

Faithless Justice:
Understanding the Justice System's Role in Facilitating Abuse of the
Blasphemy Laws in Pakistan

An Honors Thesis for the International Relations Program

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Abstract

While the blasphemy laws in Pakistan were ostensibly intended to protect religious sentiments, they have transformed into a tool of violence in recent years. Since the 1980s, the number of blasphemy cases and accusations has skyrocketed. In this paper, I argue that this dramatic rise in cases is due to increased abuse of these laws, facilitated by flaws in the justice system. I open with a discussion tracing the roots of the legislation, beginning with the colonial period until the late 1970s. The intentions of the laws and the steady rise of religious conservatism are highlighted in this section. The second chapter identifies the reforms made during General Zia-ul-Haq's regime as the source of several persistent flaws in the judicial system. It spotlights the debates held on the most potent amendments. The third chapter uses available data to indicate an increase of cases since the 1980s and to show who is primarily being targeted. It uses examples to illustrate flaws at several levels of the criminal justice system. It also considers international responses to these laws and their consequences, and how the Pakistan government has justified their continued existence. The fourth chapter focuses on the past decade, primarily concentrating on the period after Governor Salman Taseer's death. It shows how discourse surrounding the blasphemy laws has changed and how this has affected reform movements. It also touches on how these laws interface with other Pakistani legal provisions like the freedom of speech and expression. Ultimately, I contribute to literature on the blasphemy laws in Pakistan by pointing specifically to their implementing systems as responsible for their abuse. I further demonstrate how flaws in this system have given rise to the informal justice system that has resulted in a general reduction of security for many Pakistani citizens.

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Introduction

In June 2009 Pakistani Christian, Asia Noreen, commonly known as Asia Bibi, was working in the fields of Sheikhpura, near Lahore in Punjab. While she was working, she went to fetch water from a nearby well where she found an old metal cup that she used to get a drink of water for herself. This cup, however, apparently belonged to her Muslim neighbor, who caught Asia Bibi and claimed that a Christian could not use the same container as a Muslim. An argument between the women ensued, and the neighbor claimed that during the course of the conversation, Asia Bibi made derogatory comments towards Islam and the Prophet Muhammad. News of the incident spread quickly throughout the community, and a mob descended upon Asia Bibi's house. She had to be saved by the police who immediately placed her in jail and launched an investigation into the blasphemy allegations. She was kept in prison for a year before she was eventually charged under Section 295-C of Chapter XV of the Pakistan Penal Code, which prohibits derogatory remarks against the Prophet Muhammad. At the end of 2010, a Sheikhpura trial court sentenced her to death, making her the first woman to be sentenced to death over a blasphemy accusation. Her husband appealed the case to the Lahore High Court, but the verdict was upheld in November 2014. A few days later, her lawyer appealed the case to the Supreme Court where the case has been rescheduled several times. No trial date has been set as of the writing this thesis.

Her case has received unprecedented attention from the international community, which has promoted domestic public dialogue on the blasphemy laws. Even Pope Benedict XVI called for the charges against her to be dropped. Domestically, Governor Salman Taseer of Punjab was a vocal advocate of Asia Bibi, until he was assassinated for his outspoken views against the blasphemy laws.¹

¹ "Punjab Governor Salman Taseer assassinated in Islamabad," *BBC*, January 4, 2011, <http://www.bbc.com/news/world-south-asia-12111831>.

President Asif Zardari also considered granting her a presidential pardon, but the Lahore High Court made a stay order that prevented his involvement during her case.

Asia Bibi's case highlights several issues surrounding Pakistan's blasphemy laws and the institutions that support their implementation. The use of these laws today strays far from their original intention. Moreover, their application in modern day Pakistan is problematic at best, and dangerous at worst. At their core, the laws favor Muslims and discriminate against religious minorities. They have become especially dangerous when they are used to justify violent behavior. The institutions that reinforce the laws' power are often biased against the accused, making the process unjust. The laws are also being exploited for personal gain, making the process also corrupt. These issues and many more will be explored in this thesis.

I argue that flaws in Pakistan's justice system are primarily at fault for the increase in blasphemy accusations and their abuse, and that General Zia-ul-Haq's regime was the source of the increased potency of these laws. During his reign, legislators introduced amendments, Sections 295-B, 295-C, 298-A, 298-B, and 298-C specifically, that have allowed complainants to make vague and unsubstantiated accusations. Furthermore, there also exist weaknesses in police management of these cases. They have failed in the past to protect innocent people from violence, made arbitrary arrests, and failed to protect those even in their custody.² The courts have also been manipulated so that they are often unable to produce unbiased judgments.³ Lastly, these failures in the formal justice system have left many to distrust the government, which has given rise to increased vigilante justice through the informal justice system.⁴

² Amnesty International, "As Good as Dead: The Impact of the Blasphemy Laws in Pakistan," (London: Amnesty International Ltd., 2016): 26-31.

³ Ibid., 35-39.

⁴ United Nations, General Assembly, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul*, A/HRC/23/43/Add.2 (4 April 2013), available from [undocs.org/ A/HRC/23/43/Add.2](http://undocs.org/A/HRC/23/43/Add.2).

For the purposes of this thesis, the blasphemy laws under consideration are Sections 295-A, -B, -C and 298-A, -B, and -C of the Pakistan Penal Code (PPC). These are the sections of the PPC that punish religious offenses, and predominantly insults to Muslims who make up the vast majority of Pakistan. Furthermore, abuse will be defined as misuse of the laws; in this context, this refers to the laws not being used to punish or mitigate actual blasphemy.

The first chapter opens with an explanation of the foundations of the blasphemy laws that stem from Sections 153-A, 295, and 298 of the Indian Penal Code implemented by the British during colonial rule. It then describes how few changes were made to these laws until General Zia-ul-Haq's military coup in 1977. Even so, there was a general rise of religious conservatism during this time that set the stage for the drastic changes made in the 1980s.

The second chapter focuses on Zia's rule from 1977 until his untimely death in 1988. It explores how Zia capitalized on rising religious conservatism and used this momentum to prop up and support his unsanctioned regime. The changes made to the justice system are then reviewed along with what under what circumstances they took place. This chapter also outlines each blasphemy-related amendment made during this time and the context for its addition. The inclusion of the death penalty and the abusive legislation against the Ahmadi community are also highlighted as key changes made during this period.

The third chapter concentrates on the immediate impact of Zia's regime on Pakistani institutions. It starts by demonstrating the extent of the problem and identifying whom the laws target. The process blasphemy cases go through in both the formal and informal justice systems is outlined, and historic areas of abuse are pointed out. The chapter also highlights how the laws have been used to settle personal disputes. It concludes by reviewing the international community's criticism of these laws and how politicians continue to justify the laws' present state.

The fourth chapter explores the context in which these laws have operated in the past decade. First, it reviews how these laws operate compared to other Pakistani legal provisions. Next, it looks at how these laws have enabled censorship under the guise of protecting religious sensibilities. The role of Pakistan's powerful military in abusing these laws for their own gain will also be featured. The chapter concludes by considering recent reform efforts.

Since the topic of blasphemy remains a taboo and controversial topic in Pakistan, it is difficult to quantify the full extent to which the laws are used and abused. Not all cases of blasphemy are reported to the authorities or covered in the media. This thesis relies on data available from several different sources, like the Government of Punjab, media reports, and several independent researchers to demonstrate the presence of serious problems. It also depends on the illustrative value of cases from the media and legal judgments to highlight how the laws have historically been abused. Even so, it is impossible to precisely represent and assess the problem without access to more comprehensive data.

Though this topic might seem to foreground issues in Islamic jurisprudence, the blasphemy laws and their use in Pakistan have been much more influenced by politics and history. This thesis does not seek to understand how these laws operate from a religious perspective. Instead it strives to demonstrate how a politicized religious concept was transformed into an integral part of the justice system that has since been systematically abused. More than this, I argue that the infirmities in the present justice system are responsible for this serious abuse.

Chapter 1: Contextualizing the Laws

On April 6, 1929, a man named Ilmuddin stabbed Mahashay Rajpal, a Lahore-based Hindu publisher, to death in an apparent fit of religious fervor. A few years earlier, Rajpal had published the inflammatory book *Rangila Rasul*, or “the colorful Prophet,” which satirized the Prophet Muhammad’s marriages and included insinuations of lewd behavior. The contents of the book sparked outrage among the Indian Muslim population. Even renowned poet Muhammad Iqbal expressed his frustration with the publication, saying in a speech to more than 10,000 people that it “had wounded the most delicate part of Muslims’ heart.”⁵ Mahatma Gandhi, leader of the Indian Independence movement, also commented on the pamphlet saying, “I have asked myself what the motive possibly could be in writing or printing such a book except to inflame passions.”⁶

In reaction, Rajpal was tried under Section 153-A of the Indian Penal Code (IPC), which prohibited “attempt[s] to promote feelings of enmity or hatred between different classes.”⁷ At the trial’s conclusion in 1927, however, Justice Dalip Singh of the Lahore High Court decided that while the pamphlet included inflammatory and indecent remarks, it did not “necessarily promote feelings of enmity and hatred between classes.” He also noted that Section 153-A could not apply to “all discussions of the life and character of a deceased religious figure.”⁸

Historian Julia Stephens argues that the anger sparked by this decision demonstrates that Muslims were more outraged by Rajpal’s acquittal than the actual publication of the book. This would suggest that the anger was prompted less by religious sentiment and more by a feeling that

⁵ Quoted in Julia Stephens, “The Politics of Muslim Rage: Secular Law and Religious Sentiment in Late Colonial India.” *History Workshop Journal* 77, no. 1 (2013): 53.

⁶ Quoted in 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 and Social History Review* 50, no. 3 (2013), 318.

⁷ Indian Penal Code of 1860 §153A.

⁸ Quoted in Stephens, “The Politics of Muslim Rage,” 49.

the law did not adequately protect Muslims.⁹ On the occasion, newspaper editor and poet Zafar Ali Khan wrote, “Today Rajpal was acquitted by the court/The law of Islam is being debased.”¹⁰ This reflects the feeling of insecurity felt by Muslims as a result of Rajpal’s acquittal.

Iqbal and several other prominent figures further cultivated this sense of injury by calling on their coreligionists to unite behind the common goal of correcting this insult to the Prophet. Some blamed the judges themselves, while others like Maulana Muhammad Ali, founding member of the All-India Muslim League, blamed the language of the penal code itself.¹¹ Muhammad Ali even seemed to threaten those who insulted the Prophet with violence if an amendment better protecting Muslims was not passed.¹²

In 1927, the Indian Legislative Assembly finally addressed the issue and passed the addition of Section 295-A to the IPC. During the discussions, concern was expressed that the new clause would stymie social and religious reform and affect the accuracy of historical works. Those who lobbied for the bill, however, suggested that their intention was not to stifle fair and productive debate. Instead, they argued that the present social context necessitated the new clause. Another concern was that this section was redundant given the existence of Section 153-A, under which Rajpal was originally tried. Legislators argued, however, that Rajpal’s acquittal made it clear that Section 153-A did not go far enough.¹³ Nevertheless, two of the most ubiquitous worries were regarding the establishment of intent and potential abuse. The terms “deliberate and malicious” were added in an attempt to mitigate these concerns. Even so, these same concerns were later echoed in

⁹ Ibid., 47.

¹⁰ Ibid., 53.

¹¹ Ibid.

¹² Nair, “Beyond the ‘Communal’ 1920s,” 323.

¹³ Ibid., 331-34.

the debates surrounding the blasphemy laws' use and amendment in the coming decades.

Eventually, the bill was passed and added as Section 295-A:

§295-A: Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment...or a fine, or both.¹⁴

The bill's dissenters, which included almost all of the non-Muslim members, went on record calling the amendment a "regrettable concession to intolerance" and saying it may "increase fanaticism because it creates a new offense."¹⁵ Some historians argue that the addition of this section encouraged people "to display their wounded feelings...specifically violent displays of wounded feelings."¹⁶ These concerns point to key deficiencies that continue to exist in the laws today.

Despite the motivations behind the addition, two years after the creation of Section 295-A, Ilmuddin murdered Rajpal. At the time, many applauded Ilmuddin's extrajudicial actions, painting him as a martyr for the greater Islamic community.¹⁷

The Intentions Behind the IPC

The *Rangila Rasul* controversy and the violence that has occurred since are illustrative of a much bigger issue that has continued to persist. In examining this matter, we are left asking how laws that were meant to preserve peace transformed into an instrument of violence?

To answer this question we must consider the law at the moment of its making in order to determine the motivations that went into its enactment. While the British had operated in the Indian

¹⁴ Indian Penal Code of 1860 §295A.

¹⁵ Quoted in Nair, "Beyond the 'Communal' 1920s," 334.

¹⁶ C.S. Adcock, "Roundtable on Outrage, Scholarship and Law in India: Violence, Passion, and the Law: A Brief History of Section 295A and Its Antecedents," *Journal of the American Academy of Religion* 84, no. 2 (2016): 341.

¹⁷ Stephens, "The Politics of Muslim Rage," 45.

subcontinent for decades, the Crown took charge of the territory in 1857. They became responsible for a diverse and large population to which they were culturally alien. Because they did not understand the nuances of various traditions or cultures, the British Crown Raj decided to adopt a stance of neutrality. Specifically, they assured Indians that they would stay out of religious matters. In Queen Victoria's 1858 proclamation to the people of India, she stated that none of her subjects would be "molested or disquieted by reason of their Religious Faith or Observances..."¹⁸ Nevertheless, the British operated under the "principle of harm." John Stuart Mill, prolific philosopher and political economist, described this as the "idea that we should intervene in an individual's freedom only if its exercise harmed others."¹⁹ In practice, this meant that the government did not have the right to restrict an individual's freedom in the name of public morality unless the exercise of this freedom harmed other members of society.²⁰ This concern was salient in India due to the seemingly incompatible practices of Muslims and Hindus. For example, Hindus were frustrated with the culturally Muslim practice of cow slaughter, and Muslims were upset with the organization of Hindu festivals and processions that would pass in front of their mosques.²¹ These issues were among the primary sources of conflict between Hindus and Muslims during the colonial period.

These concerns led to the development of the Indian Penal Code (IPC) enacted in 1860. The following selected sections are widely considered to be the foundation of the blasphemy laws, with Sections 295 and 298 being a part of "Chapter XV: Of Offenses Relating to Religion:"

¹⁸ Queen Victoria, Proclamation. "Proclamation of the late Queen Victoria of the 1st day of November 1858, to the Princes, Chiefs, and the People of India," Under Secretary of State for India (November 1, 1858).

¹⁹ C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2012), 10.

²⁰ *Ibid.*, 15.

²¹ Zeenath Kausar, "Communal Riots in India: Hindu-Muslim Conflict and Resolution," *Journal of Muslim Minority Affairs* 26, no. 3 (2006), 354.

§153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence. language, etc., and doing acts prejudicial to maintenance of harmony. Offence committed in place of worship, etc.

§295. Injuring or defiling a place of worship, with intent to insult the religion of any class.

§298. Uttering words, etc., with deliberate intent to wound the religious feelings.²²

Drafted under the chairmanship of influential British politician and member of the Supreme Council of India, Thomas Babington Macaulay, the IPC was meant to manage the diversity of the subcontinent while maintaining law and order. This can be seen with its language discouraging words or actions that could create hostility. While the code was being drafted, several British politicians expressed their concern over the language of Chapter XV in particular. They thought words like “insult” or “wound,” for example, were too broad and would lend themselves to abuse based on their ambiguity. They also questioned how intent could be established with regard to religious-based offenses.²³ Again, these conversations would be loudly echoed in later discussions on the blasphemy laws.

There are two main schools of thought regarding the intention of these laws. Some historians believe they were primarily designed to preserve law and order, while others believe they were created to protect religious sensibilities. In Macaulay’s report, he described the intentions behind the penal code by saying, “the British Government in India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.”²⁴ Here it seems like Macaulay believed that the Indian people would fall into disorder without a British-designed code. Moreover,

²² Indian Penal Code of 1860 §153A, 295, 298.

²³ Nair, “Beyond the ‘Communal’ 1920s,” 331.

²⁴ Thomas Babington Macaulay, *The Indian Penal Code, as Originally Framed in 1837, with Notes*. (Chennai: Higginbotham, 1888): 409.

Macaulay outlined his broader views on the role of government in regulating religion in his response to eventual Prime Minister William E. Gladstone's *The State in its Relations with the Church*. The premise of Gladstone's argument was that the government should actively participate in the propagation of religious truths. Macaulay, however, maintained that government officials are not as qualified to propagate religious truth as they are to run a government. In fact, he wrote, "no man in his senses would dream of applying Mr. Gladstone's theory [of religious regulation] to India; if applied, it would inevitably destroy our empire..."²⁵ From this, it is clear that Macaulay argues that religious regulation is not the first order of government, and even more so in India due its diversity. His intention, therefore, with the blasphemy laws was more motivated by the desire to maintain peace than the desire to manage the religious rights of Indians.

Even so, the British were especially concerned with the sensitivity of Indians especially after the rebellion of 1857. Some believed that one cause of this violent outburst was that the religious sensibilities of Muslim and Hindu soldiers were disturbed after being forced to use Enfield rifles that were rumored to have used cartridges made with cow and pig fat. The British thought a safeguard needed to be implemented to curb potential future eruptions of religious-based violence.²⁶ Moreover, in Macaulay's report on the IPC, he alluded to a general desire to protect the local religions of India. He referenced laws made in Sir Thomas More's *Utopia*. In this work, the founder of the fictional Commonwealth of Utopia made a law whereby all citizens could practice their respective religions. This was "not only for preserving the public peace... [but also in] the interest of religion itself..."²⁷ This reference, along with the contemporary circumstances in India like the

²⁵ Thomas Babington Macaulay, "Gladstone on Church and State: April 1839" in *Critical and Historical Essays*, Volume 2, (London: J.M. Dent, 1907): 265.

²⁶ Adcock, "Roundtable on Outrage, Scholarship and Law in India," 342.

²⁷ Macaulay, *Indian Penal Code*, 413.

rebellion of 1857, demonstrates that Macaulay did have a moderate concern for the religious beliefs of Indians, even if it was primarily in the interest of maintaining control.

These reflections on the purpose of the IPC indicate that there was a fundamental tension between the preservation of law and order and the protection of religious sensibilities. During colonial rule, it seemed that the British were most concerned with law and order, and their main concern with religious freedom was how it could disrupt the peace. Mill's principle of harm underlines this relationship by justifying restrictions on freedom of expression by pointing to the harm this expression could impart on other citizens. The inclusion of Sections 153-A, 295, and 298 appear to stem from fear of disorder originating from a source of conflict that had proven to spark unrest in the past. Macaulay even stated in his report on the IPC that due to the religious diversity of the subcontinent, "a state of [such] things is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration." He goes on to say, "There is perhaps no country in which the government has so much to apprehend from religious excitement among the people."²⁸ Moreover, a people in disorder are difficult to control and manage. The British essentially wanted to minimize any potential disruption to their revenue extraction scheme in the subcontinent. If Indians were in conflict they would not be as productive, and therefore not yield maximum profits for the British.

During British colonial rule, the balance between the blasphemy laws' two fundamental intentions, the maintenance of order and religious sensitivity, was a careful one. The British, however, were relatively successful in their preservation of this balance given the relative lack of use the blasphemy laws received during their regime. Between 1860 and 1947, less than fourteen cases were recorded. This is in stark contrast with recent history; between 1981 and 2012, more than 1200

²⁸ Ibid., 409.

cases were registered.²⁹ Besides the *Rangila Rasul* amendment made in 1927, the laws remained relatively unchanged. What did change, however, was the environment in which the laws operated, including their implementing institutions within the justice system. These changing socio-political conditions created opportunities for religious conservatives to shift the focus of the blasphemy laws, and even the justice system more broadly, to prioritize the protection of religious sensibilities over core citizenship rights. As the rest of this thesis will indicate, disruption to this carefully constructed balance has resulted in violent consequences.

Historical Evolution

The socio-political context for these institutional changes emerged gradually after the initial introduction of the blasphemy laws in 1860. Between the late 19th century and late 20th centuries, the protection of religion was made a priority due to internal insecurities regarding shifting power dynamics and the external international pressures of *wahabbism*. These developments set the stage for General Zia-ul-Haq's regime when the most formidable changes took place.

Colonial Period

As detailed previously, one of the most influential pieces of legislation passed during British colonial rule was the IPC, which contained the basis of the blasphemy laws we see today. There were, however, several other British decisions that created an environment ripe for religious-based conflict. In 1872, the first Indian census was published. This document categorized Indians based on their religion and defined "majority" and "minority" groups.³⁰ These distinctions were then used in

²⁹ Qaiser Julius, "The Experience of Minorities Under Pakistan's Blasphemy Laws," *Islam and Christian Muslim Relations* 27, no. 1 (2016): 101.

