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Violations of the Right to Freedom of Religion or Belief in Pakistan

A Briefing Paper
July 2021

International Commission of Jurists

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International Commission of Jurists
P.O. Box 1740
Rue des Buis 3
CH 1211 Geneva 1
Switzerland
t: +41 22 979 38 00
f +41 22 979 38 01
www.icj.org

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Executive Summary and Recommendations

The right to freedom of religion or belief is guaranteed in a number of core international human rights instruments and under customary international law. It includes a broad range of entitlements, such as the freedom to have or to adopt a religion or belief of one's choice, and the freedom to manifest one's religion or belief in worship, observance, practice and teaching, either individually or in community with others, in public or private. The right to freedom of religion or belief also covers the right to freedom of thought and personal convictions, including theistic, non-theistic or atheistic beliefs, and the freedom not to disclose one's religion or belief. Moreover, under international human rights law, States must refrain from discriminating against individuals or groups of individuals because of their religion or belief, and are obliged to take all necessary measures to prevent discrimination or violence by non-State actors.

The Constitution of Pakistan, 1973, declares that the country is an Islamic Republic, and that Islam shall be the State religion. While the Constitution protects certain rights of religious minorities, it gives a special status to Islam and protects the "Islamic way of life".

The role of Islam in the functioning of the State is strongly tied to Pakistan's history. Pakistan was created in 1947 – alongside the independence of India from British colonial rule – as a "separate homeland" for India's Muslims. Diverging views on whether this meant a secular homeland for Indian Muslims or an Islamic theocratic State have shaped much of the country's politics, and by necessary implication, the rights and lives of religious minorities within it.

In the present publication, the International Commission of Jurists (ICJ) addresses and makes recommendations about violations of the right to freedom of religion or belief in Pakistan and of other human rights arising from the failure of the authorities to respect, protect and fulfill the right to freedom of religion or belief in the following contexts: the "blasphemy laws" and their implementation; the rights of minority Ahmadi Muslims to profess and practise their religious beliefs; and reported forced conversions of girls from religious minorities followed by their marriage to Muslim men.

Pakistan's laws on "offences related to religion", commonly known as "blasphemy laws", include a variety of "crimes", such as "misusing religious epithets"; "defiling" the Holy Quran; deliberately "outraging religious sentiment"; and "using derogatory remarks in respect of the Prophet Muhammad." Upon conviction, sentences for these "offences" range from fines to long terms of imprisonment and, in the case of using "derogatory remarks in respect of the Prophet Muhammad", a mandatory death sentence. Pakistan's oppressive "blasphemy laws" are frequently misused; blatantly discriminate against minority religions and sects; infringe upon the rights to freedom of expression and religion; and give rise to serious fair trial concerns.

The Constitution of Pakistan stipulates that minority Ahmadi Muslims are non-Muslim, and a number of provisions in Pakistan's Penal Code criminalize the public manifestation and practice of their faith. These legal provisions violate the right to freedom of religion or belief of minority Ahmadi Muslims and discriminate against them. They also promote discrimination, hostility, violence and other abuses against Ahmadis by non-State actors.

Finally, the present briefing considers the reported forced conversions to Islam of mostly girls and young women from religious minority communities, particularly

Hindus and Christians, often followed by their forced marriage to Muslim men. The issue of forced conversion is complex and, among other things, requires an understanding of what motivates religious conversions to Islam in a country such as Pakistan where religious minorities are discriminated against, and Islam enjoys a special status by virtue of being the State religion. Reports of forced conversion are also linked with the State's failure to implement and enforce existing laws relating to abduction, child marriage and forced marriage, especially where the victims are from religious minority communities.

The ICJ acknowledges that, in addition to the violations of the right to freedom of religion or belief in the above-mentioned contexts in Pakistan, there exists a whole range of other violations and abuses related to the authorities' failure to respect, protect and promote the right of individuals belonging to religious minorities to freedom of religion or belief. These include, for example, the State's ineffective prevention of and response to violence, discrimination and other human rights abuses by non-State actors of religious minorities; inadequate protection and application of personal laws of religious minority communities; and compelling individuals from religious minority communities to receive Islamic religious instruction in public schools.

Recommendations

- Repeal all "blasphemy laws", particularly sections 295-A, 295-B, 295-C, 298-A of the Pakistan Penal Code or amend them substantially so that they be consistent with international human rights law and standards, including on freedom of expression; freedom of thought, conscience or religion; and equal protection of the law as guaranteed under the International Covenant on Civil and Political Rights (ICCPR);

- As a short-term, temporary measure – until wider reform of the "blasphemy laws" and measures to address the flaws in their implementation be carried out:
  a) Abolish the mandatory death penalty for section 295-C cases;
  b) Expressly include the requirement of proof of deliberate and malicious intent in all "offences related to religion" that are retained in the short or long term, particularly section 295-C of the Pakistan Penal Code;
  c) Amend Schedule II of the Code of Criminal Procedure, 1898, to make all "blasphemy-related offences" (sections 295 to 298-C) bailable, and ensure bail be only denied where there is substantial risk of flight, harm to others, or interference with the investigation that cannot be allayed by other means;
  d) Amend Schedule II of the Code of Criminal Procedure, 1898, to make all "blasphemy-related offences" (sections 295 to 298-C) non-cognizable to ensure judicial warrants be a prerequisite for launching investigation and making arrests;
  e) Ensure the right to a fair trial of all people accused of "blasphemy" be guaranteed, including the right to an impartial and independent tribunal, the right to a defence and assistance of a lawyer, and the right to trial within a reasonable time;
  f) Amend section 196 of the Code of Criminal Procedure to ensure no court can take cognizance of any "blasphemy-related offence", particularly under sections 295-B and 295-C of the Penal Code, without intervention from the provincial or federal governments, preferably from officials of the Ministry of Law, Justice and Human Rights. While the ICJ remains generally opposed to the requirement of sanction for the commencement of legal proceedings, given the specific issues raised in this briefing about the flaws in the prosecution and

investigation in "blasphemy" cases, this additional temporary safeguard may act as an effective deterrent against malicious or frivolous prosecution.

- Repeal provisions of the Constitution of Pakistan, 1973, and the Pakistan Penal Code that declare Ahmadis non-Muslim and criminalize the practice of their religious beliefs;
- Ensure that the full range of human rights be guaranteed in law and in practice to minority Ahmadi Muslims;
- Ensure prompt, independent and impartial investigations into attacks on Ahmadis, bring perpetrators to justice, and ensure Ahmadis have access to justice and effective remedies for human rights violations;
- Constitute an independent committee comprising members of religious minority groups, as well as human rights organizations, to conduct research on the incidence and modality of "forced conversions" in Pakistan; and in consultation with religious minority groups, human rights organizations and other relevant stakeholders, use such research to guide law and policy on the issue of forced conversions;
- Ensure any legislation criminalizing "forced conversions" is consistent with Pakistan's obligations under international human rights law, including, in particular, with respect to the right to freedom of religion or belief, as well as with the principle of legality;
- Ensure any legislation regarding religious conversion of children is compatible with the Convention on the Rights of the Child, including Articles 12 and 14, as well as the right of children to freedom of religion or belief under the ICCPR;
- Revise the Child Marriage Restraint Act to set the minimum age of marriage regardless of gender at 18 years across Pakistan; make the protection offered by the law more robust; and ensure the law is implemented effectively; and
- Ensure allegations of "forced conversion" and "forced marriage" are independently, impartially and promptly investigated with a view to apprehending the perpetrators to bring them to justice in proceedings that guarantee the right to a fair trial; ensure that victims have the right to access to justice and to an effective remedy.

Introduction and context

Pakistan is a predominantly Muslim country, with Muslims making up 96.2 per cent of the population according to the 2017 census. Hindus comprise 1.6 per cent, Christians 1.59 per cent, "Scheduled Castes"[1] 0.25 per cent, minority Ahmadi Muslims 0.22 per cent and "other minorities"[2] 0.07 per cent of the population.[3]

The Constitution of Pakistan, 1973, declares that the country is an Islamic Republic, and that Islam shall be the State religion. While the Constitution protects certain rights of religious minorities, it gives a special status to Islam and protects the "Islamic way of life".

The role of Islam in the functioning of the State is strongly tied to Pakistan's historical context. Pakistan was created in 1947 – alongside the independence of India from British colonial rule – as a "separate homeland" for India's Muslims. Diverging views on whether this meant a secular homeland for Indian Muslims or an Islamic theocratic State have shaped much of politics, and by necessary implication, the rights of religious minorities in the country.[4]

Pakistan has had three constitutions since its creation – the first in 1956, then in 1962 and finally its 1973 Constitution, which is in force at present. While all three constitutional texts acknowledge the special status of Islam, the 1973 Constitution attributes the most pronounced role to it in regulating matters of State and society, especially as a result of a series of constitutional amendments and judicial pronouncements.

