



A Comprehensive Study of Blasphemy and Freedom OF Speech in the Light of Islamic Jurisprudence and the Pakistani Legal Perspective: A Critical Analysis

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Abstract: *The offence of blasphemy is one that elicits strong feelings. Every time it comes up, it kicks off a highly contentious discussion in Pakistan. Every time a new event takes place in Pakistan, the country's blasphemy laws are thrust into the spotlight. After doing an in-depth investigation into the matter, one discovers that it is a very serious crime, and as a result, strong action needs to be taken against the person responsible for it. The blasphemer is subject to the mandatory death sentence under Islamic law. In a similar way, the legislation of Pakistan calls for the imposition of a fine in addition to the death penalty and life imprisonment. This law has received a great deal of criticism, the most common of which is the assertion that it is used to target and persecute members of minority groups as well as adversaries on the basis of personal grudges. The problem can be solved by enhancing the preliminary stages of the experiments.*

Key Words: Freedom of Speech, Blasphemy, Islamic Jurisprudence, Pakistani Laws, International Convention

Introduction

Blasphemy is "the offence of insulting or exhibiting contempt or a lack of reverence for a God and towards anything which is deemed sacred," according to the Oxford English Dictionary. Freedom of expression is protected in Islam, up until the point where one's words violate the rights of others. In a morally acceptable context, it protects the right of every person to hold a different opinion. Legal definitions of blasphemy and whether or not it is actually a crime have become contentious issues in the modern period. Historically, blasphemy was more commonly linked with Christianity, but today it is more commonly associated with Islam. The West has spread the falsehood that Islamic blasphemy laws violate individuals' right to free expression and religious practice. Increased awareness of human rights has led to increased scrutiny of blasphemy laws. Blasphemy law in Pakistan has its roots in the country's colonial past. Several of these

changes occurred in the years after the split, during Zia's era. (Siddique, O. [2008](#))

There is a lot of uproar over this legislation. That becomes more obvious with each fresh instance. Some people say this rule is being used to target specific groups for persecution because of personal grudges and animosity. Human beings should be guaranteed the right to freely express themselves. There are treaties and pacts on the global level that ensure it. There are provisions for this in the legislation of each country. The right to hold and express one's own thoughts is a fundamental human right. (Holzapfel, [2014](#)) In addition, he is free to accept and spread any religion he chooses. But this privilege does not come without any constraints or limitations. Instead, its scope is confined to matters of national interest and social welfare. This right to express oneself does not extend to making derogatory comments about other people or threatening the safety of the state. In

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addition, it must not be utilized in a way that promotes violence. Islam's doctrines are quite similar to Christian ones. Allah, the Almighty, made people autonomous and gave them the option of following whatever religion or way of life they like. Muslims, however, are not permitted to unjustly degrade the worth of others. Islamists are held accountable for their words. The right to express oneself freely is a human right, but it comes with caveats. (Khan, A. U. [2018](#))

Literature Review

Liaquat Ali Khan ensured that the rights of Muslims and other minorities would be protected by the new state's Objective Resolution. All non-Muslims, including Hindus, Christians, and others, are guaranteed equal freedoms in the constitution to pursue their religious and cultural goals. (Centre for Research and Security Studies CRSS Islamabad). (Akhtar, [2022](#))

The study "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan: Controversial Origins, Design Defects, and Free Speech Consequences" provides an insightful examination of this issue. The misuse and misinterpretation of blasphemy laws in Pakistan are just two examples of the many facets that are examined in this study. The theocratic method of religious extremism was used to make decisions during General Zia-ul-regime, Haq's which was diametrically opposed to Muhammad Ali Jinnah's original vision for Pakistan as a secular nation where all faiths may practice freely. (Siddique, O. [2008](#))

Moreover, Amnesty International has released its findings on this issue in a report titled "The Effect of Blasphemy Laws in Pakistan," which covers many different angles on this problem. Interviews with law enforcement officials in Pakistan revealed the following complaint: when dealing with a mob enraged by religious sentiments, police officers often have difficulty controlling the mob due to a lack of support from the state in dealing with the situations, resulting in loss of life and property. (Amnesty, [2016](#))

Dr Zeeshan Khan, in a paper titled Freedom of Expression and Blasphemy, provides further insight into the connection between free speech and blasphemy legislation. In Pakistan, situations involving free speech or blasphemy typically end with the accused being arrested and then waiting for a long time for a verdict. (Khan, [2018](#))

Research Questions

- 1) Where does Islam stand on issues like blasphemy laws and free speech?

- 2) What restrictions are placed on a person's right to free expression under Islamic law and Pakistani law?
- 3) In light of Islamic teachings, what is the relationship between freedom of speech and blasphemy laws?
- 4) What are the repercussions of committing blasphemy according to Pakistani law and Islamic law?

Research Objectives

- 1) To understand and analyze the ideal position of free speech and blasphemy laws in an ideally balanced Islamic society.
- 2) To scrutinize the primary and secondary sources of Islamic law with regard to the issue of blasphemy.
- 3) To search for the link between freedom of speech and fundamental human rights.
- 4) To analyze the significance of blasphemy laws in an Islamic society

Research Methodology

The qualitative research approach was used for this study's research. Research that is both descriptive and analytical in nature. The Holy Quran, Hadith, and the Constitution of Pakistan, in addition to case laws, were used as the key sources of information for this study. The research publications, legal journals, web sources, and law digests that make up the secondary data are all included here.