³⁰ Sugata Bose, "Nation, Reason and Religion: India's Independence in International Perspective," *Economic and Political Weekly* 33, no. 31 (1998): 2091.

establishing local political systems. As historian Dipesh Chakrabarty notes, “the British, in trying to be fair referees, made the process of political representation ‘communal.’”³¹ He goes on to further point out that most Indians did not view themselves as a part of one distinct community. He argues that creating such discrete labels in the public sphere made “the identity of being Indian or Hindu or Muslim...take on a new political meaning.”³² Religion became tied peoples’ political identities adding a new layer that distinguished them from their compatriots. Making religious identity political also created an element of competition as different religious groups vied for personally beneficial legislation.

This development of political competition based on religion was particularly important in the lead up to the *Rangila Rasul* controversy, detailed earlier. At this time Muslims were feeling increasingly marginalized by Indian national politics in the 1920s. While the nationalist movement initially attempted to create Hindu-Muslim unity, these efforts eventually failed as different religious groups began to worry about their personal status on the national stage. Different religious groups morphed into political competitors. Section 295-A was passed at a time when Muslims were increasingly anxious about competing with their Hindu counterparts, especially given the rise of the Hindu-dominated National Congress party. Muslims pushed for this legislation because they felt threatened and thought they could protect themselves with the law.³³

A steady departure from Jinnah’s secular vision

With the signing of the Indian Independence Act in August 1947, India was partitioned, and Pakistan was created. At this time, Muhammad Ali Jinnah, the father of Pakistan, made it clear that

³¹ Dipesh Chakrabarty, “Modernity and ethnicity in India,” *Journal of South Asian Studies* 17 no. 1 (1994), 149.

³² *Ibid.*, 150.

³³ Stephens, “The Politics of Muslim Rage,” 48.

the country was to be founded upon the ideal of equality among all citizens.³⁴ At the beginning of Pakistan's independence, the country relied heavily on the remains of colonial institutions. This included adopting Macaulay's IPC, now known as the Pakistan Penal Code (PPC).

As the nation matured, however, it started to develop its own distinct identity. This included a steady departure from Jinnah's relatively liberal vision. One early change was the adoption of the Objectives Resolution on March 21, 1949. The resolution presented Pakistan as an Islamic nation. It states, "the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him is a sacred trust." It goes on to say, "Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the *Sunna*." In Prime Minister Liaquat Ali Khan's presentation of the resolution, he was adamant that the document did not make Pakistan a theocracy.³⁵ Even so, he goes on to say that the "state will create such conditions as are conducive to the building up of a truly Islamic society." He also states,

"...there should be no misconception in the mind of any sect which may be in a minority in Pakistan about the intentions of the State. The State will [will not] ... curb the freedom of any section of the Muslims in the matter of their beliefs. No sect, whether the majority or a minority, will be permitted to dictate to the others and, in their own internal matters and sectional beliefs, all sects shall be given the fullest possible latitude and freedom."³⁶

This promise, however, was not kept as Ahmadi Muslims lost most of their religious rights within the next few decades.

³⁴ Ayesha Jalal, *Self and Sovereignty: Individual and Community in South Asian Islam since 1850* (London: Routledge, 2000), 279.

³⁵ "The Objectives Resolution," *Islamic Studies* 48, no. 1, (2009), 91-93.

³⁶ *Ibid.*, 94-5.

In reaction to the incorporation of the Objectives Resolution, several non-Muslim assembly members publicly opposed these distinctly Islamic provisions. Mr. Bhupendra Kumar Datta, a member of parliament, in his dissent said, “Politics and religion belong to two different regions of the mind.” He went on to criticize the vague nature of the resolution and the indefinite nature of the language as points of potential abuse.³⁷ This would prove in later years to be true as future political leaders exploited this Islamic identity to pursue their own agendas.

The steady rise of religious conservatism

Several orthodox Islamic parties also started to emerge and exert influence on Pakistani politics at this time. Jamiat-ul-Ulema-i-Islam (JUI) in particular was a party that had worked closely with the Muslim League and called for an Islamic State. Another influential Islamist party influential in Pakistan’s path of Islamization is Jamiat-e-Islami (JI), founded in 1941 by Syed Abul A’ala Maududi. Haroon Ullah describes their three main motivations: “on the personal level, seek individual obedience to God; on the social level, eliminate inconsistencies between Muslims’ professions of faith and their actual lives; and on the political level, assert Islamic leadership in all areas of life.”³⁸ One of JI’s main provisions is a return to a more pure version of Islam devoid of cultural influences. This is because some believe that South Asian Islam has taken a form that is heavily influenced by traditional Hindu practices.³⁹ Both JUI and JI were important in shaping the eventual balance between secularism and orthodoxy in Pakistani governance.

They were particularly influential in the early 1950s during the debates leading up to the Constitution of 1956. These contentious debates between fundamentalists and secularists focused

³⁷ Ibid., 100-1.

³⁸ Haroon K. Ullah, *Vying for Allah’s Vote: Understanding Islamic Parties, Political Violence, and Extremism in Pakistan* (Washington: Georgetown Press, 2014), 81.

³⁹ Ibid., 84.

on the extent to which Pakistani law should be influenced by religion. Some concessions granted to traditionalists were the labeling of Pakistan as the “Islamic Republic of Pakistan,” the requirement that the president must be Muslim and a stipulation stating that no law could be passed against Islamic teachings. Even so, Article 18 clearly grants citizens the “freedom to profess, practice and propagate any religion and the right to establish, maintain and manage religious institutions.”⁴⁰ This conflict between religious conservatism and secularism persisted throughout the development of Pakistan’s justice system and continues to affect governance today. This tension between outspoken, and often well-funded, religious conservatives and their secular counterparts has undermined present day reform efforts on the blasphemy laws. Religious conservatives, usually affiliated with an orthodox Islamic party, have been able to mobilize their followers against repeal or amendment efforts powerfully enough so that politicians are reluctant to pursue these reform efforts for fear of their electoral consequences.

Backlash against Ahmadis

The influence of orthodox Islamist parties was powerful in shaping Pakistan’s approach to the Ahmadis, who were followers of a strand of Islam created by Mirza Ghulam Ahmad in 1876. Ahmad claimed he had received a revelation from God that told him to continue the work of the Prophet Muhammad. In Punjab, Muslims initially accepted Ahmad and his followers, mostly because Hindus despised Ahmad; the Hindus’ enemy inadvertently became the Muslims’ friend. The campaign against Ahmadis came after Ghulam Ahmad’s death, when the subsequent leaders of the movement split the community. Ghulam Ahmad’s son, Bashiruddin Mahmud Ahmad formed a group in Qadian that was markedly less moderate than the group that formed in Lahore. It is for this

⁴⁰ Jaffrelot and Schoch, *The Pakistan Paradox*, 453.

reason that this faction is sometimes referred to as the Qadianis. Mahmud Ahmad made enemies among leaders of other Islamic sects, most notably Maulana Ataullah Shah Bukhari, a Hanafi scholar. He along with others formed the Majlis-i-Ahrar, which lobbied for Ahmadis to effectively be ousted from Islam.⁴¹ Since this time, Ahmadis have been vilified in Pakistan. For many Muslim Pakistanis, Ahmadis' reverent adoration of Ghulam Ahmad is considered sacrilegious because it goes against the first pillar of Islam, the *shahada*, or declaration of faith. The *shahada*, translated in English, says, "there is no God but *Allah*; and Muhammad is his final prophet." Many Muslims claim Ahmadis consider Ghulam Ahmad to be equal to their beloved prophet, which is direct contradiction with their understanding of Islam.

Since this time many incidents of anti-Ahmadi violence have taken place throughout the country. For example, in 1953 anti-Ahmadi riots led to the death of more than two thousand Ahmadis in Pakistan. Maududi was implicated and sentenced to death for his contribution to inciting violence in part due to his vehemently anti-Ahmadi book, *The Qadiani Problem*.⁴² Given this fierce antagonism in the 1950s, it is surprising that this hatred was only channeled into the PPC in 1984 with the introduction of Sections 298-B and 298-C. These sections made it punishable for Ahmadis to "pose" as Muslims and even restricted their right to use Islamic features in their practice. The fact that these punishments only emerged in the 1980s, despite the fervent hatred that existed decades before, demonstrates that the Zia period created opportunities for these largely *salafi* religious conservatives to make the changes they had wanted all along.

⁴¹ Jalal, *Self and Sovereignty*, 292-5.

⁴² Ullah, *Vying for Allah's Vote*, 83.

Modern approaches to rising religious conservatism

In 1958, General Muhammad Ayub Khan staged a military coup, established martial law in Pakistan and eventually became president in 1962. He recognized that Pakistan was an Islamic nation but did not support religious leaders taking an active role in political or government spaces. In fact, he actively worked to combat the influence these religious leaders had claimed over the years.

One important case heard during his rule was *The Punjab Religious Book Society v. The State* in 1960. In this case, the contents of the book *Mizān-ul-Haq* by author C. G. Pfander were held to be offensive. The book was originally published in 1831 and later sold by the Punjab Religious Book Society (PRBS) in 1891. It discussed the origins of tensions between Christian and Muslim communities. Pfander specifically notes in the book, though, that his words are not meant to insult or disrespect Muslims. In 1953, the sixth edition of the *Mizān-ul-Haq* was published, and rumblings about offensive content started to emerge.⁴³ In fact, the *Gazette of West Pakistan* in April 1959 explicitly stated that the contents of the book were “calculated to outrage the religious feelings of the Muslims of Pakistan.”⁴⁴ One notable argument made in defense of the book during the trial was that the book had been in circulation for several decades and no objection had been raised until the 1959 petition. This suggested that the book was not unequivocally insulting. The Lahore High Court eventually decided that the publisher had not intended to outrage the religious feelings of Muslims and for that reason the book did not violate Section 295-A. The most important precedent established from this case was that intention must be established for the case to be considered under

⁴³ Farhana A. Nazir, “A Study of the Evolution of Legislation on Offenses Relating to Religion in British India and Their Implications in Contemporary Pakistan” (doctor of philosophy thesis, University of Edinburgh, 2013), 169-170.

⁴⁴ quoted in *Ibid.*, 171.

Section 295-A. Another significant point made was that the judges held the responsibility to protect all religious communities objectively.⁴⁵

In 1962, Ayub Khan introduced a new constitution that stressed liberal interpretations of Islam to better integrate Western ideas of democracy.⁴⁶ Ayub Khan's attempts at secularization, however, were not shared by his successors who would use Islam to legitimize their rule.⁴⁷

In March 1969, Chief Commander of the Pakistani Army, Yayha Khan, also became president. Under his regime, fundamentalists began to regain their voice in politics. The JI party was especially important at this time on university campuses. The student wing of the organization was devoted to stifling the leftist groups through violent action, or the threat thereof.⁴⁸

At around the same time, politician Zulfikar Ali Bhutto was developing his own idea of Islamic socialism, which he channeled into the founding of the Pakistan Peoples Party (PPP) in the late 1960s. The party took on the slogan "Islam is our faith. Democracy is our polity. Socialism is our economy."⁴⁹

Bhutto took office as president on December 20, 1971 during a particularly tumultuous period of Pakistani history. The Indo-Pakistani War of 1971, and the Bangladesh Liberation War, had just concluded four days earlier with Pakistani forces surrendering to East Pakistani and Indian forces. For many Pakistanis, the defeat was humiliating.⁴⁹ It became Bhutto's responsibility to restore faith in Pakistan and its government after this demoralizing moment. Eventually becoming prime minister in 1973, Bhutto made sweeping populist changes like nationalizing industry. In reaction to these changes, groups, like the JI, complained that his socialist policies were moving Pakistan away

⁴⁵ Ibid., 174.

⁴⁶ Jaffrelet and Schoch, *The Pakistan Paradox*, 454-459.

⁴⁷ Ibid., 460.

⁴⁸ Ibid., 461.

⁴⁹ Jalal, *Self and Sovereignty*, 174-5.

from its Islamic origins. Bhutto wanted the endorsement of the religious right for his policies, like the 1973 constitution, so he made major concessions to this lobby. The 1973 constitution took steps like empowering the Council of Islamic Ideology and declaring Islam the official state religion. Article 19 restricted freedom of expression “in the interest of the glory of Islam,” while Article 31 stated, “steps shall be taken to enable the Muslims of Pakistan...to order their lives in accordance with the fundamental principles and basic concepts of Islam.” *Islamiat*, or Islamic education, was also made mandatory for Muslims. Parties, like JI, were also able to exert influence on Bhutto’s policies by capitalizing on funding from Saudi Arabia, who was eager to use its petro-dollars to counteract Iranian influences on the international playing field.⁵⁰ Their efforts included pushing for laws that mandated the observance of Ramadan and abstinence from alcohol.⁵¹ Another major concession that would provide the foundations for two blasphemy laws, Sections 298-B and 298-C, was the official labeling of Ahmadis as non-Muslims in 1974. This move was particularly motivated by Saudi ruler King Faisal’s signaling that Pakistan would only receive Saudi aid if Pakistan declared Ahmadis non-Muslim. This decision to sacrifice the rights of Ahmadis, however, “laid the basis for an exclusionary idea of citizenship, undermining the Pakistani nation-state’s commitment to equal rights of citizenship.”⁵²

While Yahya and Bhutto slowly made concessions to fundamentalists in the governing of Pakistan, their policies were relatively mild compared with General Zia-ul-Haq’s approach in the next decade. In 1977 Zia would stage a military coup that would install him as the leader of Pakistan for the next eleven years.

⁵⁰ Ayesha Jalal, *The Struggle for Pakistan* (Cambridge: Belknap Press of Harvard University Press, 2014), 203.

⁵¹ Ullah, *Vying for Allah’s Vote*, 90-3

⁵² Jalal, *The Struggle for Pakistan*, 206.

As illustrated in this chapter, the foundations for the blasphemy laws emerged in 1860 with the introduction of the Indian Penal Code. While primarily intended to help maintain law and order in a diverse society, it also incorporated a chapter on religion that attempted to mitigate religious based violence, a historic point of contention. Even so, these laws were not widely used until the 1980s during General Zia-ul-Haq's regime. This indicates that it was the socio-political context and the laws' changing implementing institutions that sparked the widespread use of the blasphemy laws instead of the existence of the laws themselves.

During colonial rule, religion became an increasingly political identity and different religious groups were forced to compete with each other for representation. This anxiety in part caused Muslims to push for the addition of Section 295-A to the IPC after the *Rangila Rasul* controversy. After partition, Pakistan struggled with how to manage its relationship with the Islamic ideals on which the creation of the nation was based. As the country matured, religious conservatism began to take root both politically and socially. The rise and empowerment of these orthodox Islamic parties was fundamental in creating a base for General Zia-ul-Haq to take power in 1977 and allowing him to pursue conservative Islamic policies that paved the way for the abuse of the blasphemy laws. Because they were well funded and organized, they were able to mobilize into a group that could not be ignored in the political arena. This political power allowed them to slowly push the government of Pakistan to prioritize the religious sensibilities of certain groups over the citizenship rights of others. Their pressure slowly shifted the practical focus of the blasphemy laws from concerns of law and order to the protection of religious sensibilities of a select group of orthodox *salafi* Muslims. Using this political power, they were able to push for institutional changes that have fundamentally undermined the British architects' primary intention, namely the maintenance of order. These changes will be the focus of the next chapter.

Between 1927 and 1985, only around ten cases of blasphemy were registered under the penal code's religiously based sections. From 1987 to 2017, however, about 1,550 cases were reported.⁵³ This disproportionality signals that the simple existence of blasphemy laws did not lead to the widespread use of this legislation. Instead, it was the changes to the justice system made by Zia and his legates that facilitated abuse. Their changes, coupled with an increasingly orthodox Islamic political environment, have allowed the blasphemy laws to be used more readily and for malicious purposes in recent decades.

In the next chapter, I will explore how the changes most consequential to the abuse of the blasphemy laws emerged under Zia's regime. It was during and after Zia's regime that the blasphemy laws and their supporting institutions were most manipulated and used. These changes are responsible for the rampant abuse observed today.

⁵³ Asad Ahmed, "A Brief History of the Anti-Blasphemy Laws," *The Herald*, March 12, 2018, <https://herald.dawn.com/news/1154036/a-brief-history-of-the-anti-blasphemy-laws>.

Chapter 2: The Zia Era

On July 5, 1977, General Zia-ul-Haq seized power in a military coup that would last for eleven years and change the history of Pakistan forever. While he claimed to be driven by faith, his regime did much more than just “Islamicize” Pakistani institutions. His policies created a judicial system that paved the way for abuse through the blasphemy laws. The legacy of his policies persists even today. This chapter will examine how Zia ingrained religious conservatism deeper into Pakistan’s political foundation. It will do so by looking at the different institutions and policies that emerged during this period and how they affected the language and eventual uses of the blasphemy laws. Illustrative examples will also be used from cases that set certain precedents for the use of these laws and their associated institutions.

General Zia-ul-Haq

General Zia-ul-Haq entered Pakistani politics when then-Prime Minister Zulfikar Ali Bhutto appointed him as army chief in 1976. Zia was assumed to be a malleable tool who would not threaten Bhutto’s regime like army chiefs had done in years past. This, however, would soon prove to be a grave mistake as Bhutto was hanged a few short years later after being accused of politically motivated murder.

In the months leading up to the eventual military coup, there was significant political conflict between the Pakistan Peoples Party (PPP), a populist group, and the Pakistan National Alliance (PNA), a group comprised of several Islamist parties including JUI and JI. PNA argued that Bhutto, a member of PPP, had rigged the recent elections and was pushing Pakistan away from its foundational Islamic principles. Bhutto initially conceded to the “Islamization” demands by

incorporating and consulting with members of JI and JUI. He stalled the new elections, however, which gave PNA time to work with Zia and plan a coup.⁵⁴

Nizam-e-Mustafa

On July 5, 1977 Bhutto was removed from office, and Zia became Chief Martial Law Administrator (CMLA). In his first speech to the people, he indicated his intention of bringing *Nizam-e-Mustafa*, or the Islamic Order of God, to Pakistan. He stated, “Pakistan was created in the name of Islam and will continue to survive only if it sticks to Islam... I consider the introduction of [an] Islamic system as an essential pre-requisite for the country.”⁵⁵ He continued by labeling himself “a true soldier of Islam.”⁵⁶ Many scholars believe that “he sought legitimacy of his dictatorial and unconstitutional rule by using religion...”⁵⁷ In other words, he was appealing to the interests of conservative Islamists so that he could take and keep control. He capitalized on this religious fervor to advance his personal career.

His base included the PNA and its associated parties. To reward their support, they were given a considerable amount of influence in government administration and politics. In fact, it has been reported that two-thirds of Zia’s ministers were sourced from these religious parties.⁵⁸ JI was particularly influential in forming a Muslim voting bloc that was able to make an impact on mainstream politics.⁵⁹ JI was also granted unique privileges and was allowed to operate as a junior

⁵⁴ Jalal, *The Struggle for Pakistan*, 210-16.

⁵⁵ Zia quoted in Farida Shaheed, “Contested Identities: gendered politics, gendered religion in Pakistan,” *Third World Quarterly* 31, no. 6 (2010): 856.

⁵⁶ Quoted in Jalal, *The Struggle for Pakistan*, 217.

⁵⁷ Naeem Shakir, “Islamic Shariah and Blasphemy Laws in Pakistan,” *The Round Table* (2015): 308.

⁵⁸ David Waterman, “Saudi Wahhabi Imperialism in Pakistan: History, Legacy, Contemporary Representations and Debates,” *Socialinių mokslų studijos* 6, no. 2 (2014), 250.

⁵⁹ Kunal Mukherjee, “Islamic Revivalism and Politics in Contemporary Pakistan,” *Journal of Developing Societies* 26, no. 3 (2010): 334.

partner in government while all other political parties were banned. Their student wing, *Islami Jamiat-Tuleba* (IJT), was allowed to operate at schools and universities while all other student unions were banned.⁶⁰ IJT was particularly known for their aggressive and sometimes violent intimidation tactics.

Almost immediately, Zia began to implement various measures to Islamize the nation. Within the first few weeks, the Islamic Council of Islamic Ideology was tasked with creating a plan for the rebooted Islamic nation.⁶¹ They would make recommendations throughout his regime, many of which he would carry out. His reliance on this body emboldened its members to exercise their authority even more. The recommendations of the Islamic Council were responsible for key changes in the judicial system.