Article 31 of the 1973 Constitution, among other provisions, recognizes the special status of Islam and places a duty on the State to actively enable Muslims to live their lives according to the injunctions of Islam by stipulating that the State shall take steps "to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah." Furthermore, Article 227 states that all existing laws shall be brought in conformity with the "Injunctions of Islam as laid down in the Holy Quran and Sunnah", and that "no law shall be enacted which is repugnant to such Injunctions."

Article 20 of the 1973 Constitution guarantees the right of "every citizen" to "profess, practice and propagate his religion", and the right of every religious denomination and sect "to establish, maintain and manage its religious institutions", subject to law, public order and morality

The 1973 Constitution, therefore, recognizes the right of religious minority groups to practise their religion without any interference from the State. However, religious minorities in Pakistan face a number of human rights violations and abuses, both by State and non-State actors, including violence, discrimination and other forms of exclusion. Minority Ahmadi Muslims (hereafter referred to as

[1] Historically disadvantaged Hindus, including Dalits.
[2] Including Sikhs, Parsis and Kalash.
[3] https://www.pbs.gov.pksites/default/files/tables/POPULATION%20BY%20RELIGION.pdf
[4] See, for example, Ayesha Jalal, "The Struggle for Pakistan: A Muslim Homeland and Global Politics," Harvard University Press, 2014.

Ahmadis), who consider themselves as members of a sect within Islam, have been constitutionally declared "non-Muslims" "for the purposes of the Constitution or the law" and, as a result, are especially at risk of human rights violations and abuses.[5]

Shia Muslims, in particular Hazara Shia Muslims, are also persecuted. Sunni militant groups have attacked and killed hundreds of people from the Hazara community, mostly in Balochistan.[6] The Shia Muslim community more generally has also been the target of sectarian violence throughout the country. In most cases, perpetrators of such violence escape accountability, and the Government has done little to prevent further attacks or provide remedy and redress to victims.

The International Commission of Jurists (ICJ) has identified a number of violations of the right to freedom of religion or belief in Pakistan, and of other human rights arising from Pakistan's failure to respect, protect and fulfill the right to freedom of religion or belief in the country. A number of these violations relate to discrimination against religious minorities in law, policy and practice, and stem from the preferential status given to Islam and Muslims.

This briefing paper addresses and makes recommendations regarding three such issues, which are of particular concern to the ICJ: (1) the "blasphemy laws" and their implementation; (2) the rights of minority Ahmadi Muslims to profess and practise their religious beliefs; and (3) reported forced conversions of girls and women from religious minorities, often followed by their marriage to Muslim men.

[5] Pursuant to the second amendment to the Constitution of Pakistan in 1974, any "persons of Quadiani group or the Lahori group (who call themselves 'Ahmadis')" were included as religious minorities, and Article 260 was amended to say: "A person who does not believe in the absolute and unqualified finality of The Prophethood of MUHAMMAD (Peace be upon him), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after MUHAMMAD (Peace be upon him), or recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law."

[6] See, for example, Human Rights Watch, " "We are the Walking Dead" - Killings of Shia Hazara in Balochistan, Pakistan", June 2014, accessed at: https://www.hrw.org/report/2014/06/29/we-are-walking-dead/killings-shia-hazara-balochistan-pakistan

International human rights legal framework

Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2010. The ICCPR provides the principal legal framework for Pakistan's international human rights treaty obligations in relation to the right to freedom of thought, conscience and religion or belief (Article 18); the right to freedom of opinion and expression (Article 19); and the right to equality before the law and the prohibition of discrimination (Articles 2(1), 3, 24, 26 and 27). Pakistan is also bound by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

Duty to respect, protect and fulfil human rights

With respect to all human rights obligations binding on States, whether because they arise under customary international law or under universal and/or regional human rights instruments, States have a duty to respect, protect and fulfil human rights. The obligation to respect human rights means that States must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect human rights requires States to protect individuals and groups against human rights abuses; and the obligation to fulfil human rights means that States must take positive action to facilitate their exercise and enjoyment.[7]

Freedom of religion, thought, conscience and belief

The right to freedom of thought, conscience and religion enshrined in Article 18(1) of the ICCPR includes both the right to hold beliefs and the right to manifest them individually or in community with others and in private or public through worship, observance, practice and teaching. Freedom to profess a religion guarantees the right of individuals holding diverse religious interpretations, beliefs or opinions from accepted, traditional religious orthodoxies, and protects their right to hold and manifest their religious beliefs, subject only to the limitations enshrined in Article 18(3) of the ICCPR.

Article 18 of the ICCPR

1. 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.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

[7] For an expanded exposition of this legal framework, see ICJ, "A Primer on International Human Rights Law and Standards on the Right Freedom of Thought, Conscience, Religion or Belief," January 2019, available at https://www.icj.org/new-primer-on-freedom-of-religion-or-belief-in-international-human-rights-law/.

In addition to Article 18 of the ICCPR, the right to freedom of religion or belief is guaranteed in other international human rights instruments, both treaties[8] and declaratory standards,[9] including the UN General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 ('1981 Declaration'), and has been elaborated on in great depth, among others, by the UN Human Rights Committee,[10] the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in their reports.

The Human Rights Committee has stated that the terms "belief" and "religion" are to be broadly construed and include theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.[11] Moreover, it has underlined that Article 18 of the ICCPR is not limited in its application to traditional religions or to religions and beliefs "with institutional characteristics or practices analogous to those of traditional religions", and has expressed concern about tendencies to discriminate against any religion or belief or religious minorities that may be the subject of hostility on the part of a predominant religious community.[12]

The right to freedom of religion or belief is a wide-ranging right encompassing a number of distinct yet interrelated entitlements. International law, including Article 18 of the ICCPR, provides for and guarantees the right to freedom of thought, conscience, religion or belief broadly, encompassing the right to freedom

[8] See, e.g., United Nations Educational, Scientific and Cultural Organization (UNESCO), Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, Paris, UN Doc. MISC/2003/CLT/CH/14, Article 2 (C). See also Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; and UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180.

[9] See, e.g., UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, UN GA resolution 217 A (III), Article 18; UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, UN Doc. A/Res/36/55; UN General Assembly, Combating Intolerance, Negative Stereotyping, Stigmatization, Discrimination, Incitement to Violence and Violence Against Persons, Based on Religion or Belief, adopted by the General Assembly Resolution 72/176 of 29 January 2018, UN Doc. A/RES/72/176; UN General Assembly, Freedom of Religion or Belief, adopted by the General Assembly Resolution 72/177 of 19 December 2017, UN Doc. A/RES/72/177; UN General Assembly, Freedom of Religion or Belief, adopted by the General Assembly Resolution 71/196 of 24 December 2016, UN Doc. A/RES/71/196; UN General Assembly, Combating Intolerance, Negative Stereotyping, Stigmatization, Discrimination, Incitement to Violence and Violence Against Persons, Based on Religion or Belief, adopted by the General Assembly Resolution 71/195 of 23 January 2017, UN Doc. A/RES/71/195; UN General Assembly, Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly Resolution 70/166 of 22 February 2016, UN Doc. A/RES/70/166; UN General Assembly, Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly Resolution 66/168 of 11 April 2012, UN Doc. A/RES/66/168.

[10] The UN Human Rights Committee is the body of 18 independent human rights experts established under the ICCPR. The Committee monitors State parties' implementation of the ICCPR and its Second Optional Protocol. The General Comments of the Human Rights Committee provide authoritative guidance on interpretation of the ICCPR. See *Republic of Guinea v Democratic Republic of the Congo*, International Court of Justice (2010), paras 66-68.

[11] UN Human Rights Committee, General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18), 27 September 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 2.

[12] *Ibid*, para 2.

of thought and personal convictions in all matters, and protecting the profession and practice of different kinds of beliefs, whether theistic, non-theistic or atheistic, and the freedom not to disclose one's religion or belief.[13] International law also guarantees and protects the right not to have a religious confession.

The right to freedom of thought, conscience, religion or belief does not exist in a vacuum, but along a continuum with other rights – civil and political, as well as economic, social and cultural – that, together with the right to freedom of thought, conscience, religion or belief, are all inalienable, inhere to all human beings by virtue of their common humanity, and are universal, indivisible, interdependent and interrelated.