Meaning of Freedom

Freedom is a wonderful term that encompasses a majestic world. It's the ability of an individual to determine his or her own course of action in terms of thoughts, words, and deeds. A person's right to live his or her own life without interference from anyone else. It is important to remember that one's right to freedom of expression does not include the right to impose one's views or beliefs on others. Whatever is picked must not compromise this liberty in any way. This liberty is applicable within the bounds of social norms and expectations. (Knight, [1941](#))

Under the guise of freedom, no one may have the right to desecrate the traditions of a nation or a religion. Each country has the authority to control its own citizens and the movement of people within its borders. To be truly free is to be unencumbered in your thoughts and speech, free to express yourself in whatever way you see fit. To be free is to be self-reliant

and to be able to pursue one's own interests without interference from others. (Knight, [1941](#))

Definition of Freedom of Speech

There are limits to this freedom, which is defined as the individual's liberty to communicate any and all thoughts, beliefs, and opinions without governmental interference. Expression, affirmation, and exploration of any opinion, within the bounds of good behaviour as defined by the norms of ethics and legislation in a given society, are guaranteed under the right to free speech. People's basic rights are violated when they are prevented from freely expressing their opinions and values. (Stevens, [1992](#))

Freedom of speech ensures that no one can be punished for exercising their rights to free thought and expression in a lawful manner. Every member of a civilized and evolving society has a right to this, and it should be guaranteed to all of them. Yet it's important to remember that any doctrine has to be contained within the bounds imposed by nature or logic. In order to exercise these rights responsibly, each person needs to be aware of the bounds within which they exist. (Stevens, [1992](#))

The Perspective of Pakistan's 1973 Constitution on Freedom of Speech

Pakistan's Constitution from 1973 lays out the country's basic freedoms. Free speech is one of the Constitution's inalienable rights. Article 19 guarantees everyone the right to freedom of expression. Press freedom is likewise protected by this principle. However, this privilege is not absolute and is subject to legal restrictions designed to protect the dignity of Islam or the safety and stability of Pakistan or any of its constituent parts. Aside from that, it shouldn't impede morals, contempt of court, or instigation of the offence, as well as good ties with other countries. No one is to tolerate insults or slander against Allah (SWT), the Holy Scriptures, or the Prophets. (Article19, [1973](#))

Article 19 of the Pakistani constitution does not interfere with Article 20 of the constitution, which protects people's freedom of religion within the bounds of the law. Furthermore, article 19 does not discourage helpful criticism. The sole restriction is that no derogatory language should be used towards Islam, as this religion is sacrosanct and can spark widespread bloodshed if its followers feel insulted. (Article19 &20, [1973](#))

As in relevant case law NAWABZADA NASRULLAH KHAN VS THE DISTRICT MAGISTRATE, LAHORE and Others (Nawabzada

Nasrullah Khan v District Magistrate, PLD [1965](#) Lahore 642)

"It was held in this case that the freedom of speech is not a universal right. There are some limitations; therefore, it cannot be absolute in every condition. People cannot express their views and opinions openly at any time and any place."

In another case law, it was held that:

"that people have a right to freedom of speech and also they have right to publish whatever they want but there are also some restrictions imposed on them which is that they have not allowed Violating the rights of other persons because freedom of speech should not be used to ridicule others"

International Regulations

European Conventions on Human Rights

Everyone has the right to freedom of religion and thought, as stated in Article 9 of the European Convention on Human Rights (1950). Subject to certain constraints set by law that are required, especially in a democratic society, for the good of the public at large, an individual has the right to freely practice, manifest, and change his faith under this article. (Article9, [1948](#))

Individuals have the right to freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights. What this means is that everyone has the freedom to speak their mind. There is some leeway in this area, but restrictions have been put in place to ensure the safety of the populace and the state. (Article10, [1948](#)) This right is a legal entitlement, and as such, everyone has it. But there are repercussions for those who choose to ignore the above and abuse the liberties afforded by this right. For instance, it is forbidden to use language that undermines national security or that promotes violence. In a free and peaceful society, it is reasonable to impose such constraints.

The Universal Declaration of Human Rights 1948

All people have the freedom of thought and religion as provided by Article 18 of the UDHR. Individuals are not compelled to abandon their religious beliefs, and they are free to openly and freely worship whatever they see fit. (Article18, [1948](#))

Article 19 of the UDHR guarantees everyone the unrestricted right to have any opinion or seek any information from any media of their choosing. (Article19, Universal Declaration of Human Rights, [1948](#))

The International Covenant on Civil and Political Rights 1966

According to Article 18 of this Covenant, everyone has the liberty to express themselves verbally and to practice any religion of their choosing. Here, the author gives readers complete leeway to practice whichever faiths or ideologies they like. People have the right to exercise their religion and worship as they see fit; but the law does place some restrictions on this right, which are designed to protect the public. (Article 18, International Covenant on Civil and Political Rights, 1996)