Several other decisions allowed him to control the government with relative autonomy. In 1981, Zia declared Presidential Order 15, which established the Majlis-e-Shoora, which replaced the National Assembly, previously dissolved in 1977 by Bhutto before the coup. This new body, however, consisted entirely of people chosen by Zia and was consulted only on an advisory basis. Elections for the National Assembly were not held again until 1985, leaving Zia effectively autonomous.⁶² Later in 1984, Zia called for a referendum asking citizens if they approved of the regime's Islamization program. If people voted yes, Zia would continue to serve as president for five more years. Although he was awarded the election with a resounding 97.7% of the vote, reports note voter turnout as low as 5%.⁶³ Later that year, the Revival of the Constitution of 1973 Order (RCO) was passed, essentially giving Zia unprecedented power over the prime minister and elected

⁶⁰ Shaheed, "The Experience of Minorities," 858.

⁶¹ Zahra Hayat and Osama Siddique, "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defect, and Free Speech," *Minnesota Journal of International Law* 17, no. 2 (2008): 319.

⁶² J. Henry Korson and Michelle Maskiell, "Islamization and Social Policy in Pakistan: The Constitutional Crisis and the Status of Women," *Asian Survey* 25, no. 6 (1985): 589.

⁶³ *Ibid.*, 596 .

provincial chief ministers.⁶⁴ The RCO also incorporated the Objectives Resolutions, originally introduced in 1949, into the body of the constitution in Article 2-A. As Supreme Court Justice Dr. Nasim Hasan Shah explained, this effectively forced judges to consider if their ruling was in accordance with Islam when making decisions since it was now a fundamental part of the constitution.⁶⁵ This measure further embedded conservative Islamic thought into the judicial system. How this impacted the judicial system will be elaborated upon in the next section.

During this time the state also aggressively pushed efforts to have Islam permeate even further into the lives of individuals. Several new orthopraxy measures were introduced such as the recitation of the Quran at all public gatherings. Textbooks were also revised to reflect an “Islamic approach” to history.⁶⁶ Pervasive state-sponsored propaganda also worked its way into the homes of Pakistanis as religious conservatives like Maulvi Israr Ahmad were given primetime spots to peddle Zia’s ideologies.⁶⁷

During the 1980s, Zia capitalized on the religious zeal of his base to change the institutions and processes of the justice system in a way that allowed him more autonomy in his role as the ruler of Pakistan. Any dissent was labeled as “un-Islamic” and disregarded.⁶⁸ This effectively allowed him to pursue autonomous decision-making relatively unchecked. The changes he did make during his regime would increase the strength of the blasphemy laws and allow for more opportunities for abuse. Because a legislative body with a wide variety of beliefs must now agree on any changes instead of a single despotic ruler, amending these pernicious policies has proven difficult. Even more

⁶⁴ Ibid., 245.

⁶⁵ Nasim Shah, “The Objectives Resolution and its Impact on the Administration of Justice in Pakistan,” *Islamic Studies* 26, no. 4 (1987): 392.

⁶⁶ Shaheed, “Contested Identities,” 858.

⁶⁷ Jalal, *The Struggle for Pakistan*, 234.

⁶⁸ Osama Siddique, *Pakistan’s Experience with Formal Law* (Cambridge: Cambridge University Press, 2013), 231.

complicated is addressing the flaws in the judicial system that relies heavily on precedent and is comprised of several separate parts.

Changes to the Judicial System

Starting in 1979, Zia began making significant changes to the foundations of the judicial system, mostly through unilateral presidential ordinances. First, he created Shariat benches on the high courts, which incorporated religious scholars onto their benches. Shortly after, he announced the Hudood Ordinances. These ordinances aimed to push Pakistan's criminal justice system closer to the conservative principles of Islam. Reforms included the criminalization of alcohol and extramarital sex, the penalty for which was stoning.

Eventually in 1980, the Federal Shariat Court (FSC) replaced the Shariat benches. This court consists of eight judges, three of whom are *ulema*, or religious scholars. This court is tasked with examining whether “any law or provision of a law is repugnant to the injunctions of Islam...”⁶⁹ The court over time has struck down not only laws they felt violated the principles of Islam, but also detailed what laws they think should replace these sections.⁷⁰ By 1986, fifty-five federal laws and 212 provincial laws were found to be conflicting with Islam.⁷¹ Appeal of these decisions can only be made through the Shariat Appellate Bench of the Supreme Court.⁷²

In practice, the FSC mostly hears cases associated with the Hudood Ordinances. Once heard by the FSC, cases can be further appealed to the Supreme Court of Pakistan's Shariat Appellate

⁶⁹ Pakistan Const. §203-C.

⁷⁰ Moeen H. Cheema, “Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan's Law,” *The American Journal of Comparative Law* 60, no. 4 (2012): 894.

⁷¹ David F. Forte, “Apostasy and Blasphemy in Pakistan,” *Connecticut Journal of International Law* 10, no. 1 (1994): 37.

⁷² Siddique, *Pakistan's Experience with Formal Law*, 230.

Bench, which consists of three Muslim judges and two *ulema*.⁷³ Many argue that the FSC's relative autonomy in decision-making is particularly problematic because it empowers individual judges to have their personal interpretations of Islam supersede legal text and precedent.⁷⁴ From this structure, it is clear that at the highest levels, religiously based criminal cases are isolated from the rest of the judicial system.

This arrangement has caused problems as the two systems sometimes come to different conclusions about the same issue. One example can be seen in the outcomes of the cases *Abdur Rahman Mobashir v. Amir Ali Shah* and *Mujibar Rehman v. Federal Government of Pakistan*. This case was decided in the Lahore High Court in 1978 and determined that non-Muslims' rights were fully protected under the law. In 1985, however, *Mujibar Rehman v. Federal Government of Pakistan* was tried in the FSC and determined that Ahmadis were not entitled to the same protections as other classified non-Muslims because Ahmadis allegedly believe in something fundamentally antithetical to Islamic thought, namely that Prophet Muhammad is not the final prophet. These two cases illustrate the tension during this period between secular and Islamic law.⁷⁵

The creation of this parallel system emphasized the influence of religion on the justice system. This granted importance effectively changed how religion was viewed within the judicial context, further entwining these two spheres. Because religion has been given its own arena, religious offenses have become viewed as especially important. These new federal institutions also seemed to make religious matters the responsibility of the government to adjudicate. Because of this new responsibility, religious leaders, with clear biases due to the nature of their profession, have

⁷³ Charles H. Kennedy, "Islamization in Pakistan: Implementation of the Hudood Ordinances," *Asian Survey* 28, no. 3 (1988): 308; Jalal, *The Struggle for Pakistan*, 249.

⁷⁴ Shaheed, "Contested Identities," 857.

⁷⁵ Nazir, "A Study of the Evolution of Legislation," 206.

been incorporated deeper into this federal system that is ostensibly meant to be objective. Their inclusion in this supposedly neutral system has undermined the greater system's impartiality.

Global Islamic Militantism

In this period, Islamic orthodoxy was reshaped into Islamic militantism. It took place at a time when there was a heightened sense of insecurity felt by Muslims around the world. It began as the Iranian Revolution, the Soviet occupation of Afghanistan, and the occupation of the Kaaba dominated international headlines in 1979. The Soviet invasion of Afghanistan in particular was marketed as a global war on Islam. During this same time, Zia faced political backlash for not holding the elections he had initially promised. He capitalized on the global Muslim anxiety of the time by calling on his fellow Muslims to protect not only Pakistan but Islam itself. In response to the conflict in Afghanistan in particular, Zia made calls to radical clerics in the tribal areas for Sunni madrasa students to accept the call of *jihad* and fight as an Islamic duty.⁷⁶ Historian Ayesha Jalal notes, "Pakistanis were susceptible to the Islamist charge that the ruling elite's lack of religiosity had caused the country's disintegration..."⁷⁷ They accepted this call because some believed that the more secular approach of governments of the past had allowed East Pakistan to slip through the cracks. They would not allow this irreverence to hurt them again.

Sunni militants, also known as the mujahidin, enjoyed large flows of money that only empowered them. The United States, for example, channeled large sums of money to Islamic militants who they hoped would help counteract Soviet forces in Afghanistan. This money was primarily funneled through Pakistan. Most of the money, however, came from Saudi Arabia, whose

⁷⁶ Jalal, *The Struggle for Pakistan*, 227.

⁷⁷ Ayesha Jalal, "The Past as Present," in *Pakistan: Beyond the Crisis State*, ed. Maleeha Lodhi (London: Hurst & Company, 2011), 14-15.

goal it was, and continues to be, to affirm *wahhabism* as the purest form of Islam. JI leader Maududi helped usher in this Saudi Arabian influence due to his close relationship with the Arab nation's government. The Saudis were also motivated by their global Islamic reassertion campaign that was in full force in the late 1970s.⁷⁸ This money was welcomed with open arms. As Jalal notes,

“Lines of credit were sought from friendly Arab states, softening the blows of the global oil shock for cash-starved Pakistan. The global reassertion of Islam on the back of Arab petrodollars won the admiration of Pakistan's rising middle classes, who sought to emulate the Saudi variant of Wahabi Islam.”⁷⁹

Wahhabism encourages the return to early practices of Islam and is heavily financed by the Saudi Arabian government. It is relatively well known that Saudi Arabian financing often comes tied with the expectation that their extreme religious views will also be propagated.⁸⁰ As mentioned earlier, this expectation was made relatively explicit in the case of Saudi aid to Pakistan.⁸¹ This *wahhabi* ideology has also historically been associated with violence in promulgating its extremist beliefs.⁸²

Due to the circumstances of his personal political plight, Zia capitalized on the geopolitics that had resulted in the heavy funding of Islamist militants. He relied heavily on this well-funded and radical cohort especially when his legitimacy was being questioned.⁸³ In the process, he transformed “jihad into an instrument of state police.”⁸⁴ The steady rise of state-sponsored Islamic militancy may offer insight into why Muslims have felt empowered to violently express their religiously motivated

⁷⁸ Jalal, *The Struggle for Pakistan*, 218.

⁷⁹ Ibid.

⁸⁰ Claude Moniquet, “The Involvement of Salafism/Wahhabism in the Support and Supply of Arms to Rebel Groups Around the World,” *The European Parliament*, (2013): 5-8; Murtaza Haider, “European Parliament identifies Wahabi and Salafi roots of global terrorism,” *Dawn*, July 20, 2013, <https://www.dawn.com/news/1029713>.

⁸¹ Jalal, *The Struggle for Pakistan*, 205.

⁸² Waterman, “Saudi Wahhabi Imperialism in Pakistan,” 249-51.

⁸³ Jalal, *The Struggle for Pakistan*, 233.

⁸⁴ Ibid., 234.

anger. Zia set a precedent that this violence in the name of religion was not only tolerable, but also encouraged by the state.

Amendments to the PPC

During Zia's regime, five key amendments were made to the Pakistan Penal Code (PPC), which are now commonly considered a part of the blasphemy laws. The first amendment was made in 1980 with the addition of 298-A through Ordinance XLIV of 1980. It stated:

§298-A: 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 (Ummel Muminn), or members of the family (Ahle-bait), of the Holy Prophet (PBUH), or any of the righteous Caliphs (Khulfa-e-Rashideen) or companions (Sahaba) of the Holy Prophet (PBUH) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.⁸⁵

Later in 1982, Section 295-B was added specifically adding punishment for the defilement of the Quran. This section states:

§295-B: Whoever willfully defiles, damages or desecrates a copy of the Holy Quran or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.⁸⁶

This section was added because of Muslims' esteem for the written manifestation of God's revelation to the Prophet Muhammad; the Quran's contents are considered the word of God. Muslims are generally quite careful in how they handle this book making sure they pay the utmost respect to the text. One illustration of a case brought under Section 295-B is *Syed Ijaz Husain alias Tabir Pir v. The State* in 1992. In this case, a Muslim had put a bag containing the Quran and shoes next to the accusers feet. The complainant believed that this was disrespectful to the Quran and accused the person with the bag of blasphemy.⁸⁷

One important part of Section 295-B is the term "willfully." The Peshawar High Court

⁸⁵ "Pakistan Penal Code," §298-A.

⁸⁶ "Pakistan Penal Code," §295-B.

⁸⁷ *Syed Ijaz Husain Alias Tabir Pir v. The State*, 1994 MLD 15 Lahore.

specified this term meant that the act “must be with intention to achieve a nefarious objective contemptuously...”⁸⁸ One case that demonstrates the importance of this requirement of intention was in April 1982. In this case, a man was found throwing and trampling on a booklet with Quranic verses. His defense argued that he was under the influence of mind-altering drugs and also was illiterate and therefore had no idea what he was holding. He was acquitted because no intention could be established.⁸⁹

No matter the results of these individual cases, the rulings on cases associated with Sections 298-A and 295-B are incredibly susceptible to the individual preferences and integrity of the judge. Too often, the same set of circumstances will result in different life-altering consequences for the accused. Their vague wording makes them particularly vulnerable to abuse and unfair application.

Discrimination against Ahmadis

In the early 1980s, several Islamic parties made aggressive moves to further restrict the rights of Ahmadis. Parties like *Jammat-e-Islami*, *Jammat-e-Ulama-e-Islam*, and *Jammat-e-Ulama-e-Pakistan*, and *Tebrik-e-Khatam-e-Nubunmat* all lobbied for change. One large event was in early January of 1984. The protest demanded that the lives of Ahmadis be severely limited, including the removal of Ahmadi government and military officials and banning Ahmadis from calling their places of worship “mosques.” These protests specifically wanted Ahmadis to be punished as “non-Muslims” and as blasphemers.⁹⁰

⁸⁸ Quoted in Nazir, “A Study of the Evolution of Legislation,” 218.

⁸⁹ Ibid.

⁹⁰ Ibid., 202.

Partially as a result of the passionate appeals of these conservative religious parties, Ordinance XX was declared in 1984. This declaration added Sections 298-B and 298-C, specifically targeting Ahmadis. These sections read as follows:

§298-B: Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places:

Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadi' or by other name who by words, either spoken or written, or by visible representation

- a. Refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (Peace Be Upon Him), as "Ameer-ul-Mumineen," "Khalifatul-Mumineen," "Khalifa-tul-Musilme," "Sabaabi" or Razi Allah Anho;"
- b. Refers to, or addresses, any person other than a wife of the Holy Prophet Muhammad (PBUH), as "Ummul-Mumineen;" or
- c. Refers to, or addresses, any person, other than a member of the family "Ahle-bait" of the Holy Prophet Muhammad (PBUH), as "Ahle-bait;" or
- d. Refers to, or names, or calls, his place of worship a "Masjid;"

Shall be punished with imprisonment of either description for a term that may extend to three years, and shall also be liable to fine.

§298-C: Person of Qadiani group, etc., calling himself Muslim or preaching or propagating his faith:

Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself 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, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.⁹¹

These amendments have been deemed problematic for several reasons. First, the language is vague, which means that the adjudication of these cases occurs in a relatively arbitrary manner. Ahmadis can be punished if they "outrage" the feelings of Muslims, but what is deemed outrageous behavior is not explicitly noted in the law. As a result of this language, Ahmadis in Pakistan have been subject to unfair arrests and trials. Specific cases will be illustrated in the following chapter. Second, the laws operate on the idea of strict liability, meaning that intent to harm does not need to

⁹¹ "Pakistan Penal Code," §298-B, 298-C.

be established. This diverges from how most criminal offenses are settled. Third, due to the nature of the offense, people testifying in such cases have been excused from repeating the words they claim to have heard.⁹² Fourth, this ordinance also seems to be in direct contradiction to Article 20, which states that all citizens are allowed to “profess, practice, and propagate his religion.”⁹³

The courts further endorsed this discrimination in 1993 in the case *Zaheeruddin v. the State*, sometimes referred to as the “Coca-Cola judgment.” In this case the Supreme Court of Pakistan heard the appeals of eight Ahmadis who were charged with posing as Muslims after having parts of the *kalma* on their person.⁹⁴ In Justice Shafiur Rahman’s decision, he compared Ahmadis referring to themselves as Muslim to someone using the trademark of a company. He stated,

“... [I]ntentionally using trade names, trade marks, property marks or descriptions of others in order to make believe others that they belong to the user thereof amounts to an offense and not only the perpetrator can be imprisoned and fined but damages can be recovered and injunction to restrain him issued... For example, the Coca Cola Company will not permit anyone to sell, even a few ounces of his own product in his own bottles or other receptacles, marked Coca Cola...”

“However, in this Ideological State, the appellants, who are non-Muslims want to pass off their faith as Islam? It must be appreciated that in this part of the world, faith is still the most precious thing to a Muslim believer, and he will not tolerate a government, which is not prepared to save him of such deceptions or forgeries.”⁹⁵

In essence, Justice Rahman likened Islam to a brand name that only true Muslims could invoke. This decision furthered the idea that Ahmadis “posed” as Muslims instead of being actual Muslims, like they viewed themselves. When Ahmadis practiced their faith, it was as if they were committing intentional deception, a punishable crime.

⁹² Amnesty International, “As Good as Dead: The Impact of the Blasphemy Laws in Pakistan,” 17.

⁹³ Pakistan Const. Art. 20.

⁹⁴ M. Nadeem Ahmad Siddiq, “Enforced Apostasy: Zaheeruddin v. State and the Official Persecution of the Ahmadiyya Community in Pakistan,” *Law & Inequality* 14, no. 1 (1996): 291.

⁹⁵ *Zaheeruddin v. State*. 1993. 26 S.C.M.R. 1718 (S.Ct. 1993) (Pak.).

There have been several international calls to have Ordinance XX's contents repealed. In 1985, the United Nations Human Rights Subcommission on the Prevention of Discrimination and Protection of Minorities passed a resolution criticizing Ordinance XX as a violation of international human rights.⁹⁶ When the ordinance was first made, it probably could be argued as a reasonable application of executive privilege since the freedom of religion is classified as a derogable, or right that may be suspended in times of emergency, in the Pakistani Constitution. While Ordinance XX was technically made during a state of emergency, its continued existence is not legal. The constitution only allows for the suspension of derogable rights for a maximum of four months. In response to this international criticism, Pakistan made a statement to the UN Subcommission saying that the purpose of the ordinance is to "restrain certain Ahmadiyya practices which offend Orthodox Muslims' and which 'could hurt the sentiments of society in general and could lead to creating tension between various sections of society.'"⁹⁷

As demonstrated, the introduction of Sections 298-B and 298-C by Ordinance XX was and continues to be discriminatory to Ahmadis. Their key freedoms have been restricted and their rights have been forfeited in favor of the Sunni majority. This discrimination has continued to be reasserted by the rest of the judicial system. Ahmadis face prejudice from when their case is first registered with the police all the way to the highest levels of the courts. This is primarily because intolerance of their practice has been codified.

⁹⁶ Linda J. Berberian, "Pakistan Ordinance XX of 1984: International Implications on Human Rights," *Loyola of Los Angeles International and Comparative Law Journal* 9, no. 3 (1987): 663.

⁹⁷ *Ibid.*, 679.

The Death Penalty

In 1986, Section 295-C was added with much controversy. Its addition was in part prompted by the debate stirred by lawyer Muhmamad Ismail Qureshi surrounding the book *Heavenly Communalism* by lawyer Mushtaq Raj, published in 1983. While the book was originally tried under Section 295-A, which protects against “acts intended to outrage religious feelings,” many thought that this section did not go far enough to protect their prophet from abuse. They wanted a more severe punishment for a crime they deemed more offensive.⁹⁸ To address this issue, Qureshi moved that the FSC should include the death penalty in cases regarding the Prophet Muhammad in 1984. The bill was decided, however, to not be under the purview of the courts and was later moved to the parliament.⁹⁹

Heated Legislative Debate

On July 9, 1986, the National Assembly of Pakistan engaged in debate on the proposed amendment for Section 295-C, which would allow for the punishment of death in cases where Prophet Muhammad was insulted. In the debate, Moulana Gohar Rehman, member of the orthodox Islamic party JI, claimed that he “could not find a single saying that denies that there is the death penalty for blasphemous remarks against the Holy Prophet (PBUH)... The Prophet (PBUH) himself has said that anybody who uses foul language or derogatory remarks or is disrespectful to any prophet of Allah should receive the death sentence...” He goes on to claim that there is significant support from both the *ummah*, the general Muslim community, and from religious

⁹⁸ “Pakistan Penal Code,” §295-A; Nazir, “A Study of the Evolution of Legislation,” 211.

