern Societies', in E.B. Coleman & K. White (Eds.), *Negotiating the Sacred: Blasphemy and Sacrilege in a Multicultural Society*. Canberra: ANU Press, 2006, p. 119.
32. Coleman and White, 'Negotiating the Sacred in Multicultural Societies', in E.B. Coleman & K. White (Eds.), *Negotiating the Sacred: Blasphemy and Sacrilege in a Multicultural Society*. Canberra: ANU Press, 2006, p. 3.
33. *Habib-ul-WahabAlkheri v. Federation of Pakistan*, PLD 1992 FSC 484, at 496.
34. Available at [www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0343\\_0495\\_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0343_0495_ZO.html), accessed 23 August 2013.
35. At 404–405.
36. *Report of the Court of Inquiry Constituted under Punjab Act II of 1954 to Enquire into the Punjab Disturbances of 1953*. Lahore: Government Printing, Punjab, 1954.

- <http://aaail.org/text/books/others/misc/munirreport/munirreport.pdf>, accessed 23 August 2013.
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  38. Abdullahi A. An-Naim, 'Shari'a in the Secular State: A Paradox of Separation and Conflation', in P. Bearman et al., (Eds.), *The Law Applied: Contextualizing the Islamic Shari'a, A Volume in Honor of Frank Vogel*. London: I.B. Tauris, 2008, p. 323.
  39. E.B. Coleman & K.White (Eds.), *Negotiating the Sacred: Blasphemy and Sacrilege in a Multicultural Society*. Canberra: ANU Press, 2006, p. 8.
  40. Declan Walsh, 'Islamic Scholar Attacks Pakistan's Blasphemy Law'. *The Guardian*, January 20, 2011, [www.guardian.co.uk/world/2011/jan/20/islam-ghamidi-pakistan-blasphemy-laws](http://www.guardian.co.uk/world/2011/jan/20/islam-ghamidi-pakistan-blasphemy-laws).
  41. Maulana Wahiduddin Khan, 'Blasphemy and the Islamic Way'. *Times of India*, January 10, 2011, [http://articles.timesofindia.indiatimes.com/2011-01-10/edit-page/28365726\\_1\\_islamic-abusive-language-blasphemy](http://articles.timesofindia.indiatimes.com/2011-01-10/edit-page/28365726_1_islamic-abusive-language-blasphemy).
  42. M.H. Kamali, *Freedom of Expression in Islam*. Berita Publishers, 1994.
  43. Arafat Mazhar, 'The untold story of Pakistan's Blasphemy Law'. *Daily DAWN*, December 9, 2014.
  44. The Hanafi school is followed by an overwhelming majority of Muslims in Pakistan.
  45. Al-Tahawi in Makhtasar al Tahawi.
  46. PEW Study (2013). <http://tribune.com.pk/story/852601/pakistan-among-top-countries-who-believe-religion-affects-morality-report/>.