Article 19 of this Covenant guarantees the freedom of expression for all people. This article also guarantees the right to free speech and to access the news in a variety of formats, subject to certain legal limitations. (Article 19, International Covenant on Civil and Political Rights, 1996)

To name only two examples, libel and threats against national security are strictly forbidden. As we discussed, the International Conventions guarantee the freedom of expression, thinking, and religion for all people. Nonetheless, there are some restrictions that are imposed by law because they are necessary for the general public's well-being and the orderly functioning of society. There should not be an unrestricted right because doing so could lead to violence in society. All people should make an effort to use their rights to free religion, speech, and expression within the bounds that society has established. This is the only way to guarantee social stability and harmony. These restraints are necessary for the protection of other people's rights and are mandated by law. By enforcing these restrictions, we can keep religious groups from inciting violence and safeguard national security. (Quigley, 1992)

All of the international conventions and charters that have been discussed above guarantee the right to free expression. But it is not limitless and unconditional. Instead, it is restricted for the sake of society and the globe at large. Dissent that threatens the safety and stability of the nation is a crime. Anything that promotes violence or disrupts social order is likewise prohibited. This is why several nations have enacted blasphemy laws. Nonetheless, several nations have recognized that criminalizing blasphemy is an unnecessary restraint on free speech and have repealed their own blasphemy laws. (Sturges, 2015)

Blasphemy laws are often promulgated but ultimately unsuccessful in other countries. For instance, according to Dr Agnes Callamard, numerous European countries have repealed their blasphemy

laws. Yet, in other countries like the United Kingdom and Norway, the rules remain on the books but are not enforced effectively. Freedom of speech is limited not only by the blasphemy law but also by Islamic law and the Constitution of Pakistan. Nonetheless, the freedom of expression is subject to some restrictions as a result of international conventions. (Callamard, 2008).

Freedom of Speech in Islam

Each Muslim is guaranteed freedom of expression, but their faith also instructs them on how to use that freedom responsibly. To express one's opinions is a basic human right in Islam, so long as one does not do so in a way that unjustly harms others. Because the misuse of the right to freedom of speech can lead to violence in a peaceful community, this is the criterion that is explicitly stated in Islam: no one can injure others unjustifiably. As a result, Islam limits how much people can say what they want. (Asad, 2009)

Quranic References

"Quran put restrictions on unkind speech which causes hurt to other persons. For example, in Surah An Nisa verse 148, it clearly stated that Allah (SWT) dislikes those people who openly say evil and hurtful speech" (Al - Quran 4:148).

Also, restrictions on freedom of speech and expression were addressed in **Surah Al-Hujaraat**. This ayat states that all Muslims are brothers of one another and that Allah Almighty placed limits on His believers to prevent them from fighting. They should avoid anything that damages human connections. In addition, the Almighty Allah commanded that believers not mock one another. Even if some women are more physically or cosmetically endowed than others, in the eyes of Allah Almighty they are all created equal. The last line of the verse makes it clear that those who call themselves Muslims but don't obey Allah's rules are indeed sinners.

The proper way to express oneself orally is covered in yet another surah. Those who believe in Allah (SWT) are commanded in this verse, to tell the truth and perform acts of kindness. The verse concludes with the promise that if they follow these rules, Allah Almighty will forgive them and bless them in this life and the next. (Al - Quran 33: 70 - 71)

Hadith References

Prophet SAW too guided his followers about the etiquettes of freedom of expression. According to Hadith, *"If any individual cannot say good words, then he should remain silent because it is the best thing for*

him."

Therefore, everyone should use the right to free speech consciously and cautiously as we will be held accountable for whatever we speak. In Islam, every individual need to control his language and ideas as the dignity of other people and even other religions, Prophets, and worships are very sacred.

Meaning of Blasphemy

The Greek word "blasphemein" is where the word "blasphemy" comes from. Blasphemy is defined as "talking wicked," "using absolutely profane or insulting language," "talking indecently," or "talking flippantly to absolute offensiveness" in reference to God or anything sacred. It alludes to any defamatory or contemptuous remarks, writings, or actions directed at God or other things that are sacred to a particular person. (Lawton, 1993)

Quranic Verses Relating to Blasphemy

Allah (SWT) instructed Muslims not to use the dubious words used by Jews to derogate Prophet Muhammad (Peace be Upon him) in Surah Al-Baqarah in following words:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقُولُوا رَاعِنَا وَقُولُوا انْفِرْنَا وَاسْمِعُوا وَاسْمِعُوا وَأَلْبَسُوا عَدَابَ اللَّهِ (104)
"O you who have faith! Do not say Ra'ina, but say Unzurra, and listen! And there is a painful punishment for the faithless." (Al - Quran 2:104)

Likewise, in Surah al-Tawba, Allah the Exalted admonished the people who pass derogatory remarks against Prophet Muhammad (Peace be Upon Him). Allah says:

وَمِنْهُمْ الَّذِينَ يُؤَدُّونَ النَّبِيَّ وَيَقُولُونَ هُوَ أَذُنٌ قَلَّ أَدُنٌ حَتَّىٰ لَوْ كَفَرَ اللَّهُ يَأْتِيهِمْ مِنْ رَبِّهِمْ بَأْسٌ كَرِيمٌ
وَمِنْهُمْ مَن يَلْمِزُكَ وَالَّذِينَ آمَنُوا مِنْكُمْ وَالَّذِينَ يُؤَدُّونَ رَسُولَ اللَّهِ لَهُمْ عَذَابٌ أَلِيمٌ
"And among them are men who hurt the Prophet (Muhammad SAW) and say: "He is (lending his) ear (to every news).", Say: "He listens to what is best for you; he believes in Allah; has faith in the believers; and is a mercy to those of you who believe." But those who hurt Allah's Messenger (Muhammad SAW) will have a painful torment." (Al - Quran 9:61)

Allah the Exalted is so careful regarding the honour of the Prophet (Peace be Upon Him) that he corrected companions of Prophet Muhammad (Peace be Upon Him) when the volume of their voices increased in front of Prophet Muhammad (Peace be Upon Him)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَرْفَعُوا أَصْوَاتَكُمْ فَوْقَ صَوْتِ النَّبِيِّ وَلَا تَجْهَرُوا لَهُ بِالْقَوْلِ كَجَهْرِ بَعْضِكُمْ لِبَعْضٍ أَن تَحْبَطَ أَعْمَالُكُمْ وَأَنتُمْ لَا تَشْعُرُونَ (7)

"Believers, do not raise your voices above the voice of the Prophet and when speaking to him do not speak aloud as you speak aloud to one another; lest all your deeds are reduced to nothing without your even realizing it". (Al - Quran 49:2)

Moreover, Allah the Exalted warned the companions and Muslims to leave such meetings where people ridicule the religion.

وَإِذَا رَأَيْتَ الَّذِينَ يَخُوضُونَ فِي آيَاتِنَا فَأَعْرِضْ عَنْهُمْ حَتَّىٰ يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ ۚ وَإِمَّا يُنسِيَنَّكَ الشَّيْطَانُ فَلَا تَتَّبِعْهُ بَعْدَ الذِّكْرِ ۚ مَعَ الْقَوْمِ الضَّالِّينَ (٦٨)

"When you see those who are engaged in blasphemy against Our signs, turn away from them until they begin to talk of other things; and should Satan ever cause you to forget, then do not remain, after recollection, in the company of those wrong-doing people. (Al - Quran 6:68)

Allah the Exalted warned such people who opposed Allah and Prophet (Peace be Upon Him) in the following verse:

إِنَّ الَّذِينَ يُحَادُّونَ اللَّهَ وَرَسُولَهُ كُبِتُوا كَمَا كُبِتِ الَّذِينَ مِنْ قَبْلِهِمْ ۚ وَقَدْ أُنزِلَتْ آيَاتٌ بَيِّنَاتٌ وَلِيُكَفِّرِينَ عَذَابَ مُهِينٍ (٥)

"Indeed, those who oppose Allah and His Messenger are abased as those before them were abased. And We have certainly sent down verses of clear evidence. And for the disbelievers is a humiliating punishment." (Al - Quran 58:5)

Defamation of religion is a crime which calls for war

وَإِنْ كُنْتُمْ أَحِبَّاءَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَكَلَعْنَا فِي وُجُوهِكُمْ فَفَاتِلُوا أَلْبَتَةَ الْكُفْرِ ۚ إِنَّهُمْ لَا يَمَانُ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ (١٧)

"And if they break their oaths after their treaty and defame your religion, then combat the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease". (Al - Quran 9:12)

Above mentioned verses clarify that derogatory remarks or saying something that is below the stature of Prophet Muhammad (Peace be Upon Him) is intolerable even in cases of minor matters and Muslims are instructed to be conscious of such actions whenever they happened around them.

The incidents in the life of Prophet Muhammad (peace be upon him) also reveal that such matters were handled severely whenever people crossed the boundaries and passed derogatory remarks against Prophet Muhammad (Peace Be Upon Him). Some of them are mentioned below: (Madni, 1994)

1. The Messenger of Allah said: "Who is going to help me in punishing the person who hurt me

by defaming my family's reputation? Saad b. Mua'dh said, " O Messenger of Allah! through Allah, I will soothe you from him. If that man is of the Aws' tribe, we'll chop his head off. If he belongs to the Khazraj of our brothers, then command us and we'll fulfil your command.

2. Muawia Ibn Mughera used to abuse Prophet (Peace Be Upon Him). Prophet commanded Zubair and Asim (may Allah be pleased with them) to behead him. It was done according to the orders.
3. Abu Rafay was a famous merchant in the Khaiber. He used to ridicule and verbally abuse Prophet (Peace be Upon Him). A group of people was sent by Prophet (Peace be Upon Him) to end the matter. Abdullah ibn Unais (May Allah be pleased with him) killed him.
4. Abu Afah wrote a poem against Prophet (Peace be Upon Him). He abused and ridiculed the Prophet (Peace be Upon Him), Islam and believers. When Prophet (Peace be Upon Him) heard this poem, he asked the companions: Who amongst you will end the matter of this filthy and characterless person? Salim Ibn Umair presented himself for the noble task and killed that person

The same decree was passed during the reign of companions of Prophet Muhammad (Peace be Upon Him) whenever such incidents happened. Some examples are the following:

1. Once a person was presented before Hazrat Omar ibn Khattab (R.A) who used to abuse Prophet Muhammad (Peace be Upon Him). Hazrat Omar ibn Khattab (R.A) commanded to behead him and then he issued an order that whoever abuses Prophet Muhammad (Peace be Upon Him) or any other Prophet, must be beheaded.
2. Fifth Rightly Guided Caliph Omar ibn Abdul Aziz passed an order that killing a person will be permissible whoever will insult Prophet Muhammad (Peace be Upon Him).