⁹⁹ I.A. Rehman, “The blasphemy law,” *Dawn*, November 25, 2010, <https://www.dawn.com/news/585332>.

scholars.¹⁰⁰ Syed Shah Turab-ul-Haq Qadri, a Barelvi Scholar, also seemed at one point to threaten the members of the assembly by stating, “if we reject this bill, let’s keep in mind that 250,000 people can surround the parliament, Mr. Speaker. We will not ignore this threat.”¹⁰¹ Later, the speaker of the assembly read the decision of the Islamic Ideology Council in 1984 saying, “that anyone saying anything disrespectful towards the Holy Prophet (SAW) directly or indirectly deserves only the death penalty.”¹⁰²

The only apparent dissenter in the debate was Hamza Sahab, a member of the Pakistan Muslim League, who expressed two main qualms. First, he believed that this important matter was being considered too hastily. He also asked that the matter be taken to the public to gauge their opinion.¹⁰³ In response, Qadri claimed that there was no need to consult public opinion since there existed *ijma*, or consensus, on the matter. *Ijma* is one source of Sunni law that is used when there are no available sources in the Quran or *Sunnab*. Proof of this consensus was presented in the debate in the form of signatures from more than 100 *ulema*. This claim of consensus and apparent lack of dissent was cited throughout the debate as reason for the bill to be passed quickly and without further debate. Mr. Hamza’s protest, however, was evidence that the matter was not completely without controversy.¹⁰⁴

Further into the debate, Chaudary Ameer Hussain, member of the National Assembly, asserted that the only fair punishment for insulting the Prophet was death. The inclusion of the possible punishment of ‘life imprisonment’ was to be included for situations in which there were an

¹⁰⁰ The National Assembly of Pakistan Debates, vol. II, no. 29, July 9, 1986: 3214.

<https://www.scribd.com/document/327051790/9th-July-Parliamentary-Debate-on-295C>.

¹⁰¹ Never Forget Pakistan, “Pakistan’s Blasphemy Law: Origin of 295-C,” YouTube Video, 7:08. October 13, 2016, <https://youtu.be/SXcUA86LVDg>.

¹⁰² The National Assembly of Pakistan Debates, 3223.

¹⁰³ Ibid., 3218.

¹⁰⁴ Never Forget Pakistan, “Pakistan’s Blasphemy Law: Origin of 295-C.”

insufficient number of witnesses.¹⁰⁵ This, however, is problematic because it allows for a person to still be punished with inadequate evidence.

Mr. Hamza then brought up another concern:

“...in the bill, several different words were used like “insult” and “derogatory.” Could we have the definition of these words? Also it is said that the blasphemy could be sentenced to “death or could be given life imprisonment, and also a fine.” We have left this on the court. I think it will not be right to leave this on the courts, especially in Pakistan where people accuse each other on trivial matters to the extent of calling each other *kafir* (infidel). The law should be absolutely clear. It should not have any two meanings. The court shouldn’t have the authority to sentence somebody to death or life imprisonment. Therefore, the law should be clear to the court...I do not want to leave [the law] in a state where irresponsible people in the court (legal system) or people taking bribes can take advantage...”¹⁰⁶

The body dismissed Mr. Hamza’s concern of adopting more precise definitions by claiming that this was the responsibility of the courts. Eventually, the Criminal Act 111 of 1986 was passed adding Section 295-C to Chapter XV of the PPC. The eventual text of the amendment read as follows:

§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.¹⁰⁷

While the FSC later did detail what they believed constituted as an insult to the Prophet Muhammad, they were not very precise in their definition. They included “vilifying him or making an ugly face when his name is mentioned” and “showing enmity or hatred towards him, his family, his companions, and the Muslims.”¹⁰⁸ These suggestions of what constitutes an insult do not really help reduce the vagueness of the law and allow for even the most inadvertent references and facial expressions punishable by death. Mr. Hamza’s concerns regarding the ambiguity of the text were not

¹⁰⁵ The National Assembly of Pakistan Debates, 3222.

¹⁰⁶ Ibid., 3225-7.

¹⁰⁷ “Pakistan Penal Code,” §295-C.

¹⁰⁸ Quoted in Nazir, “A Study of the Evolution of Legislation,” 225.

addressed, and they continue to be the primary driver of abuse. Malevolent accusers use this inexact language to their advantage.

Because the crux of the debate surrounding this section seems to be its Islamic nature, it is useful to consult respected Islamic texts on the matter. The organization Never Forget Pakistan suggests that the *Al-Sarim-Al-Maslool*, *Fatwa-e-Alamgiri*, *Fatwa-e-Shami*, *Al-Hidayah*, *Saif-ul-Maslool*, and *Makhtasir al Tabawi* all explicitly state that non-Muslims should not be killed for insulting the Prophet. This would suggest that an *ijma* is not in fact present, invalidating the key source of legitimacy claimed by the death penalty's supporters in the legislative debates.¹⁰⁹

Moreover, one key criticism of the amendment is the fact that a person can be accused without *mens rea*, or intention. This allows for Section 295-C to be “a far easier offense to prove despite the fact that it stipulates a far more severe punishment.”¹¹⁰ In fact, on the issue Muhammad Tahir-ul-Qadir, a member of the FSC, stated, “the intention and motive of the offender are irrelevant and cannot be taken into consideration while deciding the case [and] a blasphemer must not be given an opportunity of a hearing to prove his intention and motive in his defense.”¹¹¹ Furthermore, Farhana Nazir notes in her doctoral thesis, “it can be said that any hint, doubt, imagination, or statement of a single witness who has seen an incident either directly or indirectly can bring punishments on those who are thereby assumed to have made an utterance in contempt of the Holy Prophet.”¹¹²

In reaction to this amendment, the same lawyer who initially requested the death penalty, Ismail Qureshi, filed a petition claiming that life imprisonment should not be included in the

¹⁰⁹ Never Forget Pakistan, “Pakistan’s Blasphemy Law: Origin of 295-C.”

¹¹⁰ Tariq Ahmad, “FALQs: Proposals to Reform Pakistan’s Blasphemy Laws” *Library of Congress* (blog), June 30, 2015, <https://blogs.loc.gov/law/2015/06/falqs-proposals-to-reform-pakistans-blasphemy-laws/>

¹¹¹ Quoted in Nazir, “A Study of the Evolution of Legislation,” 227.

¹¹² *Ibid.*, 224.

language of the clause at all. In 1990, the FSC heard the case *Qureshi v. the State* and determined that any “alternate punishment of life imprisonment as provided in Section 295-C, PPC is repugnant to the Injunctions of Islam...”¹¹³ In other words, the judges came to the conclusion that any punishment except the death penalty would not be severe enough in cases where a prophet was disrespected. Nevertheless, the judges also decided that intention was fundamental in cases under Section 295-C and that “Shariah recognizes an offence liable to Hadd only if it is accompanied by an express intention.”¹¹⁴ The judgment did not, however, direct the greater judicial system to consider intent in their decisions. In response, the federal government filed an appeal against this decision, but it was subsequently withdrawn by then-Prime Minister Nawaz Sharif, leaving the decision to be binding in all courts.¹¹⁵ The main impact of this case was that the punishment of life imprisonment was made effectively defunct in cases tried under Section 295-C.

Since the additions of Sections 295-B and 295-C to the penal code, which call for the mandatory punishment of life imprisonment and the death penalty, respectively, the number of blasphemy accusations has increased significantly. Most scholars point to the dwindling emphasis on intention as the primary reason for the growing number of accusations. Nazir argues, that the “results of this change include not only the effect on the person accused of blasphemy but also the political leaders, police and most of the lower courts and lawyers...”¹¹⁶ Because intention does not need to be established, there exists a much larger gray area in terms of dealing with these cases. The actors mentioned must navigate this gray area carefully; if they are viewed as being lenient on blasphemy cases, their actions could be also declared unislamic, and they in turn could be targeted. This broadened area of ambiguity along with pressure to support the accuser in an effort to maintain

¹¹³ *Muhammad Ismail Qureshi v. Pakistan*, PLD 1991, FSC 10, para. 67.

¹¹⁴ *Ibid.*, para. 48.

¹¹⁵ Amnesty International, “As Good as Dead,” 16.

¹¹⁶ Nazir, “A Study of the Evolution of Legislation,” 213.

personal religious integrity has created an opening for false accusations. It has created an environment in which false accusations could be successfully litigated in the justice system.

Moreover, the insertion of the death penalty has legitimized death as an acceptable punishment for blasphemy, something that has no real precedent. This may explain why there has been an increase in extrajudicial violence that has the intention of killing the accused blasphemer. Ordinary Pakistanis may have viewed the creation of the death penalty in these cases as a signal that death was the appropriate punishment for blasphemers, whether carried out by the government or otherwise. These cases of extrajudicial violence will be highlighted in the next chapter.

A Controversial Legacy

General Zia-ul-Haq's rule fundamentally changed how Pakistan's blasphemy laws exist and how they continue being used. Even so, his legacy is also key to understanding the violence and abuse we see today. His legates used the momentum Zia spurred and continued making changes and judgments that increased the laws' potency. As Shaheed notes "suggesting that his most damaging legacy may not be the laws, but bringing about a significant shift in our look and everyday norms towards an orthodoxy and orthopraxy based on bigotry, intolerance and even violence."¹¹⁷

Zia successfully capitalized on the gradual movement towards Islamic conservatism spurred by Bhutto's more secular approach to government. His policies were also strongly influenced by the Saudi Arabian government's *wahhabi* doctrine that came tied with the large injections of money funding Zia's cohort of mujahidin support. He used this group of people to prop up his illegitimate and prolonged regime. To appeal to this base of support he enforced a wide variety of Islamic provisions that would fundamentally change the Pakistani justice system. This included establishing

¹¹⁷ Shaheed, "Contested Identities," 858.

the Federal Shariat Court and politically empowering Islamic scholars. It also included penalizing Ahmadis for the very practice of their faith. Given the political pressure behind these changes, it demonstrates that despite the Islamic rhetoric surrounding these decisions, they were actually implemented for primarily non-religious considerations.¹¹⁸

In addition to this foundation, five amendments were passed in the 1980s that are now a part of the blasphemy laws. These sections include 298-A (disrespecting holy people), 295-B (defiling the Quran), 298-B and 298-C (refusing Ahmadis the right to refer to themselves as Muslims or use aspects of Islam in their religious practice), and 295-C (the death penalty for those who insult the Prophet Muhammad). Sections 295-B and 295-C are particularly controversial because they do not explicitly require the establishment of intention. When these laws were first actualized, several were concerned with the lack of *mens rea*, arguing it would allow the law to be abused for personal disputes and pave the way for groundless accusations. Furthermore, two of the amendments, Sections 298-B and 298-C, unfairly target the rights of a religious minority by impinging on their ability to practice.

Zia and his legatees made the changes that created the conditions for the widespread abuse of the blasphemy laws we see today. He passed vague and discriminatory legislation and manipulated its supporting institutions so that they are easily taken advantage of by ill-malevolent accusers. Even so, Siddique notes,

“Zia’s ‘Islamic’ laws are still perceived in popular and specialized discourse as part of a larger pattern in which the subjugation of democratic legislation and independent adjudication to political expediency subverted the processes of justice in Pakistan.”¹¹⁹

Under his government, the careful balance struck by the British between the preservation of peace and religious sensibilities fell completely out of order. Distracted by his

¹¹⁸ Jalal, *Self and Sovereignty*, 572.

¹¹⁹ Siddique, *Pakistan’s Experience with Formal Law*, 231.

own political plight, Zia made changes that continue to undermine the functionality of the Pakistani justice system, particularly as it applies to the blasphemy laws. Zia and his successors manipulated the blasphemy laws and their associated systems to the point where they currently fail to uphold the citizenship rights of Pakistanis. In a way, neither of the fundamental intentions behind the blasphemy laws have been met. The laws as they are currently used demonstrate a breakdown in order as Pakistanis use the laws for personal gain or malicious purposes. Some even circumvent the justice system completely in their pursuit of justice due to a lack of faith in these institutions. They have also failed to protect the religious sensibilities of Muslims who are the primary targets of these laws, even though the laws have been altered to specifically protect Islam.

These broad implications will be further emphasized in the following chapter. The next chapter focuses on the period immediately after Zia to assess what impact his legacy left on the adjudication of blasphemy. How this foundation has affected the practical use of these laws is considered. I also evaluate who is being targeted, how they are being accused, and for what reasons they are being implicated in these crimes. Illustrative examples are summarized to show how these cases are treated at different stages of the judicial process, and how abuse manifests itself at each of these levels. Finally, both domestic and international responses to these developments are considered to understand the greater context in which these laws operate.

Chapter 3: The Legacy of Manipulated Systems

In 1993, Manzoor Masih, Rehman Masih, and Salamat Masih were arrested after being accused of writing blasphemous content on the walls of a mosque in Gujranwala outside of Lahore. Hafiz Muhammad Fazl-e-Haq, the mosque's imam, claimed he had seen multiple instances of blasphemy perpetrated by the three accused over the past year. In addition to the words scrawled on the mosque's walls, he claimed to have seen insults about the Prophet written above the toilet, pieces of paper with derogatory language thrown at the mosque's door, and a poster with part of the *kaalima*, or the Muslim confessional, defaced. It should be noted that the imam claimed he had erased the insulting words on the mosque's walls, leaving no evidence, and also had kept the papers with insulting words about the Prophet in his possession for about a year without reporting it. After an investigation, the case went to the District & Sessions Court. On April 5, 1994, during the course of the trial, Manzoor, Rehman, and Salamat were attacked as they left the courthouse. Manzoor suffered a fatal injury. Despite this violence, the trial continued with Salamat and Rehmat.¹²⁰

As the trial progressed, the complainant, Muhammad Fazl-e-Haq, explicitly stated that he no longer wanted to continue with the trial because he was fearful for his own safety. He was also later declared a hostile witness after he had intentionally suppressed the truth under oath. Nevertheless, the trial proceeded, and his First Information Report (FIR) was still admitted into evidence even though the defense argued it had lost evidentiary value due to the complainant's behavior during the trial. Later, the second witness said he saw only Salamat writing on the wall but refused to repeat the words he saw being written on the walls due to their repugnant nature. The third witness also refused to repeat the words he saw written but claimed he also saw Rehmat writing. The defense argued this was a contradiction and effectively invalidated the original claim. The defense also

¹²⁰ Hayat and Siddique, "Unholy Speech and Holy Laws," 327-335.

pointed out that there was no clear line drawn between the other accusations besides the writing on the wall. The imam had seen the blasphemous content but not who had perpetrated it in any of the other incidents. Both Salamat and Rehmat claimed these witnesses were primarily motivated by personal disputes.¹²¹

Eventually, on February 9, 1995, Salamat and Rehmat were sentenced to death under Section 295-C. Salamat was only fourteen years old.¹²² From there, the two appealed their case to the Lahore High Court. During the course of the high court case, both Salamat and Rehman received several death threats. One organization even offered a prize of one million rupees for their death. On February 23, 1995, the Lahore High Court acquitted both Salamat and Rehmat of their crimes, severely criticizing the lower court's hearing. The judges rejected the reliability of the imam's testimony, which had been a key driver of the case. They also considered the discrepancy between the second and third witnesses' testimonies to be contradictory and rendered their accusations invalid.¹²³

This decision triggered mass public outrage, and Salamat and Rehmat were forced to seek asylum in Germany. Countrywide strikes were organized, and those associated with the case, like the judges and lawyers, were targeted. Even two years after the acquittal, a justice involved in the decision, Arif Iqbal Bhatti, was murdered in his law office, and the perpetrator explicitly cited the acquittal of Salamat and Rehmat as his reasoning.¹²⁴

¹²¹ Ibid..

¹²² Human Rights Watch, "Pakistan: Drop Blasphemy Charges Against 17-Year-Old," *Human Rights Watch*, February 2, 2011, <https://www.hrw.org/news/2011/02/02/pakistan-drop-blasphemy-charges-against-17-year-old>.

¹²³ Hayat and Siddique, "Unholy Speech and Holy Laws," 327-335.

¹²⁴ "Herald exclusive: Law unto themselves," *Dawn*, February 15, 2011, <https://www.dawn.com/news/606415>.

This case clearly demonstrates how the justice system deals with several key dimensions of blasphemy cases. First, the complainant's story was taken at face value without much investigation into the merits of his claims. Several different incidents were incorporated into the case even though there was no clear connection between the previous incidents and the accused. Furthermore, there was no real evidence of the accused being at the scene of the main crime (writing on the mosque walls) besides three witnesses who provided contradictory testimonies. The original FIR was also still admitted into evidence even though the complainant did not want to pursue the charges and was declared a hostile witness. Additionally, there were several suggestions that the key testimonies were based on personal disputes. Despite all these flaws in the case, the District & Sessions court still found the accused guilty. While the Lahore High Court eventually rectified the decision, it put many of those associated with the case at risk of violence.

This danger primarily came from the informal judicial system that exists in Pakistan. In blasphemy cases, the informal justice system generally refers to the use of extrajudicial violence when ordinary citizens choose to exact the justice they personally believe the accused deserves. This often includes inflicting violence on the alleged perpetrator of blasphemy before, while, or after the case moves through the formal justice process. The *Salamat Masih v. the State* case illustrates these issues. First, all three of the accused were targeted as they left the courthouse, killing Manzoor Masih. Later, when the case was moved to the Lahore High Court, several monetary rewards were advertised for the deaths of the remaining two defendants. After their acquittal, Salamat and Rehmat were forced to flee Pakistan because their well-being was in danger even after it had been proven that they had not committed blasphemy. In a way, simply the fact that a case had been registered and was moving through the courts put three innocent people's lives in danger. Even those associated with the case were in danger during the case and after its conclusion. The defending

lawyer's family was targeted, and one of the High Court judges was killed for his involvement in the case.

In this chapter, I highlight several issues illustrated in the *Salamat* case and demonstrate how the Pakistani justice system facilitates violence. First, I show that the number of accusations and the violence associated with these allegations surged after the Zia-era reforms of the 1980s. Next, I look deeper into these accusations and see against whom these laws are being used. Then, I analyze the processes these cases go through, both in the formal and informal justice systems, and show how each phase has its flaws. These issues are demonstrated using illustrative cases. These examples were chosen primarily because they were widely reported and therefore had a substantial amount of information available. The cases chosen demonstrate how the laws are being abused and at what points in the judicial system. After this, I show how these laws and their associated procedures can be abused and used to settle personal disputes. Finally, I outline how the international community has responded to these laws and how Pakistani officials continue to justify their existence.

A rising trend

Since the amendments made to the blasphemy laws in the 1980s, the number of blasphemy accusations and cases has increased notably. According to a recent Supreme Court decision, between 1948 and 1979 only eleven cases of blasphemy were registered. From 1979 to 1986, only three cases were registered.¹²⁵ Since 1987, however, about 1,550 cases have been reported.¹²⁶

The evidence used in this section comes from a variety of sources each using different techniques to gather their data. It sources information from media reports, court decisions, and

¹²⁵ *Malik Muhammad Mumtaz Qadri v. the State*, Supreme Court of Pakistan, Criminal Appeals No. 210 and 211 of 2015, p. 27.

¹²⁶ Ahmed, "A Brief History of the Anti-Blasphemy Laws."

compiled data from several independent researchers. Almost none of the data available can be considered authoritative, though, due to the uncertain nature of blasphemy cases. For example, an accusation may be made, but the case may not make it to the police due to extrajudicial action. In other circumstances, reliable record keeping may not have taken place at the police level even if the case formally entered the judicial system.