Freedom to adopt, change or renounce a religion or belief

According to international human rights law and standards, the right to freedom of thought, conscience, religion or belief guarantees and includes the right to adopt a religion of one's choice, as well as the right to change religion, and the right to retain a religion. These entitlements are core elements of the right to freedom of thought, conscience, religion or belief; they have an absolute character, and cannot be subject to any limitation whatsoever, reflecting the nature of the right to freedom of thought, conscience, religion or belief guaranteed under international law.[14]

While the freedom to manifest one's religion in principle comprises the right to attempt to convince and convert other people, including through teaching, the right to freedom of thought, conscience, religion or belief does not protect "improper proselytism", such as the offering of material or social advantage or the application of improper pressure with a view to gaining new adherents.[15]

Freedom from discrimination on the grounds of one's religion or belief and the right to equality before the law

One of the bedrock principles of international human rights law is that States must not engage in prohibited discrimination, such as on the basis of religion or national origin. The non-discrimination principle is one of the pillars of international law, being enshrined in, among others, the UN Charter and the Universal Declaration of Human Rights. The non-discrimination principle,[16] the right to equality before the law and equal protection of the law without any discrimination,[17] together, constitute fundamental principles of human rights protection.[18]

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[13] *Ibid*, paras 1 – 2.

[14] As the Human Rights Committee has noted, the fact that "this provision [i.e., the right to freedom of thought, conscience, religion or belief guaranteed by Article 18 of the ICCPR] cannot be derogated from, even in time of public emergency" is testament to the fundamental character of the freedom it guarantees. Article 4, ICCPR; UN Human Rights Committee, General Comment 22, para. 1.

[15] See, for example, *Larissis et al v. Greece*, Applications nos. 140/1996/759/958960, judgment, European Court of Human Rights, 24 February 1998.

[16] The UN Human Rights Committee has stated that the term "discrimination" as used in the Covenant, including in Article 26, should be understood to imply "any distinction, exclusion, restriction or preference which is based on any ground…which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." UN Human Rights Committee, General Comment No. 18*: Non-discrimination*, 10 November 1989, available at: http://www.refworld.org/docid/453883fa8.html.

[17] Article 26 of the ICCPR guarantees equal protection of the law: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the

The non-discrimination principle applies and is integral to all human rights, whether civil and political or economic, social and cultural. Thus, it applies to the right to freedom of thought, conscience, religion or belief. Furthermore, as the Human Rights Committee has noted, even if the ICCPR allows States to take measures derogating from certain obligations under the Covenant in times of public emergency,[19] such "measures should not involve discrimination solely on the ground of [...] religion [...] Furthermore, article 20, paragraph 2 [of the Covenant], obligates States parties to prohibit, by law, any advocacy of [...] religious hatred which constitutes incitement to discrimination." [20] Other international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), by which Pakistan is bound as a State party to these treaties, and the 1981 Declaration provide similar protections against discrimination on the grounds of religion or belief.[21]

States, therefore, have the duty to refrain from discriminating against individuals or groups of individuals because of their real or imputed religion or belief, as well as the obligation to take necessary measures to prevent discrimination on such grounds by non-State actors. In this context, it is important to recall that multi-level, intersecting and compounding forms of discrimination, including in respect of age, gender, socioeconomic status, racial or ethnic background, national origin, citizenship, migration status, language, health status, particularly HIV/AIDS and disability, as well as poverty and sexual orientation or gender identity or expression, are all factors that may exacerbate or otherwise influence the nature of discrimination on the grounds of one's real or imputed religion or belief.

In addition, under international human rights law, everyone has the right to a remedy for human rights violations, such as being discriminated against on the grounds of religion or belief. In this context, States have duties to act to prevent, prohibit, eradicate and remedy prohibited discrimination on the grounds of religion or belief.

The right to freedom of religion or belief and religious minorities

With respect to religious and ethnic minorities, Article 27 of the ICCPR clarifies that, "In those States in which ethnic, religious or linguistic minorities exist,

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law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status." (**emphasis added**)

[18] See, e.g., Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 1.

[19] Under Article 4(1).

[20] Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para.2. Article 20(2) of the ICCPR reads as follows: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

[21] E.g., ICESCR Article 2(2): "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as […] religion"; CRC, Article 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language;" and the 1981 Declaration of the General Assembly, Article 2(1): "No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief."

persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

The UN Special Rapporteur on freedom of religion or belief has stated that religious minorities remain the main victims of violations of the right of freedom of religion or belief and other acts of religious intolerance.[22] Religious and belief minorities face various forms of discrimination, including with regard to official registration procedures or undue limitations with respect to religious teaching, dissemination of religious materials and displaying religious symbols. Moreover, when religious minorities are groups that follow "a so-called non-traditional or newer religion", the members of these communities may be the object of suspicion and, consequently, may suffer greater limitations of their right to freedom of religion or belief.[23]

Some religious minorities are also adversely affected by intolerance, threats or acts of violence perpetrated by non-State actors, which are often tolerated or encouraged by the authorities.[24]

Freedom of expression

Article 19(1) of the ICCPR states that everyone has the right to hold opinions without interference, and Article 19(2) states that everyone has the right to freedom of expression, including to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

Expounding on Article 19 of the ICCPR, the UN Human Rights Committee has specifically stated: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant".[25] The Committee has further clarified that it is impermissible for any such laws to discriminate in favour of or against a particular religion or belief system, or their adherents over another, or religious believers over non-believers. It is also impermissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.[26]

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[22] Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/61/340, 13 September 2006, pp. 49-51.
[23] Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/61/340, 13 September 2006, pp. 49-51.
[24] Interim report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/64/159, 17 July 2009, para. 29.
[25] UN Human Rights Committee, General Comment No. 34, Article 19: freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 2011 (Human Rights Committee, General Comment 34), para 48. Under Article 19(3) of the ICCPR, certain restrictions on the exercise of the right to freedom of expression may be permissible, for the purpose of ensuring respect for the rights of others, or the protection of national security or of public order, or of public health or morals. However, such restrictions must be precisely formulated through legal provisions that comply with human rights; they must be demonstrably necessary and proportionate to the one of the above-stipulated purposes; and must not put the right itself in jeopardy. Additionally, restrictions must not be overbroad – they must conform to the principle of proportionality and must be the least intrusive instrument among those capable of achieving their protective function and proportionate to the interest to be protected; the principle of proportionality must be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.
[26] Human Rights Committee, General Comment 34, para 48.

Additionally, the Human Rights Committee has stated that criminalizing the holding of an opinion, no matter what the opinion, is incompatible with Article 19 of the ICCPR.[27]

Principle of legality

A key precondition to a fair trial recognized globally is that criminal offences must be prescribed by law and must conform to the principle of legality.[28] This means that the laws proscribing acts or omissions as criminal must be formulated clearly and precisely to ensure individuals can regulate their conduct accordingly. Crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offence. This means that there must be a clear definition of the criminalized conduct establishing its core elements and the factors that distinguish it from conduct that is permissible.[29] Vague laws undermine the rule of law because they leave the door open to selective interpretation, enforcement, and prosecution, including based on discriminatory policies of government officials and the personal predilections of judges.

The UN Human Rights Committee has emphasized that laws must not confer unfettered discretion to those responsible for their execution and must provide sufficient guidance to enable law enforcers and the general public to determine what kinds of expression are restricted.[30]

[27] *Ibid.,* para 9.
[28] See, Human Rights Committee, *Nicholas v Australia*, UN Doc. CCPR/C/80/D/1180/2002 (2004), para 7.5; and UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, 2007 (Human Rights Committee, General Comment 32), para 30. In addition, the presumption of innocence requires that the prosecution proves each element of the crime to the required legal standard, namely beyond a reasonable doubt in criminal cases.
[29] See, *Castillo Petruzzi et al v Peru*, Judgment of the Inter-American Court of Human Rights (1999), para 121.
[30] Human Rights Committee, General Comment 34, para 25.

National Legal Framework

The Constitution of Pakistan stipulates that Islam shall be the State religion, while acknowledging the rights of people practising other religions.

The practice and recognition of a "State religion" is not *per se* contrary to international human rights law. However, the authorities must ensure that officially establishing a religion as the religion of the State does not impair the enjoyment of any human rights, and does not result in discrimination against those who profess a religion other than the State religion, or against those who do not profess any religion at all.[31]

The Constitution of Pakistan contains several provisions that relate to the right to freedom of religion or belief. Article 20 guarantees the right of "every citizen" to "profess, practice and propagate his religion", and the right of every religious denomination and sect "to establish, maintain and manage its religious institutions", subject to law, public order and morality. Article 21 provides safeguards against taxation "for purposes of any particular religion", and Article 22 provides "safeguards as to educational institutions in respect of religion".