Juristic Opinions

All four schools of law are unanimous in this regard that anyone who abuses, insults or passes derogatory remarks about Prophet Muhammad (Peace be Upon Him) will be killed. Their verdicts are mentioned below: (Rashid, [2020](#))

- 1) Imam Abu Hanifa says that whoever abuses, insults or attributes lies to Prophet Muhammad

(Peace Be Upon Him) will be declared apostate and must be killed.

- 2) Imam Malik was of the opinion that anyone who abuses Prophet Muhammad (Peace Be Upon Him), whether he is a Muslim or non-Muslim, blames him or insults him, must be punished with the death penalty and his repentance will not be accepted.
- 3) Imam Shafii declared a person apostate and permits his killing if anyone abuses or insults Prophet Muhammad (Peace be Upon Him).
- 4) Imam Ahmed ibn Hanbal too was of the view that anyone whether he is Muslim or non-Muslim, if he abuses or insults Prophet Muhammad (Peace be Upon Him) or his family, must be killed and his repentance must not be accepted.

The preceding debate makes clear that while some academics associate blasphemy with apostasy, others view it as a unique crime that warrants a different punishment. It is also claimed that the death penalty is agreed upon by the law and that the same punishment is given to both the Muslim who commits blasphemy and the non-Muslim who does it. This has led some academics to argue that blasphemy should always and without exception result in capital punishment. (Rashid, [2020](#))

A Muslim who commits blasphemy is considered an apostate under Hanafi law and is therefore subject to the mandatory death penalty established by Hadd. As such, the same forms of proof will be accepted as in Hadd punishment, namely, the testimony of two male witnesses who meet the criteria of Tazkiya tu Shahud. Yet, they argue that since it is not an apostasy in the case of a non-Muslim, the Siyasa Shariah will apply and the offender will be subject to local law. (Rashid, [2020](#))

Repentance of the Convict

In this regard, there is no consensus between scholars. When he returns to Islam, some of the scholars will accept his sincere confession and forgiveness, but others will not and will instead call for his execution. Only Imam Malik and Imam Ahmed ibn Hanbal forbid a change of heart, while Imams Abu Hanifa and Shafii permit it. Some who do not prohibit repentance, however, set a strict deadline of three days after the arrest. Over the next three days, he will be held in custody and consulted by experts. It would be best for him spiritually if he converted to Islam. If he does not repent, he will be executed. (Ahmad, [2018](#))

Pakistan Penal Code

In consequence, the Code now include a provision dealing with violations of faith. There were four subsections totalling a maximum sentence of one year under this law. Injury or desecration of a house of worship so as to insult any and all faiths is the subject of Section 295. Disturbance in the religious assembly is the topic of Section 296. Infringements on burial locations, etc. are addressed in section 297, while statements intended to hurt someone's religious sentiments are addressed in paragraph 298. The framer mentioned two things to start Section 298. Both "all fair leeway for religious discussion" and "to protect the religious teachers, through words, gestures, or demonstrations, from willfully hurting what was precious to the others" are important. As the Code failed to prevent conflict between India's two largest religions, political and religious tensions escalated. (Rumi, [2018](#))

To remedy this situation, Section 153-A of the Code was drafted and enacted in 1898. A sentence of up to two years in prison, a fine, or both may be imposed on anybody who "promotes or makes efforts to promote sentiments of hostility or hatred among the different classes of Her Majesty's subjects by sayings or publications, by symbols, recognizable depictions, or otherwise." This algorithm was put to the test in the *Raj Pall Case*. Raj Pall released his pamphlet, "The Amorous Prophet," in this instance. In accordance with Section 153-A of the IPC, he was tried and convicted by two separate bodies for inciting enmity between Muslims. The High Court of Lahore ruled in the appeal that Section 153-A's primary purpose was to protect the general populace from attack, not to avoid problems involving religious leaders. (*Rajpal v Emperor* AIR [1927](#) Lahore 590) Although in another case, *Devi Sharan Sharma v. the Emperor*, a judge of the Lahore High Court, F. W. Skemp, sentenced the petitioner to six months in jail and a fine for inciting hatred and animosity between Muslims and Hindus by his writings in *Sair-i-Dozakh*. (*Devi Sharan Sharma v. the Emperor* AIR [1927](#) Lahore 594)