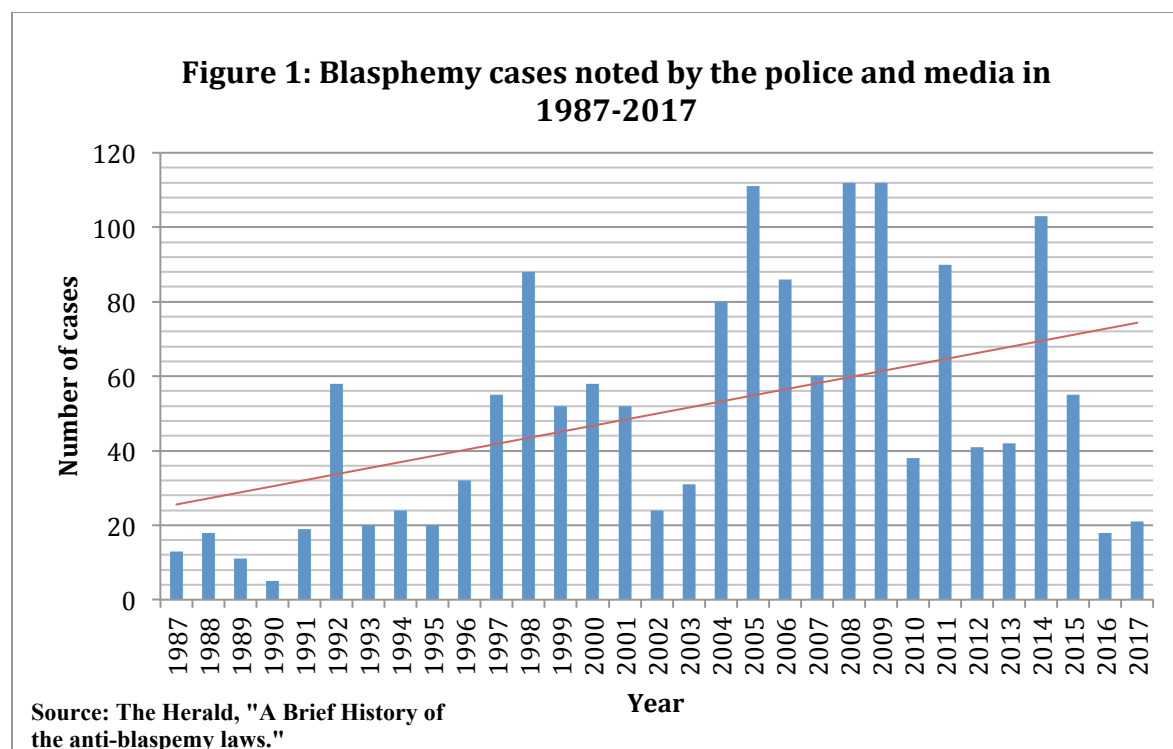


Figure 1, taken together with the fact that only about fourteen cases were reported between 1948 and 1986, illustrates that the number of blasphemy cases increased notably after Zia's regime. This data was originally sourced from the Centre for Social Justice, a Lahore-based advocacy group.¹²⁷ It should be noted that this increase in cases has not been consistent, though, over this thirty-year period being analyzed. Nevertheless, even the single year 1990, which saw the least number of cases in this period according to this particular data set, still saw five reported cases. This

¹²⁷ Ahmed, "A Brief History of the Anti-Blasphemy Laws."

is almost half of the total reported cases between 1948 and 1979. This data shows that after Zia's regime, the scale to which blasphemy accusations were being reported increased. This points to Zia's regime as one of the catalysts for the increased and systematic abuse of these laws.

Table 1: Blasphemy cases registered in Punjab between 2011 and 2015

Blasphemy Law Cases (Accused)				
Year	Registered	Accused Involved	Accused Arrested	Declared Innocent
2011	242	397	367	14
2012	300	488	338	130
2013	267	572	310	17
2014	336	573	299	62
2015	151	269	216	32
Total	1296	2299	1530	255

Source: Amnesty International, "As Good as Dead."¹²⁸

Data from the Government of Punjab paints an even more dramatic picture. Between 2011 and 2015, 1296 cases were registered just in the province of Punjab. These include cases filed under Sections 295, 295-A, 295-B, 295-C, 298, 298-A, 298-B, 298-C, and other associated laws of the PPC.¹²⁹ Table 1 shows that while 1296 cases were registered, the cases often implicate more than one person, making the number of accused involved stand at 2299 in this period. It is also important to note that in almost a fifth of these cases, the accused were eventually declared innocent. While this available data from the Government of Punjab only spans a few years, it still offers insight into how the scale of accusations has increased since the late 1980s.

While these statistics cannot be considered complete or reliable individually, they do collectively demonstrate a clear increase in accusations and cases after the Zia-era reforms. This points to the Zia-era reforms and amendments as a potential source for the increased use, and

¹²⁸ Amnesty International, "As Good as Dead," 64.

¹²⁹ Ibid.

subsequent abuse, of the laws. Access to government data and better reporting by local police would offer a clearer picture of the scale of this legislation's activity, assuming this information exists.

Who is being targeted?

Recognizing this sharp increase in blasphemy cases, we shift our focus to understanding against whom these laws are being used and by whom. By and large, most blasphemy accusations are coming from Muslims who accounted for about 98.6% of the accusations in Punjab from 2011 to 2015.¹³⁰ This is not surprising, though, since Muslims make up about 96.4% of the population in Pakistan.¹³¹ Who they primarily target, however, is more unexpected. According to data from the Government of Pakistan between 2011 and 2015, of the 1296 blasphemy-related cases that were registered, 92.2% were Muslims accusing other Muslims. Again, while this available data set only spans a few years, it does offer insight into how the government has recorded the make up of these accusations. Data was unavailable to substantiate if these statistics are consistent over a longer period of time.

¹³⁰ Ibid.

¹³¹ Pew Research Center, "The Future of World Religions: Population Growth Projections, 2010-2050," *The Pew Research Center*, April 2, 2015, <http://www.pewforum.org/2015/04/02/religious-projections-2010-2050/>.

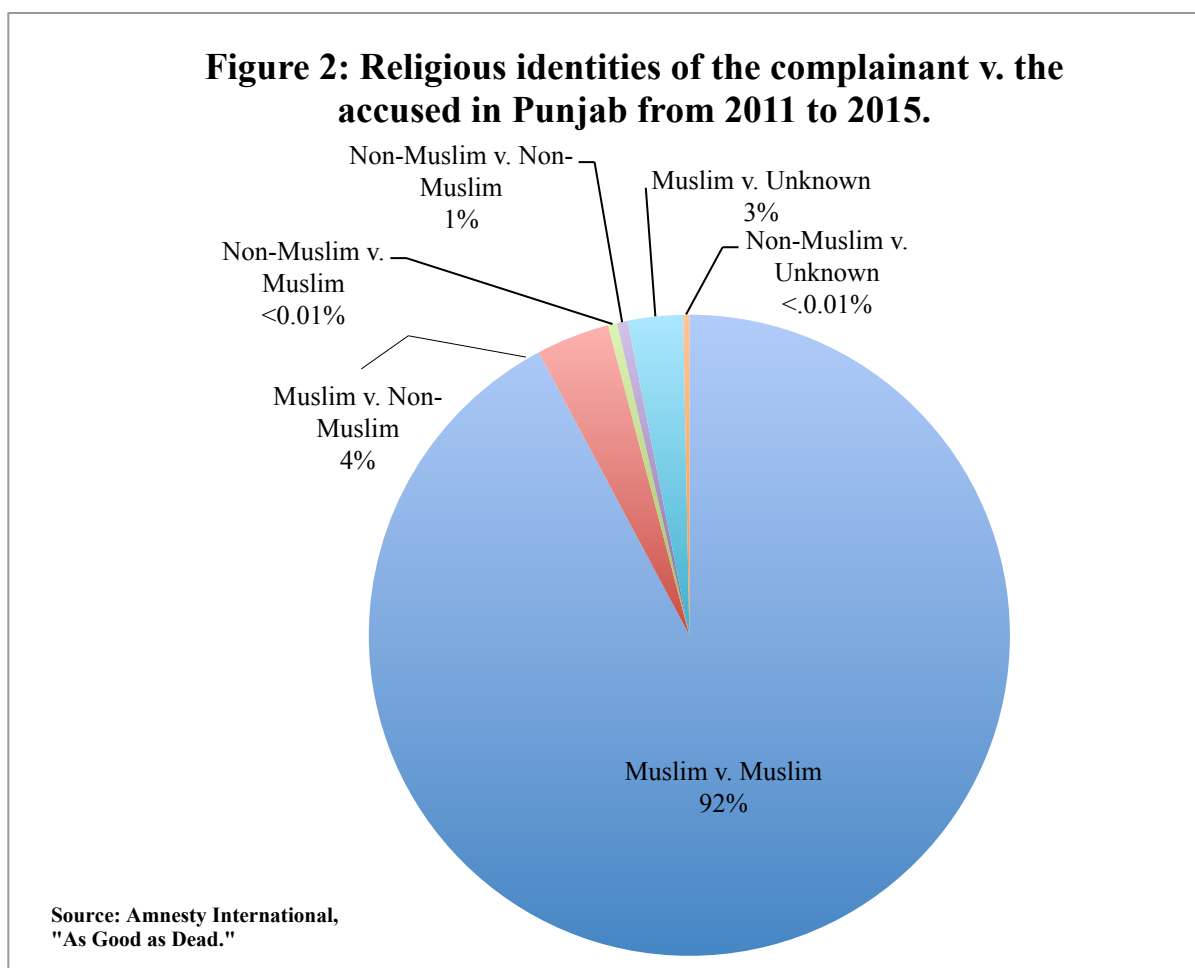


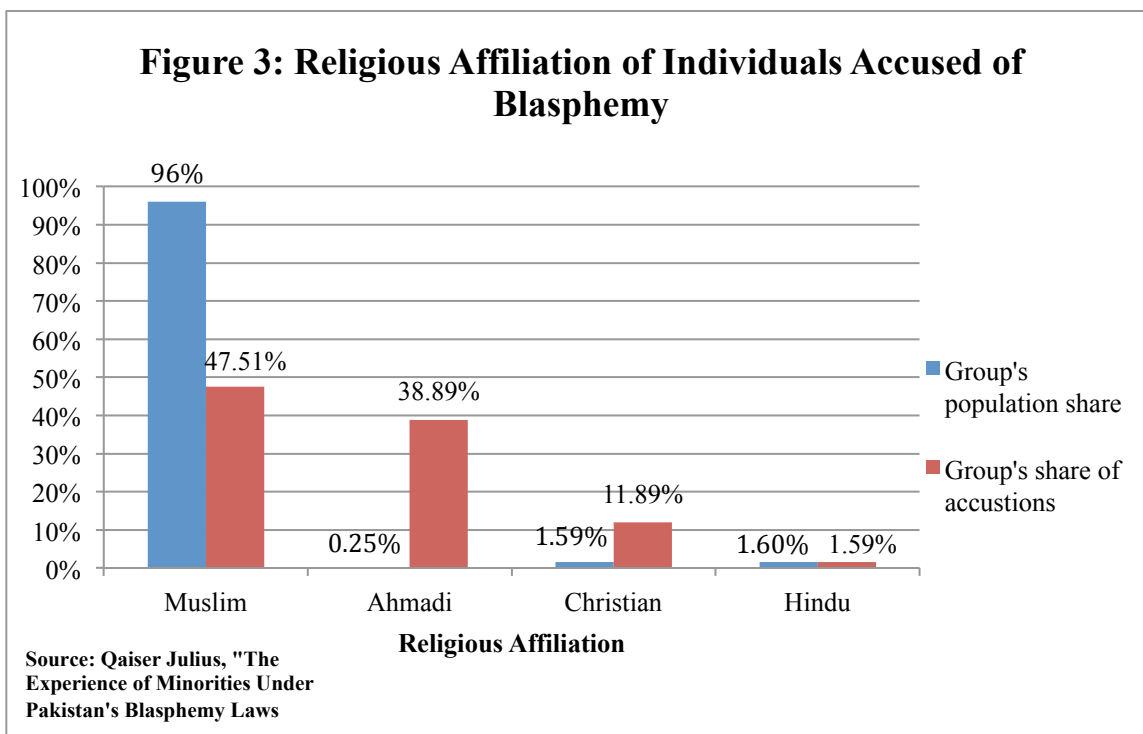
Figure 2 illustrates this breakdown of what groups are accusing whom of blasphemy. This is surprising because one would not initially expect such a large number of Muslims being accused of insulting a fundamental part of their faith. The blasphemy laws specifically target foundational components of Islamic practice, like respect for the Prophet Muhammad and the Quran. This figure shows that the very people these laws were meant to protect are becoming victims of abuse by way of these laws. One potential explanation for this stark statistic is that many Pakistanis are abusing these laws to settle personal disputes. These cases, like with Shafiq Masih and Rimsha Masih, will be illustrated later in the chapter. Another potential reason for the large number of accused Muslims

may be because the data does not disaggregate the different sects of Islam. The blasphemy laws may have legitimized the exclusionary impulses of orthodox Sunnis who were at the center of the empowered *wahhabi* movement of the 1980s. The laws could be used to target sects of Islam that believed differently from these orthodox Sunnis, fundamentally undermining these other sects' right to equal citizenship. One such group is Shi'a Muslims who according to one report make up about 70% of all Muslims accused of blasphemy.¹³²

While more Muslims are being accused of blasphemy than any other religious group, it is important to remember that Muslims make up an overwhelming majority of the Pakistani population. A deeper dive into the data reveals that religious minorities, like Ahmadis and Christians, are disproportionately targeted. Figure 3 shows that while Ahmadis make up .25% of the population, they make up 38.89% of the blasphemy cases. A similar picture can be seen with Christians who make up 1.59% of the population but account for 11.89% of blasphemy cases.¹³³

¹³² Julius, "The Experience of Minorities," 98.

¹³³ Ibid., 99.



Even so, it is important to consider this data in the greater Pakistani social context. This data may not be completely representative of the actual population of the Ahmadi community because Ahmadis may not identify as their true faith publicly for fear of violence. This would make them seem like a smaller population than they actually are.

Hayat and Siddique paint a similar picture with a different set of data. They look at the forty-one cases that were tried under Section 295-C, which calls for either life imprisonment or the death penalty, between 1960 and 2007. They find that of these cases about half of the accused were Muslims, while fifteen were Ahmadis and five were Christians. Again, religious minorities make up almost 50% of the life imprisonment or death penalty cases even though as a whole they only make up about 3% of the population.¹³⁴

¹³⁴ Hayat and Siddique, "Unholy Speech and Holy Laws," 325-327.

Although one data set alone cannot be considered conclusive, taken together they paint a compelling picture. Given this data on who is being targeted, two simultaneous phenomena can be observed. First, most accusations are Muslims targeting Muslims. This gives us pause and forces us to reconsider what this figure indicates. Most literature on the topic suggests that this statistic actually captures the personal abuse; meaning people are using the laws for personal gain instead of their intention. Reframing the make up of accusation may help illuminate deeper issues associated with these laws besides religion. This concept will be elaborated upon later in this chapter.

The second phenomenon observed is that religious minorities are the victims of a disproportionately large number of accusations. Religious minorities are accused at a much higher ratio than expected for their share of the population. Given this statistic and the rampant abuse of the laws, it suggests that religious minorities face disproportionate abuse under the blasphemy laws. This idea will be further elaborated upon in later sections.

These trends are unexpected given the original intentions of the blasphemy laws. While primarily intended to keep the peace, Macaulay also indicated that the laws were meant to protect the religious beliefs of the people of the subcontinent. This intention has clearly not been met as Muslims face the largest number of blasphemy accusations. This is even more true as the laws became much more about religion, and to a greater degree politics, than maintaining order beginning with the late 1970s and especially in the Zia period. During this time the government assumed the role of religious arbitrator as it created entirely new systems to manage religious offenses and closely integrated religious scholars into the framework of the justice system. The government of Pakistan, however, has failed to adequately fulfill this role considering the sheer number of Muslims that are being accused of disrespecting their own religion under laws that have been altered to specifically protect their religious sensibilities.

Religious Minorities

Even though Muslims face the largest number of accusations, religious minorities still are the victims of a disproportionately large share of all blasphemy cases. Two of the most vulnerable groups have been the Christian and Ahmadi communities. Perhaps one of the largest and most violent outbursts against the Christian community was in 2013 when a mob attacked Joseph Colony in Lahore. In this case, a single Christian worker was accused of insulting the Prophet while having an argument with a friend. Before the police could even prepare to arrest the worker, several thousand Muslims gathered at the largely Christian neighborhood of Joseph Colony. By the end of the day, more than 170 of the 200 houses had been burned, twenty-eight were wounded, and four people were killed.¹³⁵ The Supreme Court took on the case *suo motu*, meaning it heard the case without a formal request, and ruled that the police had failed to protect the citizens of Joseph Colony due to negligence. In the proceedings, the judges also scrutinized whether the attack had been motivated by the value of the land.¹³⁶ This is because after the attack, several media sources reported that land mafias had wanted Joseph Colony's land for industrial development.¹³⁷ This case shows how blasphemy charges were used as a means of fulfilling a personal motive and how the police mishandled allegations.

Another notable attack was on Shama and Shahzad Masih, a Christian couple in Punjab. They were accused of burning pages of the Quran when in fact they were simply burning unwanted items, a common practice in Pakistan. The news of the alleged blasphemy spread quickly and soon a

¹³⁵ Waqar Gillani and Declan Walsh, "Attack on Christians Follows Claim of Blasphemy in Pakistan," *The New York Times*, March 9, 2013, <http://www.nytimes.com/2013/03/10/world/asia/explosion-rips-through-mosque-in-peshawar-pakistan.html>.

¹³⁶ "Joseph Colony case: Police failed in protecting citizens, says SC," *the Express Tribune*, March 11, 2013, <https://tribune.com.pk/story/519076/joseph-colony-case-who-was-responsible-for-the-incident-asks-sc/>.

¹³⁷ Khurshid Akhtar Khan, "The Joseph Colony Incident," *The Nation*, March 19, 2013, <https://nation.com.pk/19-Mar-2013/the-joseph-colony-incident>.

mob of about 500 people made their way to the village, grabbed Shama and Shahzad, and burned them alive in a brick-making kiln. It initially took more than two hours for the first five police officers to arrive at the scene, for which they were clearly unprepared; more police did not arrive for another hour. This lack of response was surprising because the police had actually heard rumors of a mob attack the night before, but the information was not communicated to senior officers who could have been more prepared for the subsequent violence.¹³⁸

These cases show the extrajudicial violence faced by religious minorities on account of unsubstantiated blasphemy claims. They show the types of violence Christians are subject to simply because of their faith. Even those who are not accused of blasphemy can be targeted by indiscriminate and enraged mobs that channel their anger towards the entire community instead of just the accused. Nonetheless, Ahmadis bear an even greater share of blasphemy cases.

Abuse of the Ahmadi Community

The Ahmadi community is at even more risk since their very right to religious practice is condemned by the state. As highlighted in Chapter two, the Ahmadi community suffered severe restrictions to their right to practice in the 1980s under Zia. In 1984, Ordinance XX was passed, introducing Sections 298-B and 298-C into the PPC. These sections forbade Ahmadis to call themselves Muslim or use Islamic terms to refer to different parts of their faith among other restrictions. The passage of this legislation in effect legitimized and gave state support to hostility against the Ahmadi community. Since the passage of these laws and the incorporation of the death

¹³⁸ Amnesty International, “As Good as Dead,” 47.

penalty with Section 295-C, the number of blasphemy case registered has risen sharply with the largest share of allegations made against Ahmadis.¹³⁹

One widely cited case is *Nasir Ahmad v. State* in 1993. In this case, an Ahmadi family was accused of blasphemy after they printed Muslim expressions on wedding cards. It was claimed that in printing these expressions, they were posing as Muslims, which is in clear violation of Section 298-C. While the lower court originally found the family's patriarch guilty, he was acquitted in his appeal to the Lahore High Court.¹⁴⁰ This case shows that even a relatively personal document that was clearly not written with any intent to insult can still be used to jail Ahmadis. A similar situation occurred in 2004 with *Mirza Mubarak Ahmed v. State*. In this case, an Ahmadi wrote a letter in which he blessed the Prophet Muhammad and Mirza Ghulam Ahmad. He was accused of equating Mirza Ghulam Ahmed with the Prophet and in effect defiling the Prophet Muhammad's stature.¹⁴¹ Again a seemingly innocent action was used to allege blasphemy.

In reaction, there have been efforts by the Ahmadi community to combat the abuse they face on account of the blasphemy laws. In 1993, the Supreme Court dismissed eight appeals brought by Ahmadi Muslims who claimed that Ordinance XX violated the religious rights of religious minorities. In the decision, Justice Abdul Qadeer Chaudhry wrote that when Ahmadis use Islamic terms or exalted the name of Mirza Ghulam Ahmed,

“it would amount to publically defiling the name of the Holy Prophet (PBUH) and also other Prophets...thus infuriating and instigating the Muslims so that there may be a serious cause for disturbance of the public peace, order, and tranquility and it may result in loss of life and property.”¹⁴²

¹³⁹ Hayat and Siddique, “Unholy Speech and Holy Laws,” 325-327.

¹⁴⁰ *Nasir Ahmad v. State*, (1993) 26 S.C.M.R.153, 154 (Pak..)

¹⁴¹ *Mirza Mubarak Ahmed v. State*, (1989) 7 M.L.D. 896, 896 (Pak.).

¹⁴² *Zabeeruddin v. State*. 1993. 26 S.C.M.R. 1718 (S.Ct. 1993) (Pak.).

In effect, the court reasoned that by calling themselves Muslim or using components of Islam, Ahmadis outraged the feelings of Muslims, which could cause violence and disturbance to the peace. In other words, Ahmadis' religious practice would instigate violence, which is not permitted by the penal code. This decision essentially prioritized the Muslim community's right to practice over religious minorities' rights.

Given this abuse and violence perpetrated against religious minorities in Pakistan, especially of the Christian and Ahmadi communities, under the blasphemy laws, it is clear that these laws have strayed far from their original intentions. The British envisioned these laws as a tool to reduce religious conflict between different communities. In recent decades, however, the laws have been used to ramp up religious conflict due to the changes to the justice system made during the Zia period and his successors. Religious conservatives have exploited these alterations to promulgate their own exclusionary ideas of Islam and Islamic governance.