Excerpts from the Constitution of Pakistan

20 Freedom to profess religion and to manage religious institutions.
Subject to law, public order and morality:-

(a) every citizen shall have the right to profess, practice and propagate his religion; and

(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

21 Safeguard against taxation for purposes of any particular religion.
No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

22 Safeguards as to educational institutions in respect of religion, etc.

(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law:

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

[31] In setting out the scope of limitations under Article 18 of the ICCPR, the Human Rights Committee has recognized that a "State religion" must not result in "any impairment of the freedoms under Article 18." The Committee has emphasized that those who do not accept the official ideology of the State must be protected against discrimination. See, General Comment No. 22, para. 9.

The interpretation of these fundamental rights provided by the Courts in Pakistan through their jurisprudence is inconsistent. Nonetheless, in 2014, the Supreme Court did deliver a landmark judgment clarifying and expanding the scope of Article 20 of the Constitution.[32] The Court explained that "religion" cannot be defined in rigid terms, and held that freedom of religion must also include freedom of conscience, thought, expression, belief and faith. The Court elaborated and held that these freedoms have both an individual and a community aspect, and on the basis of this interpretation, further ruled that each citizen of Pakistan is free to exercise the right to profess, practise and propagate his or her religious views, even against the prevailing or dominant views of his or her own religious denomination or sect.

In its judgment, the Supreme Court interpreted the constitutional provisions relating to freedom of religion in light of international human rights law and standards. It noted that these standards "serve as moral checks and efforts are continually being made to incorporate these rights into domestic law." In determining that the scope of freedom of religion in Article 20 of the Constitution included freedom of conscience and belief, the Supreme Court's judgment relied on, among other things, Article 18 of the ICCPR and the 1981 Declaration, both of which guarantee the right to freedom of thought, conscience and religion in terms that are broader than Article 20 of the Constitution.[33]

However, in applying Article 20 to specific cases, especially those raising sensitive issues relating to "blasphemy" or involving members of the minority Ahmadi Muslim community, the courts have taken a different approach. In such cases, not only have they interpreted Article 20 narrowly, but the courts have also held that the right to freedom of religion or belief enshrined in Article 20 of the Constitution must be interpreted in a manner that is consistent with the "injunctions of Islam."[34]

The Constitution also contains certain special provisions for Muslims. Article 31 states, as a principle of State policy, that the State shall take steps to "enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah." Among other things, the State shall also endeavour to "make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran", and "to promote unity and the observance of the Islamic moral standards."

Article 227 of the Constitution provides that all existing laws shall be brought in "conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."

The Constitution also establishes two institutions to achieve these objectives. The first is the Federal Shariat Court, which has jurisdiction to "examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy

[32] *Suo motu* case no 1 of 2014.
[33] Human rights groups have highlighted how the SC's directions in the judgment have still not been implemented. See, for example, Center for Social Justice, "Justice Yet Afar", May 2021, accessed at: http://www.csjpak.org/pdf/Justice%20Yet%20Afar%20BOOK.pdf
[34] See, for example, *Zaheeruddin v. the State*, 1993 SCMR 1718.

Prophet",[35] and the Council of Islamic Ideology, which has the authority to make recommendations to the Parliament and provincial legislative assemblies on "enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah", as well as advising "whether a proposed law is or is not repugnant to the Injunctions of Islam."[36]

[35] Article 203, Constitution of Pakistan.
[36] Article 230, Constitution of Pakistan.

Violations of the right to the freedom of religion of belief in Pakistan

This briefing paper addresses and makes recommendations about violations of the right to freedom of religion or belief in Pakistan and of other human rights arising from Pakistan's failure to respect, protect and fulfill the right to freedom of religion or belief in the following contexts: (1) the "blasphemy laws" and their implementation; (2) the rights of minority Ahmadi Muslims to profess and practise their religious beliefs; and (3) reported forced conversions of Hindu girls, often followed by their marriage to Muslim men.

Offences related to religion: "blasphemy laws"

Pakistan's laws on "offences related to religion", commonly known as "blasphemy laws", include a variety of "crimes", such as "misusing religious epithets"; "defiling" the Holy Quran; deliberately "outraging religious sentiment"; and "using derogatory remarks in respect of the Prophet Muhammad." Upon conviction, sentences for these "offences" range from fines to long terms of imprisonment and, in the case of using "derogatory remarks in respect of the Prophet Muhammad" (section 295-C of the Penal Code), a mandatory death sentence.

By law, the majority of these offences are "non-bailable", meaning that, while bail may be granted at the discretion of the court, those detained pursuant to many of these offences may not apply for bail as a matter of right. A majority of these offences are also "cognizable", which means the police may start an investigation and arrest suspected offenders without a warrant.

Since their promulgation, Pakistani civil society activists, human rights groups, academics and members of the judiciary have denounced these oppressive and frequently misused "blasphemy laws". Concern about them was also expressed during the review by UN Member States of Pakistan's human rights record at the UN Human Rights Council,[37] as well as by a number of the Human Rights Council's Special Procedures mandate holders[38]

[37] During Pakistan's second Universal Periodic Review in 2012, Pakistan received seven recommendations related to its "blasphemy laws". Pakistan rejected recommendations 122.30, which called for the law on blasphemy to guarantee in practice the right to freedom of religion. Pakistan noted a number of recommendations, including recommendation 122.28, which asked the Government to ensure that "blasphemy laws" and their implementation be in line with international law, and called for the enactment of legislation ensuring freedom of religion and belief for all religious groups, and for consideration to be given to abolishing "blasphemy laws. The list of recommendations and Pakistan's responses can be accessed here: http://www.upr-info.org/sites/default/files/document/pakistan/session_14_-_october_2012/recommendationsandpledgespakistan2012.pdf.

[38] See, for example, Report of the Special Rapporteur on freedom of religion or belief, 2012, Heiner Bielefeldt: "States should repeal any criminal law provisions that penalize apostasy, blasphemy and proselytism as they may prevent persons belonging to religious or belief minorities from fully enjoying their freedom of religion or belief", UN Doc. A/HRC/22/51 accessed at: http://www.ohchr.org/Documents/Issues/Religion/A.HRC.22.51_English.pdf; and the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, following her mission to Pakistan in 2012, UN Doc. A/HRC/23/43/Add.2 (2013), para 117: "Blasphemy laws, Hudood Ordinances, and anti-Ahmadi laws, as well as any other discriminatory legal provisions, should be repealed and replaced with provisions in conformity with Pakistan's Constitution and the international human rights law instruments to which Pakistan is a party", accessed at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/126/79/PDF/G1312679.pdf?OpenElement. See also, "*UN rights experts call for urgent measures to protect Pakistan's religious minorities",* 2 June

and international human rights organizations,[39] who have all observed that Pakistan's "offences against religion" violate its obligations under international human rights law, and have urged Pakistan to repeal or radically amend them.

The UN Special Rapporteur on the Independence of Judges and Lawyers, for example, following a mission to Pakistan in 2012, found that

> *These laws serve the vested interests of extremist religious groups and are not only contrary to the Constitution of Pakistan, but also to international human rights norms, in particular those relating to non-discrimination and freedom of expression and opinion.*[40]

The Special Rapporteur went on to recommend that Pakistan should repeal or amend the "blasphemy laws" in accordance with its human rights obligations.

Recently, the UN Human Rights Committee expressed concern at Pakistan's "blasphemy laws" following its review in July 2017 of country's first periodic report on its implementation of the ICCPR. The Committee expressed concern that these offences carried severe penalties, including the mandatory death penalty; they reportedly had a discriminatory effect, particularly on Ahmadi persons; a very high number of "blasphemy" cases were based on false accusations and there was violence against those accused of "blasphemy"; and there were reports that judges who hear "blasphemy" cases were frequently harassed and subjected to intimidation and threats.

In light of the above, the Committee recommended that Pakistan "repeal all blasphemy laws or amend them in compliance with the strict requirements of the Covenant, including as set forth in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, para. 48."[41]

Moreover, the Human Rights Committee and other human rights bodies and independent human rights experts have clarified that the mandatory imposition of the death penalty, which is prescribed under section 295-C of Pakistan's Penal Code, is prohibited under international human rights law.[42]

In April 2021, the European Union Parliament passed a resolution expressing concern about Pakistan's "blasphemy laws" and their misuse, including with respect to the case of Shagufta Kausar and Shafqat Emmanuel (see, "The case of

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2014, accessed at: http://www.un.org/apps/news/story.asp?NewsID=47938#.VdIjSEUeXVY.

[39] See, for example, *Amnesty International, Pakistan*: *Use and Abuse of the Blasphemy Laws,* July 1994; Freedom House, *Policing Belief: the impact of blasphemy laws on human rights*, October 2010, accessed at: https://freedomhouse.org/sites/default/files/Policing_Belief_Full.pdf, pp. 69-89.