Pakistan and Blasphemy Laws

Upon independence, Pakistan acquired the British Indian Penal Law, including its provision on "Offenses involving religion," which is now part of the Indian Penal Code. However, the term "subjects of His Majesty" was replaced with "Pakistan's citizens" in 1956. Non-Muslim societies in Pakistan were thought to be free from fear and to more readily support, embrace, and practise their faith if they had access to the same

possibilities as Muslim citizens. Hence, the Supreme Court of Pakistan ruled that all mosques, churches, and temples must abide by the same regulations. After independence, Hindu minorities were less likely to attack Muslims over their religion. However, the Section on "Offenses in Religion" of the PPC was brought up again as an issue by Muslims because of the Muslim-Ahmadi debate (Malik, [2017](#)). The Justice Munir 1954 Report details these disagreements; the 1974 Campaign to remove Ahmadi from the definition of Muslim failed when Ahmadi attacked Muslim students at the Rabwa railway station on July 30, 1974. The incident apparently occurred because of elements and slogans that were inflammatory to the religious sensibilities of both Muslims and Ahmadi. K. M. A. Samdani, a judge on the country's highest court, has been tasked by the government with looking into the problem. On June 13, 1974, the National Assembly appointed a special committee led by Mr Zulfiqar Ali Bhutto to find a solution to the Ahmadi's situation. Each side carefully considered the board's recommendations. Ultimately, on September 7, 1974, an amendment to the constitution defining Muslims was passed, officially recognising Ahmadi as a non-Muslim minority. (Malik, [2017](#))

Punishment of Blasphemy

The foregoing explanation, with its citations from the Hadith and perspectives from several schools of thought and the law of Pakistan, demonstrates that the punishment for blasphemy for a Muslim is death. Blasphemy is a sign of impending apostasy for any Muslim. Since the definition of blasphemy is to attack and insult the Holy Prophet (PBUH), Allah Almighty, and faiths, it inevitably hurts people's sensibilities. A Muslim who commits blasphemy is considered to have committed apostasy, whereas a non-Muslim who does so is not seen to be apostatised because he is already a non-believer. Aside from anything else, the Brits recalled religious transgressions when it came to the Indian Criminal Code. A maximum of one year of disciplinary confinement was imposed across four domains. Offences that "damage or contaminate a position of love with the intent to affront the religion of any class" are dealt with under Section 295, while those that "upset a strict get-together" are dealt with under Section 296. (Rafiq, [2015](#))

In the Raj Pall trial, this code was put to the test. An Urdu poster titled "The Amorous Prophet" was disseminated by Raj Pall in this instance. He was charged under Section 153-A of the Indian Penal Code and convicted for sowing discord between the Muslim and Hindu communities. Under the watchful eye of the

Lahore High Court Justice, it was determined that Part 153-A wasn't intended to prevent polemics against strict pioneer but rather was intended to prevent an assault on the local area and incarceration, with the proposal for the introduction of a new segment to meet the circumstance.

However, in the case of *Devi Sharan Sharma v. Sovereign*, Judge F. W. Skemp of the Lahore High Court accused the applicant, the author of *Sair-I-Dozakh*, for promoting contempt and ill will among Muslims and Hindus, and sentenced him to rigorous confinement for a period of half a year and a fine. Within the legal framework of Pakistan's Article 295-C, "lewdness against the Holy Prophet" designates any written or spoken word, any apparent portrayal, any ascription, allusion, or implication, direct or indirect, that desecrates the Holy Prophet's (PBUH) name as blasphemous and punishable by death.

Problems with the Pakistani Laws of Blasphemy

The Hanafi school of Islamic thought is widely followed by Muslims in Pakistan. When it comes to blasphemy, Hanfis categorically differentiate between Muslims and non-Muslims. When a Muslim commits blasphemy, Hanfis label him an apostate and subject him to Hadd Punishment, which includes mens rea and all other criteria that are required in Hadd Punishment, but when a non-Muslim commits blasphemy, Hanfis subject him to Siyasa, as stated in the preceding chapter. The law in Pakistan treats both equally and makes no distinctions. (Khan, [2016](#))

Also, there is no opportunity for remorse, whereas the Hanfis text explicitly allows a blasphemer three days to repent before the punishment is nullified. Such an admission of guilt is illegal in Pakistan. (Khan, [2016](#))

Conclusion

God is the one who grants independence. He taught people that their actions have consequences and provided them with the freedom to make their own decisions. So, not only in this world but also in the next, man will answer to God for his deeds. This heavenly idea of responsibility for one's actions helps maintain harmony in human communities. Most people wrongly believe that blasphemy is antithetical to free speech, but this is not the case. Blasphemy is the promotion of discord and immoral behaviour under the pretence of personal liberty. It's the intentional display of disdain or scorn towards the divine, the prophets, or the tenets of any religion. It violates

people's right to practise their faith freely. Thus, we must make a differentiation between divine rights and human rights. For the simple reason that in using one's rights, a person may trespass against God Almighty's favour. As a God-given human right, the freedom of free speech must be protected by the state. To speak freely and without fear of retribution is a fundamental human right, and the Islamic system generally upholds this right without impediment. Concern for the public's emotional well-being necessitates limiting the right to free speech.

Blasphemy against the Prophet Muhammad (peace be upon him) is forbidden according to the Quran, the hadith, and the athar. Prophet Muhammad (peace be upon him) instituted the death sentence for blasphemers during his lifetime. The subsequent caliphs continued his policy of executing blasphemers. All of the legal experts agree that the blasphemer should be executed. Yet, Muslims and non-Muslims do not always see eye to eye. When it comes to distinguishing between Muslims and non-Muslims, some jurists do not make any distinctions at all, while others do. Certain jurists who draw distinctions between the two say that the punishment for apostasy will be Hadd for Muslims but Siyasa Shariah for non-Muslims. Another contentious topic is the results of expressing contrition. It is permitted by Hanafis and Shafis if performed within three days but forbidden by Malikis and Hanbalis.