Processing Blasphemy Cases

Given this rise in blasphemy charges, we must look more deeply into the system in which they operate. This section outlines the process blasphemy cases go through in the formal justice system, and how this process actually facilitates abuse.

The Police

Once an accusation has been made, the police register a First Information Report (FIR). The FIR is meant to be an initial record of events as a starting point for the case. There have been noted complaints that the police often do not register an FIR when someone asks to register one or they

do not push the FIR through to the next step in the process.¹⁴³ From there, an investigation into blasphemy charges can be launched immediately since religious offenses are considered “cognizable.” This means that police have the right to start an investigation without the approval of a magistrate and can also arrest individuals involved without a warrant.¹⁴⁴ A person can be arrested when “reasonable complaint, credible information or reasonable suspicion” has been surmised.¹⁴⁵ This means that the accused is essentially at the mercy of the present officer’s biases. This is of special concern given that most Pakistani police officers are Muslim and are sometimes personally insulted by the content of the accusation. In fact, an investigating officer once said, “no Muslim tolerates a man who commits blasphemous acts” in relation to the extrajudicial killing of a man accused of blasphemy.¹⁴⁶ In 2004, one measure taken to combat potential bias was by requiring only police officers that rank at least at the level of Superintendent of Police to investigate cases under section 295-C.¹⁴⁷ This measure has not been implemented universally, though. High-ranking officers still often delegate the investigation of these cases to lower ranking officers.¹⁴⁸

While these procedures are in place officially, it is not how police officers have generally pursued these cases. Instead of carefully assessing the merits of the complaint, police will often make arrests in reaction to public pressure.¹⁴⁹ Additionally, there have been several other criticisms of the Pakistani police force. One problem is police corruption. An example of this is the politicization of

¹⁴³ Siddique, *Pakistan’s Experience with Formal Law*, 203.

¹⁴⁴ Research Society of International Law, “Frequently Applied Police Laws and Criminal Procedures: An Abridged Compendium,” *National Bureau of Police*, July 2016, 61; The Code of Criminal Procedure, Pakistan Code (1898) §4(f).

¹⁴⁵ Research Society of International Law, “Frequently Applied Police Laws,” 68.

¹⁴⁶ Rana Tanveer, “Another blasphemy accused killed,” *The Express Tribune*, November 15, 2010, <https://tribune.com.pk/story/77473/another-blasphemy-accused-killed/>.

¹⁴⁷ Majlis-e-Shoora (Parliament) “Act, Ordinances, President’s Orders and Regulations,” *The Gazette of Pakistan*, January 10, 2005.

¹⁴⁸ Shahzada Irfan Ahmed, “The Burden of Procedures,” *The News*, April 6, 2014, <http://tns.thenews.com.pk/burden-procedures-blasphemy-laws/#.WqiLLJPwYci>.

¹⁴⁹ Amnesty International, “As Good as Dead,” 29.

police work. Officers in some areas have worked with political leaders in order to have a better chance at securing certain appointments. These relationships have ranged from suppressing dissent to interfering with elections.¹⁵⁰ Another widely cited misgiving about the Pakistani police force is their inability to manage the investigation of these cases. One judge even noted in his decision, “we have seen the failure, inefficiency and incompetence of the Investigating Officer in handling the present case with all its consequences.”¹⁵¹

The police have also been criticized for their inability to protect the accused especially in cases of blasphemy. For example, in 2012 the police arrested a man for allegedly desecrating the Quran and brought him into custody at the Chanighot police station in Bahawalpur. Once at the station, however, a crowd of hundreds gathered trying to get the accused from the police. Eventually, the mob was successful in retrieving the alleged blasphemer and burned him alive at the site of his crime.¹⁵² Even when the accused are well within police custody, they may not be safe from harm. In 2014, a Shi’a man, Tufail Haider, was killed by a police officer at the station. According to one of his colleagues, “[the officer] could not control his emotions.”¹⁵³

After the investigation, if the police find enough evidence, they will bring the case to trial by filing a *challan*, or trial recommendation. According to an *Amnesty International* report, however, these *challan* are often weak due to pressure on the police to quickly complete investigations. In fact, many of the cases heard at the level of the High Court cite insufficient evidence as one of their key reasons

¹⁵⁰ Hassan Abbas, “Reforming Pakistan’s Police and Law Enforcement Infrastructure,” *United States Institute of Peace*, Special Report 266, February 2011: 9.

¹⁵¹ *Muhammad Mahboob v The State* (PLD 2002 Lahore 587), (2002).

¹⁵² Kashif Zafar, “Bahawalpur Mob Justice: ‘Blasphemer’ Burnt Alive by Mob as Police Looked on,” July 4, 2012, <https://tribune.com.pk/story/403534/blasphemy-mob-burns-man-alive-for-burning-holy-quran/>.

¹⁵³ Mubasher Bukhari, “Pakistani police officer axes man to death over blasphemy,” *Reuters*, November 6, 2014, <https://www.reuters.com/article/us-pakistan-blasphemy/pakistani-police-officer-axes-man-to-death-over-blasphemy-idUSKBN0IQ15220141106>.

for acquittals.¹⁵⁴ While they are acquitted, the fact that these cases must be acquitted at the High Court demonstrates failures at the police and lower court levels.

As demonstrated, there are major flaws in how the police manage blasphemy cases. This mismanagement allows for the blasphemy laws to be even more vulnerable to misuse. Their failure in judicially handling these cases has also caused some to lose faith in the police's ability to handle criminal cases in general, causing them to turn to extrajudicial options to uphold their understanding of justice.

The Courts

Once at trial, the courts hear evidence from both the prosecution and the defense. One difficulty of defending these cases is that even those associated with the alleged blasphemer can be threatened with violence. In an interview with *Amnesty International*, the father of an accused blasphemer described his difficulties in hiring a lawyer saying, "I managed to hire a lawyer who I paid one lakh rupees upfront to get my son bail. At the first bail hearing there were about fifty clerics and they physically attacked the lawyer in court. They pulled his coat off and tore his shirt. He ran away and quit from the case."¹⁵⁵ Many alleged blasphemers sometimes struggle in finding qualified representation due to the taboo nature of the allegations.

Another issue noted, especially in the District & Sessions courts, or the lower courts, is maintaining the independence of the courts. In other words, making sure the courts are not being influenced by politics, public or personal opinion. One High Court judge noted the lack of independence in the lower courts in his decision. He commented that even the presence of an accusation influenced judges to convict the accused, sometimes even causing them to lower their

¹⁵⁴ Amnesty International, "As Good as Dead," 31.

¹⁵⁵ *Ibid.*, 34.

standard of proof.¹⁵⁶ In 2010, Chief Justice Mian Nazir Akhtar went as far as publicly expressing his bias by saying, “no one had authority to pardon blasphemy and anyone accused of blasphemy should be killed on the spot as religious obligation.”¹⁵⁷ There is also a perception that judges can be susceptible to corruption through bribes and political favors that may influence the bias of their judgment.¹⁵⁸

Furthermore, there have been several reports of intimidation and even murders of judges involved in acquitting those accused of blasphemy, like in the *Salamat Masih v. the State* case outlined earlier. Another Pakistani lawyer noted, “The judges just didn’t want to acknowledge what the evidence was telling them because they were so worried about the consequences for themselves and others in their court.”¹⁵⁹ Another problem faced in trial is that judges do not expect the complainant or witnesses to repeat the words they claim to have heard. Their main reasoning is to protect the sensibilities of the complainant and those hearing the case so that the insults against the Prophet are not repeated.¹⁶⁰ This, however, severely detracts from the merits of the case since the main point of contention is essentially not admitted into the proceedings.

After a decision has been made in the District & Sessions court, it can be appealed to one of five High Courts. Beyond this, a final appeal can be made to the Supreme Court of Pakistan where all decisions are final. The appeals process, however, can take several years. In fact, Asia Bibi, whose case was outlined earlier, has been waiting for her appeal to be heard in the Supreme Court since

¹⁵⁶ *Muhammad Mahboob v The State* (PLD 2002 Lahore 587), (2002).

¹⁵⁷ quoted in U.S. Congress, House, Human Rights Commission, *Blasphemy Laws and Censorship by States and Non-State Actors: Examining Global Threats to Freedom of Expression*, 114th Cong. 2nd sess., 2016, 24.

¹⁵⁸ Siddique, *Pakistan’s Experience with Formal Law*, 146.

¹⁵⁹ Amnesty International, “As Good as Dead,” 36-7.

¹⁶⁰ *Ibid.*, 39.

November 2014.¹⁶¹ Siddique notes that some cases are stalled for more than twenty years.¹⁶² He further notes that sometimes these delays are even intentional by the complainant.¹⁶³ A blasphemy allegation, for example, may have no basis, but it will force the accused to endure the long process of the legal system and even may put the accused in jail while the case is heard. While many cases are eventually rectified and the alleged blasphemer is acquitted, the accused sometimes is forced to endure several years of waiting for justice.

Judges at the highest levels of the court hold an especially immense amount of power in making a final decision on the case that will eventually act as precedent. Their decisions also in a way act as a proxy for the state's opinion on the matter. Some judges have argued, however, that the courts, as an arm of the federal government, have not done enough in their position to protect the rights of all citizens. In a judgment regarding recent attacks on minority populations around Pakistan, Chief Justice Tassaduq Hussain Jilani said, "it is because of [the] absence of effective State Action that despite elaborate textual guarantees for minority rights, empirical realities reflect a mixed bag, rather a dismal state of affairs."¹⁶⁴ Furthermore, Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, stated in her report, "the judiciary too has grown very afraid of public sentiment regarding blasphemy cases. Such sentiment...results in a biased delivery of justice."¹⁶⁵

The courts and their judges are responsible for adjudicating blasphemy cases in an unbiased and fair manner. As noted in the cases above, however, this is not always the case. Both police

¹⁶¹ AFP, "On Death Row for Blasphemy, Asia Bibi Makes Final Appeal to SC," *Dawn*, November 24, 2014, <https://www.dawn.com/news/1146577>.

¹⁶² Siddique, *Pakistan's Experience with Formal Law*, 121.

¹⁶³ *Ibid.*, 135.

¹⁶⁴ Supreme Court of Pakistan. 2014. S.M.C. No. 1 of 2014 (SC) (Pak.).

¹⁶⁵ United Nations, General Assembly, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul*. . (A/HRC/23/43/Add.2). Official Record. April 4, 2013.

officers and judges are susceptible to outside pressures and often hold their own biases regarding the cases they are handling. These biases are rooted in how religion is discussed more broadly by Pakistani society. As religion became increasingly politicized throughout the late 20th century, exclusionary state politics that strived to define the acceptable terms of Islam permeated into the every day lives of citizens.

The justice system does not fairly arbitrate blasphemy cases. At both the police and court levels, arbitrators in the criminal justice system have historically mishandled blasphemy cases by admitting faulty evidence and poorly investigating cases. They have also demonstrated their biases by allowing their personal faith to influence their decision-making. Both levels are also susceptible to outside pressures from the media and the public. Each of these flaws in the justice system has created opportunities for abuse by selfishly motivated individuals who use the nature of the blasphemy laws and how they are processed to their advantage. The manipulation of these systems has led to rampant abuse at all levels of the formal criminal justice system and has given rise to the informal justice system.

The Informal Justice System

Even though a formal justice system exists to deal with blasphemy cases, there are many cases where Pakistanis decide to deal with blasphemy accusations informally. As Knaul reported, “it seems that a great number of people do not trust the formal justice system, claiming that it is complex, difficult, slow, and expensive, as opposed to the informal system which allegedly provides simple, cheap and quick relief.”¹⁶⁶

¹⁶⁶ Ibid.

Throughout this chapter, several instances of extrajudicial mob violence have been reviewed, such as the events in Joseph Colony and the attack on the Christian couple thrown in the kiln. These were not isolated events. In fact according to some reports, at least thirty-nine people accused of blasphemy were murdered before their trial's completion between 1986 to January 2011.¹⁶⁷ A recent Supreme Court case even reported that since 1990, fifty-two people had been extrajudicially murdered for their involvement in blasphemy cases.¹⁶⁸

One of the most extreme examples of extrajudicial violence happened in 1997 in the neighboring villages of Shanti Nagar and Tibba near Multan. The accusation of blasphemy stemmed from a rumor that someone in Shanti Nagar had desecrated the Quran. News of the blasphemy spread overnight, and the next morning a mob of about 30,000 people descended upon the towns. By the morning almost 800 houses were burned to the ground. To understand why such a large group of people would resort to mob violence over pursuing the case through the police, it is useful to understand the context. About a month before the attack, the police had raided the house of a Christian man who made alcohol and ran a gambling den. During their search of his house, the police threw a Bible on the ground. The Christian elders of the community complained to the police and said the policeman responsible should be charged with blasphemy. While the police officer was not charged with blasphemy, it created a tense environment. It was an especially contentious situation because the Christian community's vote was needed in an upcoming National Assembly election.¹⁶⁹ Because the police were in communication and viewed as cooperating with the Christian community, the Muslims may not have trusted the police to fairly investigate the charge of

¹⁶⁷ "Herald exclusive."

¹⁶⁸ *Malik Muhammad Mumtaz Qadri v. the State*, Supreme Court of Pakistan, criminal Appeals No. 210 and 211 of 2015, p. 26

¹⁶⁹ Sarah Eleazar, "20 years after Shanti Nagar," *Dawn*, February 7, 2017, <https://www.dawn.com/news/1313096>.

desecrating the Quran. Because of these circumstances, they decided to take matters into their own hands since they did not trust the formal criminal justice system.

Each of these blasphemy cases was pursued outside of the formal justice system. Instead of registering a case with the police, Pakistanis took matters into their own hands. The extent of this problem is difficult to assess due to its operation outside of official system. We must rely on the cases that are reported in the media, even though it may not fully capture the entirety of the problem. While not absolutely clear from the reporting on these instances of violence, people may have chosen the informal justice system for a variety of reasons. For example, they may have wanted the instant gratification of a swift delivery of justice. Personally motivated cases also may use large vigilante mobs to quickly take care of their problem both quickly and with public support. Those who turn to extrajudicial action also may also have lost faith in the formal justice system's ability to handle these cases due to the demonstrated systematic failures. This loss of confidence in the justice system, a fundamental part of any government, is dangerous. As Julian Roberts notes, public confidence in the criminal justice system is critical as it affects public participation in the system, which is key in the effective prosecution of guilty parties.¹⁷⁰ More than this, the Pakistani state derives a large amount of its authority from its ability to maintain security, clear given the public's deference to the army. Security is in large part facilitated by the criminal justice system, which holds the responsibility of arbitrating breaches of security. As faith in these institutions decreases, however, so does the state's authority.¹⁷¹

Furthermore, the emergence of this robust informal justice system demonstrates another way that the blasphemy laws as they are used today have deviated from their original British

¹⁷⁰ Julian Roberts, "Public Confidence in Criminal Justice in Canada: A Comparative and Contextual Analysis," *Canadian Journal of Criminology and Criminal Justice*, 49, no. 2 (2007): 154.

¹⁷¹ International Crisis Group, "Reforming Pakistan's Criminal Justice System," Asia Report no. 196 (2010): 30.

intention of maintaining order. As demonstrated in the cases above, Pakistanis are operating outside of the justice system meant to adjudicate and manage conflicts. Their use of the informal system represents a break down in order because in most of these extrajudicial cases, citizens are using violent means to exact their justice. They are not arbitrating these conflicts in either a peaceful or an orderly way.

Mala Fide

Because of the laws' malleability, they are often subject to abuse. This sometimes comes in the form of the complainant registering a case due to a personal dispute. Because the blasphemy laws are relatively subjective, they facilitate abuse by allowing the complainant to make relatively vague accusations. For example, under Section 295-C "any imputation, innuendo, or insinuation" that "directly or indirectly defiles the sacred name of the Holy Prophet Muhammad (PBUH)" is subject to punishment.¹⁷² In fact, Justice Asif Saeed Khan Khosa's judgment in the case *Malik Muhammad Mumtaz Qadri v the State* referenced the following statement, "the majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community."¹⁷³ His finding is less surprising considering that property or land disputes make up more than half of all legal disputes in Pakistan.¹⁷⁴

One example of how a complainant may use the laws to exact revenge on the accused happened in 1998. Shafiq Masih was accused of blasphemy after he was involved in an argument with a neighbor who would not contribute to a shared electricity bill. While a local imam registered

¹⁷² "Pakistan Penal Code," §295-C

¹⁷³ *Malik Muhammad Mumtaz Qadri v. the State*, Criminal Appeals No. 210 and 211 of 2015.

¹⁷⁴ Siddique, *Pakistan's Experience with Formal Law*, 117.

the case, Shafiq was sure that his neighbor had been the source of the charge.¹⁷⁵ Another case was in 2012 when a local imam accused Rimsha Masih, a mentally impaired Christian girl, of blasphemy. The imam said that he caught the girl burning pages of the Quran. Upon further investigation, however, it seemed the imam had actually planted the pages in her bag. It was later discovered that this same imam was known for his general enmity for the local Christian community.¹⁷⁶

The cases presented are only the ones in which personal motivation was surmised during the investigation or in media coverage. It is difficult to understand the scope of how personal disputes affect blasphemy cases because these motivations are easily hidden. As noted before, for instance, complainants are not even required to repeat the blasphemous content in court.

Repercussions of false accusation

Because the blasphemy laws are so vulnerable to abuse, it would seem fair that there were procedures or laws to deal with false accusations, especially given the existence of the death penalty in some cases. Even if an accusation is proven to be false, it is actually quite difficult to pursue a case against the original complainant. One reason for this is that false accusations are non-cognizable offenses, meaning police officers need to obtain a warrant before making an arrest, unlike with the blasphemy laws. Moreover, the punishment for making a false accusation is much less for any blasphemy punishment; they can only be charged with a maximum of six months in prison.¹⁷⁷ These relatively mild punishments do not discourage people from making false accusations because those

¹⁷⁵ Rizwan Syed, "Pakistan blasphemy laws increasingly misused to settle petty disputes against Christians," *The Independent*, December 10, 2015, <http://www.independent.co.uk/news/world/asia/pakistan-blasphemy-laws-increasingly-misused-to-settle-petty-disputes-against-christians-a6768546.html>.

¹⁷⁶ Jon Boone, "Pakistan drops blasphemy case against Christian girl," *The Guardian*, November 20, 2012, <https://www.theguardian.com/world/2012/nov/20/pakistan-drops-blasphemy-case-christian>.

¹⁷⁷ Tariq Ahmad, "Why is it so easy to arrest a person for blasphemy in Pakistan?" *Foreign Policy*, July 1, 2014, <http://foreignpolicy.com/2014/07/01/why-is-it-so-easy-to-arrest-a-person-for-blasphemy-in-pakistan/>.

who make false accusations neither face a high risk of getting caught and punished, nor do they face a severe level of punishment if they are tried. Furthermore, successfully settling a personal matter may be valued at much more.

International Criticism

In response to the reports of widespread abuse facilitated by the blasphemy laws, several international organizations and national governments have condemned the present forms of the laws and have called on the Pakistani government to make changes.

Much of the criticism comes from citations of Pakistan's obligations under international law. For example, Pakistan signed the International Covenant on Civil and Political Rights (ICCPR) in 2008. This commitment holds Pakistan accountable for protecting certain freedoms for all its citizens. Article 18 in particular states,

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”¹⁷⁸

Pakistan's laws restricting the rights of Ahmadis, specifically Sections 298-B and 298-C that speak directly to the rights of Ahmadis, are in direct contradiction with these commitments.

Additionally, some international organizations claim that the very existence of these laws has negatively shaped society's perception of minorities. In a statement to the UN Human Rights Working Group, the group Muslims for Progressive Values said, “blasphemy legislation bolstered and sustained societal attitudes of discrimination against religious and ethnic minorities. Such laws

¹⁷⁸ United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, Article 18(1).

provided a legal and institutional platform for non-state actors to discriminate against them.”¹⁷⁹ In the same document, the International Court of Justice noted that Pakistan had previously accepted recommendation aimed at mitigating abuse of the blasphemy laws but had failed to act on it.¹⁸⁰ These opinions show that not only that the language of the laws is harmful and potentially illegal under international law, but also that the flaws in the institutions that support them have detrimental effects on society. Pakistan has also accepted recommendations from the international community to amend these laws, signaling that the country is aware of the laws’ deleterious effects but still has not made much tangible progress towards making a change.