[40] Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 2012, UN Doc. A/HRC/23/43/Add.2, para 57, p. 13.

[41] UN Human Rights Committee, Concluding observations on the initial report of Pakistan, UN Doc CCPR/C/PAK/CO/1, August 2017, paras 33 and 34.

[42] See, for example, Human Rights Committee, General Comment No. 36 Article 6: right to life, CCPR/C/GC/36, 3 September 2019, para. 37; Special Rapporteur on extrajudicial executions: UN Doc. A/HRC/14/24 (2010), para. 51(d) and UN Doc. A/HRC/4/20 (2007) paras 55-66; Human Rights Committee: *Thompson v Saint Vincent*, UN Doc. CCPR/C/70/D/806/1998 (2000) para. 8.2, *Kennedy v Trinidad and Tobago*, UN Doc. CCPR/C/74/D/845/1998 (2002) para. 7.3, *Carpo et al v The Philippines*, UN Doc. CCPR/ C/ 77/D/1077/2002 (2003) §8.3, *Larrañaga v The Philippines*, UN Doc. CCPR/C/87/D/1421/2005 (2006) para 7.2, *Mwamba v Zambia*, UN Doc. CCPR/C/98/D/1520/2006 (2010) para 6.3 and Human Rights Committee Concluding Observations: Botswana, UN Doc. CCPR/C/BWA/CO/1 (2008) para 13.

Shafqat Emmanuel and Shagufta Kausar" below).[43] The Resolution called on the Commission and the European External Action Service (EEAS) to immediately review Pakistan's eligibility for GSP+ status,[44] including "whether there is sufficient reason to initiate a procedure for the temporary withdrawal of this status and the benefits that come with it, and to report to the European Parliament on this matter as soon as possible."

Summary of Offences related to Religion

Sec. of Penal Code	Offence	Sentence	Year	Bailable and cognizable
295	Injuring or defiling a place of worship, with intent to insult the religion of any class	Up to two years' imprisonment, rigorous or simple, or fine, or both	1860	Bailable and cognizable
295-A	Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs	Up to 10 years' imprisonment, rigorous or simple, fine, or both	1927	Non-bailable and non-cognizable
295-B	Defiling the Holy Quran	Mandatory imprisonment for life	1982	Non-bailable and cognizable
295-C	Use of derogatory remarks, etc., in respect of the Holy Prophet	Mandatory Death sentence	1986	Non-bailable and cognizable
296	Disturbing religious assembly	Up to one year's imprisonment, or fine, or both	1860	Bailable and cognizable
297	Trespassing on burial places, etc.	Up to one year's imprisonment, rigorous or simple, or fine, or both	1860	Bailable and cognizable
298	Uttering words, etc., with deliberate intent to wound religious feelings	Up to one year's imprisonment, rigorous or simple, or fine, or both	1860	Bailable and non-cognizable
298-A	Use of derogatory remarks in respect of holy personages	Up to three years' imprisonment, fine, or both	1980	Bailable and cognizable
298-B	Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places	Up to three years' imprisonment and fine	1984	Non-bailable and cognizable
298-C	"Person of Quadiani group or the Lahori group (who	Up to three years' imprisonment,		Non-bailable and cognizable

[43] The Resolution can be accessed here: https://www.europarl.europa.eu/doceo/document/RC-9-2021-0254_EN.html.

[44] The GSP+ trading status is an instrument of the EU's trade policy that aims to encourage developing countries to comply with core international standards in return for trade incentives. Pakistan obtained its first GSP+ status in 2014. Its next review on implementation of GSP+ conditions will be held in 2022.

	call themselves 'Ahmadis' or by any other name)" who "directly or indirectly" poses as a Muslim	rigorous or simple, and fine	1984	

Historical context

Criminal offences against religion in Pakistan are, in part, based on laws promulgated during British colonial rule, as significant sections of the Indian Penal Code, 1860 are still applicable in Pakistan, India, Bangladesh and Myanmar. During colonial rule, five provisions proscribing certain "offences against religion" were introduced in the sub-continent. Four of them, sections 295 (intentional damage or defilement of a place or object of worship), 296 (disturbing religious ceremonies or gatherings), 297 (trespassing on places of burial) and 298 (intentionally insulting an individual's religious feelings) were introduced in 1860.[45]

Initially, the justification for introducing these provisions was the maintenance of law and order. In multi-cultural India, where people with different religious beliefs were living together, avoiding conflict among different groups was considered essential for controlling the colonized populations.

Section 295-A was added to the Indian Penal Code in 1927 following a rise in tension between Hindu and Muslim communities. In 1924, a pamphlet written by an anonymous author, titled "Rangila Rasool",[46] purporting to describe real events in the life of the Prophet Muhammad, was circulated in Punjab. The pamphlet triggered angry responses from segments of the Muslim community, and a case was registered against the publisher, Mahashe Rajpal, under section 153 of the Indian Penal Code for "provocation with the intent of causing a riot". Mahashe Rajpal was convicted by the trial court, but the Punjab High Court in 1927 set aside his conviction on the grounds that the intention "to attack the Mahomedan religion as such or to hold up Mahomedans as objects worthy of enmity or hatred" had not been proven. The High Court further added that

[45] These provisions defined the "offences" as well as the punishments as follows:
S. 295: Injuring or defiling place of worship, with intent to insult the religion of any class. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
S. 296: Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
S. 297: Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a, depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
S. 298: Uttering words, etc. with deliberate intent to wound religious feelings. Whoever, with any deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
[46] "The Colourful Prophet".

section 153 of the Indian Penal Code was not intended to "prevent all adverse discussions of the life and character of a deceased religious leader".[47]

Following widespread agitation against the setting aside of Mahashe Rajpal's conviction and following calls for reform of the penal code to adequately "protect the dignity of the Prophet Muhammad", the authorities introduced section 295-A in 1927 to criminalize "deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious believers".

During the debates around the wording of the new law, the founder of Pakistan, Muhammad Ali Jinnah, highlighted that it was of paramount importance that "those who are engaged in historical works, those who are engaged in the ascertainment of truth and those who are engaged in *bona fide* and honest criticism of a religion shall be protected".[48]

Promulgation of the new law did not mark the end of the matter. In April 1929, Ilm Din, a 19-year-old boy, killed Mahashe Rajpal to punish him for "defaming Prophet Muhammad" through the publication of the pamphlet. Ilm Din was later convicted for murder and hanged.

People in both Pakistan and India have remembered the perpetrator and victim of the killing for different reasons. While Mahashe Rajpal is widely remembered as a martyr in India, having sacrificed his life for freedom of expression, his killer Ilm Din is widely revered in popular culture and parts of the media in Pakistan as Ghazi Ilm Din "Shaheed" (martyr), having sacrificed his life in defence of the honour of the Prophet Muhammad.[49]

Amendments during General Zia-ul-Haq's regime

Following independence in 1947, Pakistan retained the penal code inherited from the British. During the period spanning from 1947-1977, there are only 10 reported judgments that relate to "offences against religion".[50] A majority of complaints made under section 295-A were either dismissed by the courts as the requirement of a prior authorization of the central or provincial government was not fulfilled, or they were dismissed by the High Courts for failing to meet the requirement of "deliberately and maliciously" hurting religious sentiment. In this period, complaints were mostly made by Muslims against other Muslims, or by non-Muslims against Muslims: no case was registered by a Muslim against a non-Muslim for committing an "act of blasphemy against the Prophet Muhammad" or for "defiling" the Holy Quran.[51]

In 1977, a *coup d'état* brought General Zia-ul-Haq to power and ushered in a period of "Islamization" that led to major changes to the Pakistan Penal Code

[47] See, Neeti Nair, "Beyond the 'Communal' 1920s: The Problem of Intention, Legislative Pragmatism, and the Making of Section 295A of the Indian Penal Code", *Indian Economic Social History Review,* 2013, pp. 319-324.
[48] *Ibid*., p. 331.
[49] "Blasphemy laws in Pakistan A Historical Overview", *Center for Research and Security Studies*, accessed at: https://alaiwah.wordpress.com/2012/09/21/blasphemy-laws-in-pakistan-a-historical-overview/.
[50] Reported judgments only include judgments of the superior judiciary, e.g., the Supreme Court, the High Courts and the Federal Shariat Court. These 10 judgments include three under Section 295; five on section 295-A, and two under section 297. Data on the number of cases registered under these provisions and findings of trial courts is not available to the ICJ.
[51] *Ibid.*

(PPC).[52] Five criminal provisions relating to "blasphemy" and other "offences against religion" were added to the PPC between 1980-1986.[53]