The history of blasphemy legislation can be traced back to the colonial era. During Zia's rule, it underwent much more development. Section 295 C of the Pakistan Criminal Code now mandates the death penalty, life in prison, and a fine for anyone who speaks or acts against the Holy Prophet (peace be upon him). It's a just punishment under Islamic law, yet it has its flaws.

The Hanafi school of Islamic thought is widely followed by Muslims in Pakistan. When it comes to blasphemy, Hanfis categorically differentiate between Muslims and non-Muslims. According to the previous discussion, when a Muslim commits blasphemy, the Hanfis declare him an apostate and subject the crime to Hadd Punishment, which necessitates mens rea and all other requirements that are required in Hadd Punishment, while in the case of a non-Muslim, the Hanfis subject the crime to sisyah. The law in Pakistan treats both equally and makes no distinctions. Also, there is no opportunity for remorse, whereas the Hanfis text explicitly allows a blasphemer three days to repent before the punishment is nullified. Such an admission of guilt is illegal in Pakistan. The aforementioned differences between Muslims and

non-Muslims, Hadd and Siyasa, as well as the inculcation of the rules of repentance, are all ways in which these laws might be strengthened. These laws are effective in general, but it is imperative that they be used with care and an awareness of this notion to ensure that no innocent person is hurt by their improper application.

Recommendations

1) Strengthening Pakistan's Blasphemy Laws through Improved Enforcement

The blasphemy laws in Pakistan are being poorly enforced at the moment, and neither the prosecution nor the defence are able to ensure that justice is administered in an appropriate manner. For this reason, it is absolutely necessary for there to be awareness campaigns as well as legislation that is supported by all parties in order to achieve this objective.

2) In Blasphemy Trials, Proving Mens Rea Is Essential

A significant number of blasphemy accusations that have been made by questionable witnesses have been shown to be completely unfounded in the later stages of the legal process. In order to put an end to this oddity, it is vitally crucial that the genuine intent of the accused blasphemer be put to the test at the earlier parts of the trial. This will allow the legitimacy of the case to be determined as quickly as is humanly possible.

3) Quick and Decisive Prosecution of Cases Involving Blasphemy

Many people falsely accuse their opponents of blasphemy in order to forward their own ungodly

agendas, despite the fact that they know such claims would not hold up in court. In order to prevent the abuse of blasphemy laws, it is imperative that the courts act swiftly and thoroughly when hearing such cases, allowing those who have been falsely accused to clear their names and return to their regular lives.

4) Untruthful Accusers of Blasphemy Must Be Severely Punished

The person who accuses another person or group of people of blasphemy for all the wrong reasons and ulterior motivations should be severely punished if his wicked motives are proven in a court of law. This applies whether the accusations are made against a single person or an entire group. The number of false accusations of blasphemy will be reduced "exponentially" if such a move is taken. Several attempts have been made by the Parliament of Pakistan to introduce laws for this purpose; however, they have all been unsuccessful up to this point.

5) Institution of a Special Committee of Parliament to Review Blasphemy Laws and Make Recommendations for Their Improvement:

It is true that there is currently a parliamentary committee for human rights and religious matters, but this body is not serving its intended goal of ensuring that blasphemy laws are applied appropriately. As a consequence of this, it is essential that a particular parliamentary committee be established in order to investigate the contentious issues that are present within the process of implementing and providing justice in relation to the blasphemy laws. A committee of this kind should also have support from both major political parties.