While there were calls for reform before 2010, the strongest calls for reform came after Asia Bibi was sentenced with the death penalty in 2010.¹⁸¹ Her case actually corresponds to an uptick in reported blasphemy cases, shown in Figure 1. The decision in her case may have empowered others to use the blasphemy laws since they saw the harsh punishment given to Asia Bibi. In response to her case, both Pope Benedict XVI and Pope Francis have been vocal supporters of her release and have referenced her case in several public appearances.¹⁸² Moreover, her release has been incorporated into Pakistan’s economic negotiations with the European Union. Jan Figel, special envoy of the EU for the promotion of religious freedom around the world, said that if Pakistan wanted to maintain its Generalized System of Preferences (GSP) plus status, it would need to more

¹⁷⁹ United Nations, General Assembly, *Summary of Stakeholders’ submissions on Pakistan*, A/HRC/WG.6/28/PAK/3 (6-17 November 2017).

¹⁸⁰ Ibid.

¹⁸¹ Human Rights Watch, “Pakistan: Drop Blasphemy Charges Against 17-Year-Old.”

¹⁸² Rob Crilly, “Pope Benedict XVI calls for release of Christian sentenced to hang in Pakistan,” *The Telegraph*, November 18, 2010, <https://www.telegraph.co.uk/news/worldnews/asia/pakistan/8142127/Pope-Benedict-XVI-calls-for-release-of-Christian-sentenced-to-hang-in-Pakistan.html>; Farahnaz Ispahani, “Pakistan’s blasphemy laws persecute the weakest of the weak,” *CNN*, March 1, 2018, <https://www.cnn.com/2018/03/01/opinions/pakistan-blasphemy-law-opinion-ispahani/index.html>.

seriously consider the release of Asia Bibi.¹⁸³ Furthermore, several bills have been introduced in the U.S. Congress over the past several years. For example, in 2017 U.S. Senator Rand Paul demonstrated his support by introducing a bill that urged for Asia Bibi's release and reform in Pakistan's "religiously intolerant laws regarding blasphemy."¹⁸⁴

This widespread international criticism shows the international community's condemnation of these laws as they exist today. Pakistan has made several commitments as a part of numerous treaties that obligate the nation to protect certain standard of human rights for all of its citizens. As noted, Pakistan is not meeting these obligations and is as a consequence, failing to protect the welfare of its citizens.

Justification of the Laws

Given the public condemnation of these laws internationally, several public officials have felt compelled to defend the laws' existence. For example, in 1994 Rafiq Tarar, former Supreme Court judge and president of Pakistan, said "if this law is not there the doors to courts will be closed on the culprits and the petitioners provoked by them, and then everyone will take the law in his own hands and exact revenge from the criminals. As a result anarchy will prevail in the country."¹⁸⁵ This statement emphasizes the argument that the laws' are a tool to manage law and order, as mentioned in previous chapters. Others cite their personal Islamic faith and the faith of the Muslim population in Pakistan as the primarily reason to not reform the blasphemy laws. This argument echoes the reasoning given during the debates when the amendments to the laws were first introduced. Some politicians have blamed other parts of government for their involvement in maintaining the law. In

¹⁸³ "The EU Remembers Asia Bibi," *European Union Cooperation in Pakistan*, February 1, 2018, <https://europeanunion.pk/?p=2313>

¹⁸⁴ S. Res. 109, 115th Cong. (2017).

¹⁸⁵ Rehman, "Blasphemy law revisited."

September 2017, Prime Minister Shahid Khaqan Abbasi said “[it’s] only up to the parliament to amend the laws. The job of the government is to make sure that the laws are not abused and innocent people are not prosecuted.”¹⁸⁶

From this it is clear that a number of government officials either support the laws as they exist or do not accept responsibility for the abuse these laws generate. As demonstrated throughout this thesis, however, all levels of government are responsible for the perpetration of violence under these laws. They all have a role to play in amending these laws as they stand today undermine both citizenship and human rights.

In conclusion, the number of blasphemy cases has increased dramatically since the Zia-era reforms in the 1980s. This suggests that the facilitators of abuse were created during his regime. Most of the accusations made are against Muslims, who the laws are theoretically meant to protect. Even so, religious minorities, Ahmadis and Christians in particular, are disproportionately affected by allegations. Once a case is registered it usually goes through the formal justice system, which starts with the registration of an FIR. From there the police investigate the charges. The police, however, have been shown to mishandle these investigations often to the detriment of the accused. If enough evidence is gathered, the case goes to trial at the District & Sessions court. It is at this level that the judges seem to have shown the most bias according to several High Court and Supreme Court reviews. Even though this formal justice system exists, some choose to use the informal system. This usually takes the form of people who feel particularly perturbed by the blasphemy deciding to exact violence on the alleged blasphemer, sometimes extending this violence to the accused’s general community.

¹⁸⁶ Naila Inayat, “Pakistan alarms U.S. with harsh blasphemy laws allowing rise of radical Islam,” January 16, 2018, <https://www.washingtontimes.com/news/2018/jan/16/pakistans-islam-blasphemy-laws-hurt-us-relations/>.

Given this data and the cited cases, it is clear that the blasphemy laws are seriously vulnerable to abuse. The exploitation of these laws primarily originates from the end of General Zia-ul-Haq's military regime that lasted until the late 1980s. From the early 1990s onwards, Pakistan has witnessed a dramatic rise in cases that many report comes from increased abuse of these laws.¹⁸⁷ While there exist serious problems in the criminal justice system as a whole, the blasphemy laws are particularly subject to abuse due to their vague language, arbitrary implementation, and taboo nature. These flaws have allowed for this legislation to be used to settle personal disputes and curb the right to security of citizens, especially religious minorities. Even though this abuse is well-documented and prevalent, changes to the laws or their implementing systems have not been made.

The restrictive nature of these laws on religious minorities and their apparent vulnerability has been the source of international criticism. International organizations and other governments have reprimanded Pakistan for its failing international law commitments and the government's general sense of apathy towards its religious minorities. Nonetheless, justification of these laws has come in several different forms from government leaders.

The increased use and abuse of the laws represent a fundamental divergence from their original intentions. The British envisioned these laws as a tool to maintain law and order, but they have since devolved into an instrument of violence that violates the security of Pakistanis across the board. Changes primarily made during the Zia era to the justice system have created easy loopholes for religious conservatives and Pakistanis with malicious motives to exploit. Their use of these windows has let to the breakdown of order as practically anyone can be accused of blasphemy and even innocents can face violent consequences. What is even more interesting is the fact that most blasphemy cases target Muslims. Even though the Pakistani government notably prioritized the

¹⁸⁷ Ahmad, "Why is it so easy to arrest a person for blasphemy in Pakistan?"

religious sensibilities of Muslims after the late 1970s, the laws and their implementing structures have been manipulated in such a way that Muslims are not practically protected under these laws.

The next chapter will explore how the assassination of former Governor of Punjab, Salman Taseer, ushered in a new era of the blasphemy laws and their operation in Pakistan. As international support poured in especially after the Asia Bibi case, more Pakistanis became empowered to speak out against the laws. Since 2011, more calls for reform have been vocalized, both internationally and domestically; even so, major changes have not been made. Censorship, both directly by the government and indirectly through vigilante justice, has stunted reform efforts. To understand these recent developments, Pakistan's recent socio-political history is analyzed and major actors' actions are highlighted in the next chapter.

Chapter 4: Changing Modern Discourse

On January 4, 2011, Salman Taseer, the Governor of Punjab, was shot by his own security guard, Mumtaz Qadri, in the Kohsar Market in Islamabad. Qadri's rage was evident as he emptied more than twenty-five bullets into Taseer's back. While in police custody, Qadri plainly stated that he was enraged by Taseer's public efforts to amend the blasphemy laws.¹⁸⁸

Taseer had become a vocal critic of the legislation in the wake of Asia Bibi's case, outlined earlier. He was especially insistent on a presidential pardon that would exonerate her and void her death sentence. With regard to the legislation at-large, he said,

“The important thing to remember is that this is a man-made law, not a God-made one. What I find particularly distasteful is that when you speak of amendment, people assume you condone the crime. If I am against the death sentence, it does not mean I condone murder.”¹⁸⁹

He saw his role as a leader in initiating conversation that lay largely dormant in the public discourse. He said,

“Because I took a stand, many people have lined up and taken a stand and that, in turn, will empower judges and law-enforcement agencies to the extent that they may not bow to pressure. I think that now a policeman registering a case of blasphemy or a judge hearing a case will investigate before registering or at least think twice before hearing such a case.”¹⁹⁰

From these quotes it is clear that Taseer recognized draconian nature of these laws and saw reform, not repeal, as a viable option to reduce the violence and abuse associated with the blasphemy laws. Even so, an outspoken resistance existed and continues to persist. Only a few days before the assassination, supporters of Tehreek-i-Tahafuz-i-Namoos-i-Risalat (TTNS) staged a rally in Rawalpindi that promised a “long march and civil disobedience if the government attempted any amendments in the blasphemy laws.” Within the government there was also fierce opposition to

¹⁸⁸ “Punjab Governor Salman Taseer assassinated in Islamabad.”

¹⁸⁹ Ayesha Tammy Haq, “Interview: Salman Taseer, Governor of Punjab,” *Newsline*, December 2010, <http://newslinemagazine.com/magazine/interview-salmaan-taseer-governor-of-punjab/>

¹⁹⁰ Ibid.

amending the legislation. Law Minister Babar Awan said in 2010, “in my presence as the law minister, no one should think of [eliminating] this law.”¹⁹¹

After being arrested at the scene, Mumtaz Qadri was convicted and sentenced to death by hanging. As noted previously, he was clear that he was motivated by his frustration with Taseer’s liberal views regarding blasphemy legislation. These views were evidently shared by many with 40,000 people descending upon Rawalpindi on March 1, 2016 to mourn Qadri’s death after he was hanged by the state.¹⁹² Many considered him a hero and a martyr who died in service to Islam. Surprisingly, the mass mourning was not widely covered by the media. Some analysts suggest that they were discouraged from covering the events at the behest of the military.¹⁹³ Even years after Qadri’s execution, a shrine exists at his burial site, funded by donations and visited by thousands.¹⁹⁴

Changing Conversations

Salman Taseer’s assassination marked a new chapter in the discourse surrounding the blasphemy laws in Pakistan. As he said himself, his outspoken efforts to garner support for amendments encouraged a dialogue by showing that there existed a group of people who were frustrated by the current state of the laws. Nevertheless, he was assassinated for this very public display of liberal views. Since his murder, there has been a discernible chill on further public dialogue. People became afraid to talk about changes to the blasphemy laws after seeing what

¹⁹¹ “Babar Awan says no one can change blasphemy law,” *The News*, November 26, 2010, <https://www.thenews.com.pk/archive/print/610178-babar-awan-says-no-one-can-change-blasphemy-law>.

¹⁹² Jon Boone, “Thousands at funeral of Pakistani executed for murdering governor,” *The Guardian*, March 1, 2016, <https://www.theguardian.com/world/2016/mar/01/funeral-pakistani-mumtaz-qadri-executed-salman-taseer>.

¹⁹³ “Pakistan Salman Taseer murder: thousands mourn at Mumtaz Qadri funeral,” *BBC*, March 1, 2016, <http://www.bbc.com/news/world-asia-35693767>.

¹⁹⁴ Asad Hashim, “In Pakistan, a shrine to murder for ‘blasphemy,’” *Al Jazeera*, February 10, 2017, <https://www.aljazeera.com/indepth/features/2017/02/pakistan-shrine-murder-blasphemy-170206103344830.html>.

happened to Taseer. Furthermore, other organs, like the military and media, have made notable interferences with blasphemy cases. This chapter seeks to explore how the blasphemy laws are being discussed, both politically and socially, and how that discourse has shaped efforts at reform.

The Limits to Freedom

Considering how the blasphemy laws are used in today's context, one might think that Pakistan's justice system does not value the freedoms of speech and expression. This, however, is not an accurate representation of the situation.

There exist explicit provisions within the Pakistani Constitution that protect speech and religion. Article 19 states, "every citizen shall have the right to freedom of speech and expression," while Article 20 says, "every citizen shall have the right to profess, practice and propagate his religion."¹⁹⁵ An important stipulation regarding Article 20, however, is that its text is prefaced with "subject to law, public order and morality."¹⁹⁶ This phrase is important because it is used to justify the restriction on Ahmadis to practice their religion. The most popular reasoning for this discrimination against Ahmadis is that when this group practices their faith, their practice engenders public outrage that can be translated into violence that disturbs the general peace.

In terms of blasphemy cases, Article 19 is more widely cited. As Hayat and Siddique point out, though, the courts have generally approached these cases by assessing the "reasonableness" in each case's situation.¹⁹⁷ In fact, one Supreme Court case in 1993 declared,

"In a democratic setup, freedom of speech/expression and freedom of press are the essential requirements of democracy and without them, the concept of democracy cannot survive. From perusal of Article 19, it is, however, absolutely clear that above right is not

¹⁹⁵ Pakistan Const. art. 19, art 20.

¹⁹⁶ Ibid.

¹⁹⁷ Hayat and Siddique, "Unholy Speech and Holy Laws," 371.

absolute but reasonable restrictions on reasonable grounds can always be imposed. Reasonable classification is always permissible and law permits so.”¹⁹⁸

In contention with the seemingly clear provisions of Article 19 and 20, however, is the much less clear Article 2-A. Originally introduced as a part of the Objectives Resolution, introduced in 1949 as a part of the preamble, it was later incorporated into the body of the Constitution through a presidential ordinance under Zia. This move officially wove religion, and specifically Islam, into Pakistan’s guiding principles. As mentioned earlier, this elevated Islam so that it was on equal footing with constitutional provisions like freedom of expression. In effect, this forces judges to consider Islamic thought in their adjudication of blasphemy cases.

In theory there should not be a conflict between the provisions of Articles 19 and 20 and Article 2-A; most interpretations of Islamic thought do not restrict the freedom of expression or religion. The ways in which the blasphemy laws have been applied and implemented in recent decades, however, has brought out this tension. The alterations made to both the laws and their supporting institutions since their introduction in 1860 are what have made the blasphemy laws and their application antithetical to these core principles of the constitution. As outlined in earlier chapters, these changes include the five Zia-era amendments that restricted Ahmadis right to practice their religion. It also includes the lack of evidence the police and courts accept when registering and hearing blasphemy cases. As the cases outlined throughout this thesis demonstrate, the circumstances under which the alleged blasphemy occurred are usually not considered adequately to surmise, for example, the accused’s intention to insult, a standard of customary international law. These flaws in the justice system allow the accusers to circumvent key citizenship rights using the blasphemy laws.

¹⁹⁸ Engineer Jameel Ahmad Malik v. Pakistan Ordinance Factories Board, Wah Cantt, SCMR 164, 178 (2004) (Pak.).

As illustrated by cases referenced in previous chapters, there exists tension between the concept of freedom of expression and the protection of religious sensibilities. People are not allowed to speak their genuine thoughts about Islam if they hold a negative opinion because it could insult the feelings of some Muslims. This conflict is waged in almost every case of blasphemy at practically every level. The complainant must determine whether the potential blasphemer's statements are considered insulting, the officer who is approached by a complainant must determine whether the alleged behavior constitutes as blasphemy, and the judge hearing the case must weigh the defendant's right to free speech with the implications of blasphemous behavior on society. There is no single way to deal with blasphemy cases - the choice of which principle of jurisprudence to apply is ultimately at the discretion of the person with the decision-making power in that specific situation.

As Senator Farhatullah Babar noted, "To the casual eye, our press would seem to be very free. There are voices of sanity being raised, but there is also fear and self-censorship. When it comes to what the state sees as going against national security or religion, there is no freedom of expression."¹⁹⁹

This mediation reinforces the idea that there exist greater issues regarding freedom of expression and censorship in Pakistan that go beyond the blasphemy laws. Be that as it may, examining the blasphemy laws offers insight into major flaws that affect citizenship rights especially within the justice system.

¹⁹⁹ Pamela Constable, "Did Pakistan security agents kidnap bloggers to make a point," *The Washington Post*, February 14, 2017, https://www.washingtonpost.com/world/asia_pacific/did-pakistani-security-agents-kidnap-bloggers-to-make-a-point/2017/02/12/3f672d72-ed66-11e6-a100-fdaaf400369a_story.html?utm_term=.8fd45fe81183.

Censorship

These questions of freedom of expression have been further pushed into the limelight in the digital age. In the past decade, several arms of the government have made efforts to limit access to Internet content. As Pervez Hoodbhoy, academic and activist, said, “Until recently, social media afforded a measure of privacy where you could discuss the hypocrisy of people whose behavior was loathsome... Now the state is saying that we will track you down wherever you are and however you might want to hide.”²⁰⁰

Facebook has been one of the primary targets of censorship. In 2010, Pakistan blocked Facebook for two weeks after the group called “Everybody Draw Muhammad Day” surfaced on the site. The ban was prompted after thousands took to the streets in protest and the group, the Islamic Lawyers Movement, filed a petition with the Lahore High Court (LHC). In his decision, Justice Ejaz Chaudhry of the LHC ordered the Pakistan Telecommunication Authority (PTA) to block access to several sites, including Facebook.²⁰¹

Furthermore, according to Facebook’s transparency report, between January 2014 and June 2014 alone 1,773 requests were made by the PTA or the Federal Investigation Agency (FIA) to restrict access to items that were alleged to violate the local blasphemy laws.²⁰² More recently, Facebook confirmed that Pakistan demanded users connect their account with a phone number. This was requested because if someone posts blasphemous content on his or her Facebook profile, the government would have access to his or her phone number. The identity of the alleged

²⁰⁰ Quoted in Sune Engel Rasmussen and Julia Carrie Wong, “Facebook was where Pakistan could debate religion. Now it’s a tool to punish ‘blasphemers,’” *The Guardian*, July 21, 2017, <https://www.theguardian.com/technology/2017/jul/19/facebook-pakistan-blasphemy-laws-censorship>.

²⁰¹ Wendy Zeldin, “Pakistan: Court order bans access to Facebook,” *The Library of Congress*, May 21, 2010, <http://www.loc.gov/law/foreign-news/article/pakistan-court-order-bans-access-to-facebook/>.

²⁰² “Transparency Report: Pakistan January 2014-June 2014,” Facebook, accessed March 26, 2018, <https://transparency.facebook.com/country/Pakistan/2014-H1/>.

perpetrator would be easier to confirm since the government collects the fingerprints of all mobile phone users. Facebook, however, denied this request.²⁰³

Facebook is not, however, the only victim of censorship. In 2012 the incendiary short film, “The Innocence of Muslims,” was published on YouTube. This film allegedly insulted the Prophet Muhammad, and set off a string of violent protests. The controversy prompted then-Prime Minister Raja Pervez Ashraf and the Supreme Court to order the PTA to block all offensive material online.²⁰⁴ This resulted in the government blocking access to YouTube for three years. The ban was not lifted until Google, the owner of YouTube, was able to launch a Pakistan-specific version of the site that would consider removing content at the government’s request.²⁰⁵

Despite the international criticism these blanket bans have received, the federal government shows no signs of stopping its use of this tactic. In March 2017, Interior Minister Chaudhry Nisar said he would not hesitate to block “all social media websites” if they include blasphemous content.²⁰⁶

In addition to these complete bans on social media, individuals have also been targeted for content on their personal pages. In April 2017, a group of university students mercilessly beat their fellow classmate, Mashal Khan, to death. They took action after hearing that Khan had posted blasphemous content on his Facebook profile. His case gained international attention particularly because several witnesses captured the attack on video. This undeniable evidence forced the perpetrators to take responsibility for their false accusation; something that does not often happen

²⁰³ Rasmussen and Wong, “Facebook was where Pakistan could debate religion.”

²⁰⁴ AFP, “SC orders PTA to block blasphemous content,” *Geo News*, September 17, 2012, <https://tdne.geo.tv/latest/81133-sc-orders-pta-to-block-blasphemous-content>; “PM orders immediate shutdown of Youtube services,” *DAWN*, September 17, 2012, <https://www.dawn.com/news/750069>.

²⁰⁵ Tommy Wilkes, “Pakistan lifts ban on YouTube after launch of local version,” *Reuters*, January 18, 2016, <https://www.reuters.com/article/us-pakistan-youtube/pakistan-lifts-ban-on-youtube-after-launch-of-local-version-idUSKCN0UW1ER>.

²⁰⁶ “Nisar threatens to block all social media websites with ‘blasphemous content,’ *Dawn*, March 9, 2017, <https://www.dawn.com/news/1319431>.

in these cases. In February 2018, the person who shot Khan, Imran Sultan, was sentenced to death while twenty-five others were issued three-year jail sentences and twenty-six were acquitted.