Whereas laws related to "offences against religion" introduced by the British were not specific to any religion and addressed all religious beliefs, "blasphemy laws" enacted during the 1980s were specific to Islam and Muslim beliefs: "blaspheming against Prophet Muhammad" and "defiling of Quran" were inserted as separate "offences"; in addition, "offences" specifically targeting minority Ahmadi Muslims were introduced, making it an offence, punishable by imprisonment and/or a fine, for them to freely express or practise their religious beliefs.[54]

In a report following a mission to Pakistan in December 1986 to study the process of return to democracy after eight years of martial law rule, the International Commission of Jurists (ICJ) expressed grave concern at the new laws enacting "offences against religion", and cautioned that not only did they violate freedom of expression and religious belief, but their vague wording made them open to abuse.[55]

The report stressed

> *Some of the offences are also framed in such broad and subjective terms that considerable discretion is left to the courts, and it is scarcely possible to know in advance whether the section is being transgressed. This is particularly true of the prohibitions on posing, directly or indirectly, as a Muslim and on outraging 'in any manner whatsoever' the religious feelings of Muslims, and the range of activities caught by them has indeed proved to be extensive.*[56]

It further added

> *Despite the lifting of martial law there continue to be serious interferences with the freedom of religious minorities, to a very considerable extent in the case of the Ahmadis but also significant as regards the*

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[52] General Zia-ul-Haq was the sixth President of Pakistan from 1978 until his death in 1988. He declared martial law for the third time in the country's history in 1977.

[53] The three provisions specific to "blasphemy" include: S. 295-B: Defiling, etc. of copy of Holy Qur'an. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract there from or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.
S. 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 (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to a fine.
S. 298-A: Use of derogatory remarks, etc., in respect of holy personages. Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulaf-e-Raashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[54] Osama Siddique and Zahra Hayat, *Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design Defects, and Free Speech Implications*, Minnesota Journal of International Law, Vol. 17, No. 2, 2008 (Unholy Speech, Holy Laws), pp. 312-216.

[55] International Co*mmission of Jurists*, "Pakistan: Human Rights After Martial Law", Geneva, 1987, accessed at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1987/01/Pakistan-human-rights-after-martial-law-fact-finding-report-1987-eng.pdf

[56] *Ibid.,* p. 106.

non-Muslim minorities.[57]

While the ostensible justification for these criminal provisions may have been to provide a legal avenue for the adjudication of religious conflict, the outcome has resulted in restricting pluralism, persecution of religious minorities, and muzzling freedom of expression and religious belief.

The case of Shafqat Emmanuel and Shagufta Kausar[58]

In 2014, Shafqat Emmanuel and Shagufta Kausar – husband and wife – were convicted by a trial court of "defaming the Prophet Muhammad" under section 295-C of Pakistan's Penal Code and were sentenced to death. The Lahore High Court (LHC) overturned their conviction and acquitted them in June 2021.

The allegations against Shafqat Emmanuel and Shagufta Kausar were that they had sent messages in the English language "defaming the Prophet Muhammad" to a cleric and a lawyer. The sim card with which the messages had been sent was allegedly in Shagufta Kausar's name. Shafqat Emmanuel "confessed" to sending the messages before a magistrate, a "confession" he later retracted maintaining that he had been subjected to torture and forced to confess to the crime. Shafqat Emmanuel and Shagufta Kausar claimed they were both illiterate and could not type in Urdu, let alone English. They also denied that the sim card with which the messages had been sent belonged to them.

The defence also argued that Muhammad Hussain, a friend of the complainant in the case, colluded with him to steal Shagufta Kausar's National Identity Card, which was then used to buy a sim card in her name and later to send the "blasphemous" text messages. Shagufta Kausar and Shafqat Emmanuel said that Muhammad Hussain's motive was to seek revenge after a quarrel between their children and their neighbours a few months before the incident.

The LHC acquitted the couple after finding that there was no material evidence against them linking them to the "blasphemous" text messages.

They were acquitted after spending nearly seven years on death row, much of which in poor health. Their appeal before the LHC was postponed a number of times between June 2019 and June 2021, before they were eventually acquitted released.

Courts too have expressed concern at the misuse of "blasphemy" provisions. In 2002, for example, the Lahore High Court found that "ever since the law became more stringent, there has been an increase in the number of registrations of the blasphemy cases", and "as we have seen in the recent past, cases of such-like nature are on the increase and we have also observed element of mischief involved."[59]

There is no official data about the number of "blasphemy" cases in Pakistan. According to NGO data on "blasphemy cases", at least 1855 people have been accused of committing offences related to religion between 1987 and 2020.[60] A breakdown of these figures reveals that religious minority communities are disproportionately affected by the various "offences against religion"; however,

[57] *Ibid*., p. 118.
[58] The official, reported judgment of the Lahore High Court is yet be made available; see, among others, the following BBC item Pakistan overturns Christian couple's blasphemy death sentences.
[59] PLD 2002 Lahore 587, para 30.
[60] *Dawn News*, 5 February 2021, accessed at: https://www.dawn.com/news/1605527

these laws do not just target non-Muslims, as nearly half of those accused of "blasphemy" are Muslims.

In response to the UN Human Rights Committee's concern about the "blasphemy laws" in Pakistan, particularly "the very high number of blasphemy cases based on false accusations" and their "discriminatory effect",[61] the Government submitted the following statement:

> *Statistics of Blasphemy cases registered in Punjab during 2011-2015 show that out of 2299 only 255 (11%) persons were falsely involved in the blasphemy cases and out of 1296 cases only 119 (9%) cases were falsely registered. This ratio was reduced to 6% in 2015 due to effective prosecution by the Government and discouragement of the abuse of Blasphemy Law by mischievous elements. Furthermore, 1201 (around 93%) blasphemy cases were registered against Muslims (majority) whereby 6 cases are against Muslims by Non-Muslims. During the same period, in Sindh, the second largest province of Pakistan, only 11 cases were registered. In case of KP* [Khyber Pakhtunkhwa]*, only 19 cases were registered and most of them are against Muslims.*[62]

The data shared by the Government does not clarify which provisions of the Pakistan Penal Code are relevant to the statistics on "blasphemy" cases cited in its response; nor does it explain how the conclusion that only nine per cent of cases were "falsely registered" was reached; or how the Government concluded it had brought this figure down to six per cent in 2015. The data is also inconsistent: the submission starts by referring to 2299 cases of "blasphemy" registered in Punjab, but it then presents a breakdown of the number of accused according to their religion, and refers to 1201 cases registered against Muslims, claiming this is 93 per cent of the total number (i.e., of 2299).

In addition to individuals prosecuted for "blasphemy", since 1986, as many as 70 people have been killed following allegations that they had committed "blasphemy";[63] moreover, countless families have been threatened, attacked and forced to leave their homes; and lawyers and judges involved in "blasphemy" legal cases have been persecuted for performing their duties independently and impartially.

More recently, both State and non-State actors have used blasphemy allegations in furtherance of their vested interests to silence activists and critics.[64]

The case of Asia bibi[65]

In 2010, Asia bibi was convicted by a trial court of "defaming the Prophet Muhammad", under section 295-C of Pakistan's Penal Code, and was sentenced to death. On appeal, the Lahore High Court (LHC) upheld her conviction and

[61] UN Human Rights Committee, Concluding observations on the initial report of Pakistan, UN Doc CCPR/C/PAK/CO/1, August 2017.
[62] UN Human Rights Committee, Information received from Pakistan on follow-up to the concluding observations, UN Doc. CCPR/ C/PAK/CO/1/Add.1, May 2019.
[63] Asad Hashim, *Al Jazeera,* Explained: "Pakistan's emotive blasphemy laws"**,** September 2010, accessed at: https://www.aljazeera.com/news/2020/9/21/explained-pakistans-emotive-blasphemy-laws
[64] See, for example, *Dawn,* "Peshawar police book Aurat March organisers over blasphemy", April 2021, accessed at: https://www.dawn.com/news/1618433 and Shamil Shams and Arafatul Islam, *DW*, "Blasphemy allegations – the new way of muzzling free speech in South Asia", May 2017, accessed at: https://www.dw.com/en/blasphemy-allegations-the-new-way-of-muzzling-free-speech-in-south-asia/a-38675677
[65] Criminal Appeal No.39-L of 2015, the Supreme Court's judgment is available at https://www.supremecourt.gov.pk/downloads_judgements/Crl.A._39_L_2015.pdf.

confirmed her death sentence in 2014. The Supreme Court finally acquitted Asia bibi in October 2018.