References

- Ahmad, M. M. (2018). Pakistani Blasphemy Law between Hadd and Siyāṣah. *Islamic Studies*, 57(1), 9–44. <https://www.jstor.org/stable/26617665>
- Akhtar, Z. (2022). Blasphemy Cases in Pakistan: 1947 – 2021. *CRSS*. <https://crss.pk/blasphemy-cases-in-pakistan-1947-2021/>
- Al- Quran 2:104. (n.d.).
- Al- Quran 33: 70 – 71. (n.d.).
- Al- Quran 4:148. (n.d.).
- Al- Quran 49:2. (n.d.).
- Al- Quran 58:5. (n.d.).
- Al- Quran 6:68. (n.d.).
- Al- Quran 9:12. (n.d.).
- Al- Quran 9:61. (n.d.).
- Khan, A. U. (2018). Personal-cum-Political Security & Blasphemy Laws in Pakistan: A Critical Analysis. *Pakistan Journal of Criminology*, 11(0), 121. https://www.researchgate.net/profile/Asad-Ullah-30/publication/363585606_42_An_Assessment_of_Association_between_Financial_Constraint_Protection_Gap_With_Respect_to_International_Health_Assistance_in_internally_displaced_persons_PJCv0110NoJanuary2018/
- Amnesty, I. (2016). *Pakistan: How the Blasphemy Laws Enable Abuse*, December 21, . International Amnesty. <https://www.amnesty.org/en/latest/press-release/2016/12/pakistan-how-the-blasphemy-laws-enable-abuse/>
- Article10. (1948). *Human Right Act*. Human Right Commission. <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-thought-belief-and-religion#:~:text=Everyone%20has%20the%20right%20to,worship%2C%20teaching%20practice%20and%20observance>
- Article18. (1948). *Universal Declaration of Human Rights*. United Nation. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Article18. (1996). *International Covenant on Civil and Political Rights*. United Nations General Assembly. <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>
- Article19. (1948). *Universal Declaration of Human Rights*. United Nation. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Article19. (1973). *The Constitution of Pakistan*. <https://www.pakistani.org/pakistan/constitution/>
- Article19. (1996). *International Covenant on Civil and Political Rights*. United Nations General Assembly. <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>
- Article19&20. (1973). *The Constitution of Pakistan*. <https://www.pakistani.org/pakistan/constitution/>
- Article9. (1948). *Human Rights Act*. Equality and Human Rights Commission. <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion#:~:text=Everyone%20has%20the%20right%20to,worship%2C%20teaching%20practice%20and%20observance>
- Asad, T. (2009). Free speech, blasphemy, and secular criticism." Is critique secular? *Blasphemy, injury, and free speech* 2, 20–63. <https://books.google.com/books?hl=en&lr=&id=cailDgAAOBAJ&oi=fnd&pg=PA20&dq=FREEDOM+OF+SPEECH+IN+ISLAM&ots=DaBIN2TDA M&sig=ioDKgUYyDUoMkFY9OabHNlsv kw>
- Callamard, A. (2008). Expert meeting of the links between articles 19 and 20 of the ICCPR. <https://www.menschenrechte.org/wp-content/uploads/2013/05/Freedom-of-expression-and-advocacy-of-religious-hatred-that-constitutes-incitement-to-discrimination-hostility-or-violence.pdf>
- Devi Sharan Sharma v. the Emperor AIR 1927 Lahore 594.
- Holzappel, C. (2014). Can I Say That: How an International Blasphemy Law Pits the Freedom of Religion against the Freedom of Speech. *Emory Int'l L. Rev.* 28, 597. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/emint28§ion=17
- Khan, D. Z. (2018). "Freedom of Speech and Blasphemy," September 27. <https://nation.com.pk/28-Sep-2018/freedom-of-speech-and-blasphemy>. *The Nation*.
- Khan, O. (2016). In the Name of God: Problems with Pakistan's Blasphemy Laws. *Cornell International Law Journal*, 12–24. <https://cornellilj.org/wp-content/uploads/2016/01/Omar-Khan-In-the-Name-of-God-3-CILJO-31.pdf>
- Knight, F. H. (1941). The Meaning of Freedom. *Ethics*, 86–109. <https://www.journals.uchicago.edu/doi/pdf/10.1086/290262>

- Lawton, D. (1993). *Blasphemy*. University of Pennsylvania Press.
<https://books.google.com/books?hl=en&lr=&id=twcSyyuijZ0wC&oi=fnd&pg=PP10&dq=MEANING+OF+BLASPHEMY&ots=M2SlnBUYXv&sig=0mhe-UMpEaPxF25ZA6ewl9mEbO0>
- Madni, M. A. (1994). *Verdict of Islamic Law on Blasphemy and Apostasy*.
- Malik, S. A. (2017). Blasphemy: A Crime in Pakistan Penal Code versus the Traditional Perspective. *PLR* 8. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/pakislr8§ion=9
- Nawabzada Nasrullah Khan v District Magistrate, 642 (Lahore 1965).
- Nawabzada Nasrullah Khan v District Magistrate, PLD 1965 Lahore 642.
- Siddique, O. (2008). Unholy speech and holy laws: Blasphemy laws in Pakistan—controversial origins, design defects, and free speech implications. *Minn. J. Int'l L.*, 303. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/mjgtl7§ion=15
- Quigley, J. (1992). The International Covenant on Civil and Political Rights and the Supremacy Clause. *DePaul L. Rev.* 42, 42-87. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/deplr42§ion=63
- Rafiq, A. (2015). Section 295-C of Pakistan Penal Code: Controversy and Criticism. [http://www.savap.org.pk/journals/ARInt./Vol.6\(3\)/2015\(6.3-38\).pdf](http://www.savap.org.pk/journals/ARInt./Vol.6(3)/2015(6.3-38).pdf)
- Rajpal v Emperor AIR 1927 Lahore 590.
- Rashid, M. (2020). Blasphemy of Salman Rushdie and shifting legal discourse in India. *Contemporary Islam*, 14(1), 1-18. <https://link.springer.com/article/10.1007/s11562-019-00435-w>
- Rumi, R. (2018). Unpacking the blasphemy laws of Pakistan. *Asian Affairs*, 49(2), 319-339. <https://www.tandfonline.com/doi/abs/10.1080/03068374.2018.1469338>
- Stevens, J. P. (1992). The freedom of speech. *Yale L.J* 102, 12-93. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ylrl02§ion=49
- Sturges, P. (2015). Limits to freedom of expression? The problem of blasphemy. *IFLA journal*, 24(1), 112-119. <https://journals.sagepub.com/doi/pdf/10.1177/0340035215584778>