Interestingly, Sultan was not convicted based on his false accusation of blasphemy. Instead he was sentenced to death based on Sections 302-B, 148, and 149.²⁰⁷ These sections punish the killing of someone intentionally and inducing riots.²⁰⁸

Later that year, the courts also took drastic action against content posted online. Taimoor Raza became the first man sentenced to death for a post on Facebook after engaging in a sectarian debate on Islam with an undercover counter-terrorism agent. He was actually tried in an anti-terrorism court because in addition to Section 295-C of the PPC, he was also charged under Sections 9 and 11-w of the Anti-Terrorism Act, which punish the incitement of sectarian hatred.²⁰⁹

From these recent incidents, it is clear that as Pakistanis have gained increased access to the digital world, more opportunities to be accused of blasphemy have emerged. So far, the government has struggled to manage this phenomenon. When it can, it has worked to censor blasphemous material. In cases where the website does not choose to cooperate with the Pakistani government, Pakistan has completely shut down access to the hosting site. This approach has led many to label government action as blatant censorship, both in a direct and indirect sense. When online content is blocked, it is direct censorship. When people are fearful to express their opinions due to the fear of what violence their thoughts might incur, however, it indirectly censors citizens.

²⁰⁷ Iftikhar Firdous and Rizwan Shehzad, "One awarded death sentence, five life imprisonment in Mashal Khan murder case," *the Express Tribune*, February 7, 2018, <https://tribune.com.pk/story/1628349/1-atc-announce-verdict-mashal-khan-case-today/>.

²⁰⁸ Pakistan Penal Code, §305(b), 148, 149.

²⁰⁹ Sune Engel Rasmussen and Waqar Gillani, "Pakistan: man sentenced to death for blasphemy on Facebook," *the Guardian*, June 11, 2017, www.the-guardian.com/world/2017/jun/11/pakistan-man-sentenced-to-death-for-blasphemy-on-facebook.

Fear of blasphemous content has been ingrained into society because it is severely punishable by law. With the advent of new technology, this fear has caused the government of Pakistan to turn to censorship in an effort to reduce exposure to blasphemous content at a time when people have access to even more forms of communication.

Military Intervention

Another source of indirect censorship has been from the military. Many in Pakistan are suspicious of the military's use of the blasphemy laws to censor negative portrayals of Pakistani military action.

In early 2017, five bloggers were abducted after they posted critical material about the Pakistani military and religious intolerance. They later reappeared after almost a month without explanation. Many have speculated that their disappearances were carried out by the Pakistani military, and more specifically an intelligence agency, to stifle dissent regarding military policies.²¹⁰ While they were missing, several accused the bloggers of blasphemy, but the FIA declared these accusations unfounded. Some believe that the bloggers were initially kidnapped due to their views on the Pakistani military, but their disappearances were justified to the masses by their rumored blasphemous behavior.²¹¹ The disappearances of these men were used to send a message via the blasphemy laws to others who published negative opinions about the military. This incident showed that not only could the army easily take out the dissident, but also that they could legitimize their action using malleable legislation, like the blasphemy laws.

²¹⁰ Constable, "Did Pakistan security agents kidnap bloggers."

²¹¹ AFP, "No evidence found against bloggers accused of blasphemy, FIA tells court," *Dawn*, December 23, 2017, <https://www.dawn.com/news/1378262>.

As noted earlier, more recently some alleged blasphemers are also being charged under the Anti-Terrorism Act of 1997, specifically under Sections 8, 9, and 11, which prohibit the incitement of sectarian hatred and circulating information intended to incite hatred.²¹² This has made blasphemy a matter of national security.

In recent years, the military has also made rather overt political stances on when they choose to intervene in cases related to blasphemy. Even their non-action speaks volumes. In November 2017 during the protracted anti-blasphemy protests that paralyzed Islamabad, the military remained relatively silent in stopping the violence even though the government claimed it had authorized military action.²¹³ This seemed to signal that the army tolerated the violent behavior of extreme Islamists. The military only stepped into a mediation role when they could control the outcome of the talks between the government and the Islamists groups that eventually resulted in a comparative win for the Islamists.²¹⁴

The military is using the blasphemy laws as a means to control their narrative. They are silencing dissidence and using blasphemy as a scapegoat for their actions. In the process, however, they are slowly chipping away at the legitimacy of the criminal justice system and influencing how the legislation can be manipulated for unrelated purposes. Furthermore, whether they decide to take action demonstrates what is acceptable behavior. Such decisions have in a way empowered Islamist groups as they have interpreted the military's sometimes-passive approach to these conflicts as legitimizing.

²¹² Anti-Terrorism Act of 1997, §8, 9, 11.

²¹³ "Pakistan capital tense as military silent on protests," *The Hindu*, November 26, 2017, <http://www.thehindu.com/news/international/pakistan-capital-tense-as-military-silent-on-protests/article20943631.ece>.

²¹⁴ Kay Johnson and Asif Shahzad, "Pakistan army's role in focus as Islamists end blasphemy blockade," *Reuters*, November 28, 2017, <https://www.reuters.com/article/us-pakistan-protests-military/pakistan-armys-role-in-focus-as-islamists-end-blasphemy-blockade-idUSKBN1DS0QQ>.

Role of Media

As mentioned earlier, the media has played an interesting role in discussions of blasphemy in recent years. While there exist constitutional provisions to protect the freedom of the press, this freedom is often overshadowed by laws that protect religion and national security efforts.

In 2014, for example, the owner of Geo TV, a popular private television network, was charged with blasphemy after airing a reenactment of the wedding using a religious hymn that was reportedly played at the wedding of Prophet Muhammad's daughter. The accusation was made because it apparently seemed like the bride was actually pretending to be the daughter of the Prophet. The owner of the channel was sentenced to twenty-six years in prison as a result of this segment. Many believe that this arrest was actually motivated by a report earlier in the year that accused Pakistani military intelligence of attacking an anchor. Some believe "the blasphemy allegation was simply a means of reminding the station of the power Pakistan's deep state..."²¹⁵

In addition, as previously noted, in 2016 the media was censored when it was strongly discouraged from covering Mumtaz Qadri's well-attended funeral, one of the most well attended in Pakistan's recent history. The Pakistan Electronic Media Regulatory Authority (PERMA) threatened to shut down stations that covered "events that glorified criminals." The government, however, had never enforced such restrictions before.²¹⁶ Moreover, this event was objectively newsworthy given its scale, no matter the character of subject. Similar events had been covered extensively in years past, indicating that it was directly due to this warning that there was limited coverage.²¹⁷ This change in

²¹⁵ Rafia Zakaria, "The borders of freedom: Blasphemy and the press in Pakistan," *CNN*, November 24, 2017, <https://www.cnn.com/2017/11/24/opinions/blasphemy-laws-pakistan-opinion-zakaria/index.html>.

²¹⁶ M. Ilyas Khan, "Why did Pakistan keep hard-line mourners off air?" *BBC*, March 1, 2016, <http://www.bbc.com/news/world-asia-35699064>.

²¹⁷ Mehreen Zahra-Malik, "As Pakistan bars extremists from airwaves, some fear creeping censorship," *Reuters*, July 22, 2016, <https://www.reuters.com/article/us-pakistan-media-militants/as-pakistan-bars-extremists-from-airwaves-some-fear-creeping-censorship-idUSKCN1021NI>.

behavior suggests that the controversial nature of blasphemy caused the government to change its behavior. This warning was justified under Pakistan's National Action Plan, a counter-terrorism strategy. This further indicates how blasphemy-related cases are being reframed as a national security because of the civil unrest often associated with them.

A more direct effort to censor the media came in early November 2017 when a regulatory body was formed by the PTA to monitor and block blasphemous content online. Many fear that the introduction of this body is only the beginning of further restrictions of freedom under the guise of protecting Islamic principles.²¹⁸

From these examples, it is clear that while the media is meant to report objective news to inform the masses, it is at the mercy of the federal government and the military. Blasphemy allegations can be wielded against journalists easily because the laws are easily manipulated. The legislation can be used to send the message that the federal government can and will silence those who are not in line with government messaging.

Attempts at Reform

For years, the blasphemy laws have functioned as a tool of violence used for malevolent purposes. This abuse, however, will most likely continue if serious changes are not made to laws themselves or the systems that implement them. At the forefront of reform efforts is former Pakistani Ambassador to the U.S. and Senator, Sherry Rehman. In 2010, she introduced a bill in the Senate that moved to end the death penalty for blasphemy cases. She said, "the aim is to amend the codes to ensure protection of Pakistan's minorities and vulnerable citizens, who routinely face

²¹⁸ Madeeha Anwar, "Pakistan forms regulatory body to monitor online blasphemous content, *VoA News*, November 4, 2017, <https://www.voanews.com/a/pakistan-blasphemy-online-regulatory-body/4101325.html>.

judgment and verdicts in the lower courts where mob pressure is often mobilized to obtain a conviction.²¹⁹ The bill specifically sought to amend Section 295-C and remove its death penalty.²²⁰

After Taseer's death, however, there was a marked decrease in reform efforts. People became scared to publicly declare their support for amendment efforts for fear they might be targeted next. This fear was not unfounded; Pakistani Minorities Minister Shahbaz Bhatti was also shot dead in March 2011 for his outspoken support for blasphemy law reform.²²¹ In reaction, Rehman's bill was tabled due to party pressure after she received several death threats and was accused of blasphemy herself.²²²

Nevertheless, in January 2017 the Senate Committee on Human Rights revisited reform efforts looking specifically into the recommendation made twenty-four years ago in a report. In particular, they sought to consider mandating an investigation into the complainant before a case was registered and whether the death penalty should remain.

Furthermore, the Islamabad High Court recently took major action in initiating blasphemy law reform in an order published on August 11, 2017. In the judgment, Justice Shaukat Aziz Siddiqui asked parliament to look into changing the current blasphemy legislation to include a harsher punishment for those who falsely accuse others of blasphemous behavior. Currently, the maximum punishment for a false accusation under Section 183 of the PPC is six months in jail or Rs 3,000, equivalent to about \$25.²²³ In addition to this suggestion, however, Justice Siddiqui also suggested that officers add Sections 6(f) and 6(p) of the Anti-Terrorism Act 1997 when registering the case.

²¹⁹ Quoted in "Sherry submits bill for amending blasphemy laws," *Dawn*, November 30, 2010, <https://www.dawn.com/news/587351>.

²²⁰ Zia Khan, "Blasphemy law amendment: Sherry Rehman to withdraw bill, says PM," *Dawn*, February 3, 2011, <https://tribune.com.pk/story/113445/blasphemy-law-amendment-sherry-rehman-to-withdraw-bill-says-pm/>.

²²¹ Jill McGivering, "Climate of fear over Pakistan's blasphemy laws," *BBC*, April 28, 2011, <http://www.bbc.com/news/world-south-asia-13038060>.

²²² *Ibid.*

²²³ Pakistan Penal Code §183.

These sections classify terrorist action as inciting “hatred and contempt on religious sectarian or ethnic basis to strip up violence or cause internal disturbance” and “involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.”²²⁴ In the same decision, he also ordered the PTA to set up a firewall blocking blasphemous online content in Pakistan.²²⁵

This progress seemed to slip, however, in November 2017 when a political crisis erupted after it was reported that Law Minister Zahid Hamid had removed the *Khatm-e-Nabuwat* clause with the Elections Act 2017. People claimed Hamid had intentionally removed the portion of the electoral oath that affirms a politician’s belief that Prophet Muhammad was the last prophet. Much of the anger was rooted in the hatred many Muslims in Pakistan feel towards Ahmadis who believe in a prophet after Prophet Muhammad. While the government immediately rectified what they cited as a clerical error, protests broke out around the country, led by Tehreek-e-Labbaik’s Khadim Hussain Rizvi. For almost three weeks the government in Islamabad was incapacitated and the army refused to step in to help. During the course of the crisis, Hamid’s personal faith was publicly questioned and even prompted him to release a video of himself trying to prove he was a devout Muslim. Eventually, Hamid was forced to resign as a part of deal with Rizvi. By the end of the conflict, however, at least six people were killed and 200 more injured due to this seemingly simple clerical error.²²⁶

²²⁴ The Anti-Terrorism Act, 1997, §6(f)(p).

²²⁵ “Islamabad High Court suggests making blasphemous law tougher to check its misuse,” *Dawn*, August 12, 2017, <https://www.dawn.com/news/1351121>.

²²⁶ “Law Minister Zahid Hamid resigns as analysts predict defections in PML-N,” *the Express Tribune*, November 27, 2017, <https://tribune.com.pk/story/1569364/1-law-minister-zahid-hamid-quits-tenders-resignation-pm/>; Nosheen Abbas and Sune Engel Rasmussen, “Pakistani law minister quite after weeks of

There has also been vocal dissent within the government and in the public discourse regarding potential amendments. Tahir Ashrafi, former leader of the Pakistan Ulema Council of Muslim clerics and member of the Council of Islamic Ideology, said, “Make new laws to punish those who abuse blasphemy laws, but no one can even think about changing this law.”²²⁷

In short, while attempts at reform have been made, they were noticeably hindered by Taseer’s death. People became fearful that a target would appear on their back too if they publicly supported amendment efforts. Several years after the assassination, hope for reform reemerged when the Islamabad High Court directed parliament to reconsider the laws and how abuse could be mitigated. Even so, the Khatm-e-Nabuwat crisis in late 2017 demonstrated that not enough support had been gathered to overcome the powerful religious right’s forceful strategies.

Salman Taseer’s assassination signaled a change both politically and socially in dealing with cases of blasphemy. His outspoken criticisms of the law were radical in that they verbalized concerns that many shared but did not have the courage to declare so publicly. His death, however, muzzled public discourse on the laws as people feared for their personal safety. Furthermore, the digital age has presented even more issues and opportunities for blasphemy charges. So far, the government has resorted to censorship strategies to manage these concerns. Additionally, two other actors have become more implicated in cases of blasphemy. The army has used this legislation to justify their own censorship efforts that are primarily aimed at stifling dissenting views on military action but that take advantage of the malleability of these laws. The army has also made decidedly political decisions on when to intervene in blasphemy-related cases. The blasphemy laws have also affected

anti-blasphemy protests,” *the Guardian*, November 27, 2017,

<https://www.theguardian.com/world/2017/nov/27/pakistani-law-minister-quits-zahid-hamid>.

²²⁷ Mehreen Zahra-Malik, “Pakistani Senate group to debate how to prevent misuse of blasphemy laws,” *Reuters*, January 12, 2017, <https://www.reuters.com/article/uk-pakistan-blasphemy/pakistani-senate-group-to-debate-how-to-prevent-misuse-of-blasphemy-laws-idUSKBN14W2FB>.

the media as government agencies have embedded journalists and intimidated news agencies to not report on certain violence associated with blasphemy cases.

Considering the current impacts of the blasphemy laws, it is important to remember the intentions behind them and how their implementation has changed throughout the years. The laws were never meant to impede constructive conversation about religion, but that is how they are being used today. Starting in the 1970s due to political pressures from religious conservatives the government of Pakistan, with pressure from the Saudis, altered the justice system so that it prioritized the interests of *wahabbi* Muslims over the citizenship rights of all Pakistanis. These changes have caused the blasphemy laws to be used in a way that goes against their primary intentions. They have created disorder as innocents are being violently targeted by the laws in both the formal and informal justice systems. Beyond the unrest these laws have caused, Muslims have ironically made up the largest portion of blasphemy accusations even though the laws were meant to protect them. This demonstrates that the laws are neither fulfilling their original intentions nor achieving their contemporary rationale. Moreover, the laws' religious justifications can also largely be considered null given that their contemporary implementation has been more grounded in politics rather than religious thought. As demonstrated by the cases cited throughout this thesis, there is often an ulterior motive behind blasphemy accusations and their subsequent adjudication besides the pursuit of justice.

Given the pervasive nature of these laws and their endurance through the changing political landscape, foundational changes clearly need to occur. I will conclude by reviewing how the laws have morphed into the antithesis of their intention. Major concerns regarding how blasphemy cases are processed in both the formal and informal justice systems will be underlined as points of potential reform.

Conclusion

The blasphemy laws were initially introduced in 1860 with the primary intention of maintaining law and order in a society that held a diverse variety of beliefs. Ancillary to this primary motivation was the protection of religious rights, including the right to be protected from intentional insults to religion. The careful balance struck between these two intentions was initially successful in that not many cases were registered until the 1970s. In a way, the existence of these laws under the British seemed to mitigate conflict. After decades of virtual non-application of the laws, however, they suddenly transformed into a tool of violence that capitalized on the flaws of the justice system. These flaws emerged largely due to the political pressures placed on the government of Pakistan in the late 20th century by well-funded and organized religious conservatives. This pressure pushed the government to take on the responsibility of arbitrating religious conflicts and integrate unelected religious scholars into the foundations of the justice system.

These changes primarily took place in the 1980s under General Zia-ul-Haq's regime, who justified the changes under the pretense of an Islamic revivalism even though they were made due to both international and domestic political pressures from *wahabbi* Islamists. The five amendments made under his administration, for example, legitimized violence by setting the precedent for severe punishments like life imprisonment and the death penalty. The language of the laws was also vague enough to allow for the widening of what constituted as blasphemy. The courts and the police have facilitated this abuse with their arbitrary approach to registering, investigating, and adjudicating cases. The system has historically allowed for minimal evidence of blasphemy before convicting the accused. These failures in the formal justice system have allowed for the informal justice system to flourish. This informal system is often more violent and injudicious in its punishment of blasphemy. These flaws can be traced to Zia-era changes and the changes made by his successors since the number of blasphemy cases skyrocketed after Zia's death.

Because of the changes made in after the late 1970s, Pakistanis across the board are now susceptible to abuse under these laws. Ironically, Muslims have historically faced the largest number of blasphemy accusations. This is surprising because every amendment made to the blasphemy laws has been to protect Muslims. There is strong evidence, though, that these accusations primarily stem from the laws being used to settle personal disputes instead of on a religious basis. Even so, the fact that Muslims are being overwhelmingly targeted under these laws shows that the government of Pakistan has failed to protect the very people who the laws were meant to protect. This undermines the rationale used to justify the changes made to the blasphemy laws and their implementing institutions. Religious minorities, especially Christians and Ahmadis, are also vulnerable to blasphemy accusations. Ahmadis in particular face a greater risk since the freedom of religion, a citizenship right guaranteed under Article 20, has been undermined with Sections 298-B and –C to the PPC that punish the very practice of the Ahmadi religion. All Pakistanis are at risk of violence due to these laws.

My analysis has followed the evolution of these laws and their associated systems from their inception during colonial rule until the present. This historical review has described the socio-political context in which these laws were created and subsequently amended. It has highlighted the changes made during Zia's regime and the legacy of his rule in accelerating and magnifying this abuse. My analysis has demonstrated the scope of the problem with data from several sources to illustrate the severity of the problem. Illustrative anecdotes have been used to point to historic areas of system failure and consequent abuse. I also have considered how international and domestic discourse changed after Governor Salman Taseer's assassination and how these developments have impacted domestic politics. I have concluded with a discussion the blasphemy laws' greater implications on fundamental freedoms and the current state of reform efforts.

My thesis has traced abuse of the blasphemy laws to the very institutions that are meant to uphold fair and unbiased justice. While most literature focuses on the existence and contents of the laws themselves, I have found that the abuse can actually be traced the criminal justice system that implements these laws. I have used data and case studies to point to both historic and systematic points of abuse that primary originated during and after General Zia-ul-Haq's quasi-Islamic authoritarian regime. Through my research, I have exposed weaknesses in the laws and systems, which have created opportunities for the laws to be used for malevolent purposes. I have found that the arbitrators of justice are often prejudiced against the accused and this bias affects their approach to blasphemy cases.

The blasphemy laws as they exist and are practically used today are illogical. They do not fulfill their original British intention of maintaining law and order in the subcontinent as they have been transformed into a tool of violence used by maliciously motivated Pakistanis who are using the laws for personal gain. They have also led to the emergence of the informal justice system that has routinely capitalized on the creation of disorder to exact extrajudicial retribution. More than this, the laws are not even protecting the religious sensibilities of Muslims, which has continued to be the rationale behind the laws since the late 1970s. Muslims continue to be commonly accused of blasphemy under the very laws that have been altered to explicitly protect them.

These issues did not emerge in a vacuum. They materialized in the 1990s after religious conservatives were able to sink their teeth into the foundations of Pakistani governance. Thanks to the growing global Islamic anxiety and regional politics, these groups received the funds necessary to influence Pakistani politicians and made themselves an indispensable voting bloc. This political influence was channeled into the changes made to the justice system that have allowed for the abuse of the blasphemy laws today.

As demonstrated throughout this thesis, these changes have resulted in state abandon of the laws' original intentions. More than this the resulting flaws in the justice system have led to the Pakistani state failing to protect the security of its own citizens and undermined basic Pakistani citizenship rights. The blasphemy laws are only one lens through which to view this flawed justice system. These defects have broader implications for the greater security of Pakistanis, and as a consequence, the very stability and well being of the nation.

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