The allegations against Asia bibi were that she had made three "defamatory and sarcastic" statements about the Prophet Muhammad on 14 June 2009, during an argument with three Muslim women while the four of them were picking fruit in a field. In her defence, Asia bibi maintained she had a "quarrel" with two of the Muslim women, Mafia and Asma, in 2009, following their refusal to drink water that she had brought for them because she was a Christian. She stated that "some hot words were exchanged" during the argument, after which Mafia and Asma, alongside Qari Muhammad Salaam – a Muslim cleric – and his wife, who taught Asma and Mafia the Quran, fabricated the "blasphemy" case against her. Asia bibi also maintained that she had "great respect and honour for the Holy Prophet Muhammad and the Holy Quran" and had never made the alleged "blasphemous" remarks.

The Supreme Court acquitted her after finding:
a) an unexplained delay in the registration of the criminal complaint against her;
b) material inconsistencies in the testimonies of prosecution witnesses;
c) a wrongful reliance by other courts on Asia bibi's extra-judicial "confession";
d) that the trial court and LHC had failed to take into account the circumstances of the "blasphemy" allegations, including a "quarrel", possibly about Asia bibi's faith.

The Supreme Court also noted that the context indicated the charges could have arisen from a "false allegation" of "blasphemy", echoing concern raised by the ICJ and others that the "blasphemy" laws in Pakistan have typically become an instrument of personal vendettas and malicious motivations.

Asia bibi's acquittal came after she had spent eight years in prison, mostly on death row. Moreover, Salman Taseer – the then Governor of Punjab – and Shahbaz Bhatti – the Minister for Minorities Affairs at the time – were killed after advocating for her release; and her family was subjected to continuous threats and harassment, only because of their relationship with someone accused of "blasphemy".

Inconsistency with international human rights law

Pakistan's blasphemy laws are fundamentally incompatible with Pakistan's obligations under international law, including the duty to guarantee freedom of thought, conscience and religion; the right to freedom of expression; and the right to equality before the law and equal protection of the law without discrimination. In addition, the vague and over-broad formulations of the above-mentioned "blasphemy laws" violate the principle of legality, and leave them open to subjective interpretation and abuse.

As discussed above, under international human rights law obligations binding on the country, including, in particular, Article 18 of the ICCPR, Pakistan is obliged to guarantee the right of every individual to freedom of religion or belief. International human rights law and standards, as well as human rights expert bodies and authorities have reiterated on numerous occasions that such right does not entail – or extend to – the protection of any particular religion. It is the right to have, adopt and practise one's religion of choice that is guaranteed and protected under international human rights law – as opposed to the protection, maintenance or guarantee of any specific religion *per s*e.

Criticism of any particular religious sentiment or of a religion itself does not necessarily limit or threaten the right of others to exercise their freedom to have,

adopt or manifest their religion, any more than criticism, mockery, etc. of any particular political belief or opinion. The right to freedom of religion or belief does not, either expressly or by implication, place a duty on all persons to have respect for everyone's religion or belief at all times, nor does it include the right to have one's faith elevated to a status over and above any others and/or where it is free from criticism or even insult.[66]

Pakistan's "blasphemy laws" also violate the right to freedom of expression. The UN Human Rights Committee, expounding on Article 19 of the ICCPR, has specifically stated: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant".[67]

The Human Rights Committee has further clarified that it is impermissible for any such laws to discriminate in favour of or against a particular religion or belief system, or their adherents over another, or religious believers over non-believers. It is also impermissible for such "blasphemy" prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.[68]

Legality and the doctrine of vagueness

As highlighted above, a key precondition to the internationally recognized right to a fair trial is that criminal offences must be prescribed by law in a manner that complies with the principle of legality. This means that they must be formulated clearly and precisely to ensure individuals can regulate their conduct accordingly. Vague laws undermine the rule of law because they leave the door open to selective interpretation, enforcement and prosecution, including based on discriminatory policies of government officials and the personal predilections of judges.

In Pakistan, various criminal provisions related to "offences against religion" are framed in overly broad, vague terms and, therefore, breach the principle of legality. Section 295-C of the Pakistan Penal Code, for example, criminalizes words, representations, imputations, innuendos, or insinuations, which directly or indirectly, defile "the sacred name of the Holy Prophet". If proven, the offence carries a mandatory death penalty.

As is evident from a plain reading of the provision, elements of the offence are glaringly vague and overbroad, as such they are therefore open to subjective

[66] Asma Jahangir, Special Rapporteur on freedom of religion or belief, and Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Report on Incitement to Racial and Religious Hatred and the Promotion of Tolerance, UN Doc. A/HRC/2/3, (2006), para. 36.

[67] UN Human Rights Committee, General Comment No. 34, Article 19: freedoms of opinion and expression, para 48. Under Article 19(3) of the ICCPR, certain restrictions on the exercise of the right to freedom of expression may be permissible, for the purpose of ensuring respect for the rights of others, or the protection of national security or of public order, or of public health or morals. However, such restrictions must be made by a precisely formulated law that complies with human rights; must be demonstrably necessary and proportionate to one of the above-stipulated purposes; and must not put the right itself in jeopardy. Additionally, restrictions must not be overbroad – they must conform to the principle of proportionality and must be the least intrusive instrument among those that might achieve their protective function and proportionate to the interest to be protected; the principle of proportionality must be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.

[68] Human Rights Committee, General Comment 34, para 48.

interpretations, and give virtually no instruction to the people or to law enforcement officials and the judiciary regarding what behavior is prohibited.

The UN Special Rapporteur on the Independence of Judges and Lawyers, in a report following a mission to Pakistan in 2012, made a similar observation

> *The vague language of the blasphemy laws makes no reference to a potential offender's psychological state or intention and represents an open door for abuse and the persecution of minorities, in particular by religious or sectarian groups.*[69]

In practice, the vague and broad wording of the provision has allowed a wide range of acts and expressions to be prosecuted under section 295-C, including, for example: using language resembling the Prophet's name on fabric; placing the Prophet's name in an allegedly insulting place on an advertisement; disputing Islamic beliefs and rituals; failing to remove an allegedly blasphemous post from a Facebook page, and even calling for reform or just critiquing provisions of "offences against religion" in the Pakistan Penal Code.

The jurisprudence of Pakistani courts has not provided further precision with respect to the definition of the conduct this section 295-C offence is supposed to proscribe, and courts have not applied a "reasonable person" standard when interpreting and enforcing it. A survey of case law arising from the application of the provision shows that the prosecution does not have to prove the alleged blasphemous conduct was insulting to the Prophet Muhammad by any objective standard, but merely establish that the defendant was responsible for the alleged blasphemous conduct.

In addition, because the overbroad and subjective language of section 295-C allows individual judges to interpret the "true" Islamic position on "defiling the sacred name of the Holy Prophet" based on their own individual reading of Islam, case law on the provision is disturbingly contradictory and arbitrary.

In 2002, for example, relying on the traditional belief that the Prophet taught mercy and forgiveness, the Lahore High Court acquitted a Muslim man accused of pasting posters containing allegedly derogatory remarks about the Prophet Muhammad on the gate of a mosque. The Court also prayed for Allah's mercy on him "so that he is pardoned of any sin which he may have committed."[70]

In 2005, in another case, the Lahore High Court relied on a fundamentally different interpretation of Islamic jurisprudence. In this case, the trial court had convicted a Muslim man for uttering "derogatory remarks" against Prophet Muhammad. The Lahore High Court dismissed the man's appeal against his conviction and upheld the trial court's death sentence, reasoning that the Quran prohibited "even the slightest cause of annoyance" to Prophet Muhammad, and traditional belief demonstrated that the only punishment for insulting the Prophet was death.[71]

Case law on whether "apostasy" amounts to "blasphemy" is also contradictory, with the judge's personal beliefs impacting on the outcome of the trial. In a 2004 case, for example, a trial court rejected the allegation that converting to another religion from Islam was "blasphemy", stating that there is no compulsion in religion.[72]

A few years later, in 2009, however, a trial court in Jhang reached a completely different conclusion. In a case where two individuals were accused of converting

[69] Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 2012, UN Doc. A/HRC/23/43/Add.2.
[70] PLD 2002 Lahore 587, para 29.
[71] 2005 YLR 985, Lahore.
[72] *The State v. Iqbal,* Sessions Court of Faisalabad, 2004, paras 19-20.

from Islam to another religion, the trial court held that "when any person terms superior anybody else from Almighty Allah or the Holy Prophet PBUH [peace be upon him], it will be considered that he is making war with Allah and His Messenger and he is liable to be crucified." The Court went on to hold that individuals establishing a new faith were involved in "nefarious activities, which are not less than an Atom bomb in future for Islam."[73]

The right to a fair trial

Because of the way they are framed and applied in practice, Pakistan's "blasphemy laws" also undermine and have a corrosive effect on a number of other human rights.

In the first instance, the political and religious interests that back "blasphemy" prosecutions have significantly jeopardized the defendants' right to a fair trial in such cases.[74] Fair trial violations include denial of the right to defence, the right to be tried by an independent and impartial court and of the right to the presumption of innocence.

Members of religious groups who are among those who instigate and support prosecutions in such cases often pack courtrooms, particularly in trial courts, creating an intimidating atmosphere for the accused, their lawyers and for the presiding judges. As a result, "blasphemy-related" criminal trials are often held in jails, as opposed to in open court. Judges who hear "blasphemy" cases have reported being threatened and harassed, compromising their independence to decide each case free from external influence. Ostensibly to provide security to people accused of blasphemy under section 295-C, including those convicted, the individuals concerned are often held in solitary confinement, often for prolonged periods that can stretch to years.

Recommendations

- Repeal all "blasphemy laws", particularly sections 295-A, 295-B, 295-C, 298-A of the Pakistan Penal Code or amend them substantially so that they be consistent with international human rights law and standards, including on freedom of expression; freedom of thought, conscience or religion; and equal protection of the law as guaranteed under the ICCPR;

- As a short-term, temporary measure – until wider reform of the "blasphemy laws" and measures to address the flaws in their implementation be carried out:
  a) Abolish the mandatory death penalty for section 295-C cases;
  b) Expressly include the requirement of proof of deliberate and malicious intent in all "offences related to religion" that are retained in the short or long term, particularly section 295-C of the Pakistan Penal Code;
  c) Amend Schedule II of the Code of Criminal Procedure, 1898, to make all "blasphemy-related offences" (sections 295 to 298-C) bailable, and ensure bail be only denied where there is substantial risk of flight, harm to others, or interference with the investigation that cannot be allayed by other means.
  d) Amend Schedule II of the Code of Criminal Procedure, 1898, to make all "blasphemy-related offences" (sections 295 to 298-C) non-

[73] *The State v. Liaqat Ali and Umar Draz*, Sessions Court of Jhang, 2009, para 10.
[74] For a detailed analysis of fair trial violations in blasphemy cases, see International Commission of Jurists, On Trial : the implementation of Pakistan's blasphemy laws, November 2015, accessed at: https://www.icj.org/wp-content/uploads/2015/12/Pakistan-On-Trial-Blasphemy-Laws-Publications-Thematic-Reports-2015-ENG.pdf

cognizable to ensure judicial warrants be a prerequisite for launching investigation and making arrests;

e) Ensure the right to a fair trial of all people accused of "blasphemy" be guaranteed, including the right to an impartial and independent tribunal, the right to a defence and assistance of a lawyer, and the right to trial within a reasonable time; and

f) Amend section 196 of the Code of Criminal Procedure to ensure no court can take cognizance of any "blasphemy-related offence", particularly under sections 295-B and 295-C of the Penal Code, without intervention from the provincial or federal governments, preferably from officials of the Ministry of Law, Justice and Human Rights. While the ICJ remains generally opposed to the requirement of sanction for the commencement of legal proceedings, given the specific issues raised in this briefing about the flaws in the prosecution and investigation in "blasphemy" cases, this additional temporary safeguard may act as an effective deterrent against malicious or frivolous prosecution.

The rights of Ahmadis

The Ahmadiyya movement was founded in the late nineteenth century by Mirza Ghulam Ahmad. Ahmadis identify as Muslims, but certain orthodox Muslims regard them as heretics because of some of their beliefs, including the sanctity they attach to Mirza Ghulam Ahmad.

Persecution of minority Ahmadi Muslims – both by State and non-State actors – is among the most serious human rights violations and abuses in Pakistan. As early as 1952, orthodox religious groups demanded that minority Ahmadi Muslims be declared non-Muslim; their demand was followed by agitation, unrest and episodes of violence in parts of the country. The Government constituted a Court of Inquiry (COI) to investigate the cause of such disturbances. The COI's report determined that "responsibility for the disturbances must primarily rest on the members of…the numerous religious organizations." It warned against succumbing to the demands of the anti-Ahmadi groups, and emphasized the importance of abiding by international standards of the right to freedom of religion or belief. The COI also noted that the anti-Ahmadi movement was being instrumentalized by religious groups and leaders who lacked popular support and secure political constituencies and who "were trying to capture a political living space for themselves."[75]

This observation proved prophetic. Two decades later, in an attempt to appease anti-Ahmadi groups, the Government not only declared minority Ahmadi Muslims non-Muslim, but also criminalized the practice of their faith.

Criminalization of religious practice

In 1974, during Prime Minister Zulfiqar Ali Bhutto's first term in office, as mentioned above, the Parliament amended the Constitution of Pakistan, 1973, to declare that any person

> *who does not believe in the absolute and unqualified finality of The Prophethood of Muhammad (Peace be upon him), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (Peace be upon him), or*

[75] Report of the court of inquiry constituted under Punjab act II of 1954 to enquire into the Punjab disturbances of 1953 (1954).

recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law.[76]

Pursuant to the second Constitutional amendment, Ahmadis were specifically labeled as a non-Muslim religious minority community.[77]

As discussed earlier in the section above on the "blasphemy laws", General Zia-ul-Haq made a number of changes to the Pakistan Penal Code in furtherance of an "Islamization" agenda. On 26 April 1984, General Zia-ul-Haq promulgated Ordinance XX of 1984, which introduced sections 298-B and 298-C to the PPC and made it a criminal offence for Ahmadis to call themselves Muslims, use terminology associated with the Prophet Muhammad, use Muslim practices in worship, or propagate their faith. In essence, these criminal provisions make any form of public practice of religion by Ahmadis a crime.

[76] Article 260 (3), Constitution of Pakistan, 1973. The third constitutional amendment, promulgated by General Zia-ul-Haq in 1985, substituted the provision with Article 260(3), which reads: "In the Constitution and all enactments and other legal instruments, unless there is anything repugnant in the subject or context: (a) "Muslim" means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him); and (b) "non-Muslim" means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Quadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes."

[77] Article 106(3), Constitution of Pakistan, 1973.

Provisions related to Ahmadis in Pakistan Penal Code

S. 298-B: Misuse of epithets, descriptions and titles, etc. reserved for certain holy personages or places. (1) Any person of the Quadiani group or the Lahori Group (who call themselves 'Ahmadis' or by any 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 (PBUH), as 'Ameerul-Mumineen,' 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Alah Anho';
(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as 'Ummul-Mumineen';
(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him) as Ahle-bait; or
(d) refers to, or names, or calls, his place of worship as 'Masjid';
… shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
(2) Any person of the Qadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan', or recites Azan as used by the 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.

S. 298-C: Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of the Quadiani group or Lahori group (who call themselves 'Ahmadis' or by another 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 representation, 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.

The role of the courts

In a 1993 case, *Zaheeruddin v. the State*,[78] the Supreme Court upheld the constitutional validity of these laws. The Court decided that minority Ahmadi Muslims are not Muslims because their beliefs and theological doctrines are at variance with the beliefs of the majority of Muslims. This made Ahmadis imposters, who were deceptively "posing" as Muslim. The Supreme Court analogized "posing" as Muslims with infringing trademarks, and relied on laws

[78] *Zaheeruddin v. the State*, 1993 SCMR 1718. The SC was hearing five criminal appeals, Criminal Appeals Nos. 31K-35K of 1988 (Judgment of High Court of Baluchistan, Dec. 22, 1987), and three civil appeals, Civil Appeals Nos. 149/89 and150/89 (Judgment of High Court Lahore, Sept. 25, 1984) and Civil Appeal No. 412 (Judgment of High Court Lahore, Sept. 17, 1991). Four Ahmadis, Zaheeruddin, Abdur Rehman, Majid and Rafi Ahmad were charged pursuant to Section 298C of the Pakistan Penal Code (Ordinance XX). The four men were charged for wearing badges bearing the "Kalima" while claiming to be Muslims. They were each sentenced to one year of rigorous imprisonment and fined one thousand rupees (Pakistani currency) or an additional one month of rigorous imprisonment. Muhammad Hayat was also charged pursuant to Section 298C (Ordinance XX) for the same offence as the four men. Hayat was convicted and "sentenced to imprisonment till the rising of the Court" and fined three thousand rupees or three months simple imprisonment. For more details about the case and the Court's reasoning, see M Nadeem Ahmad Sidiq, "Enforced Apostasy: Zaheeruddin v. State and the Official Persecution of the Ahmadiyya Community in Pakistan", Minnesota Journal of Law & Inequality, June 1996.

and jurisprudence relating to fraudulent trade practices to hold that the State had a legitimate interest in protecting "real" Muslims from such "deception".

The Court held that the criminalization of the religious belief practice of Ahmadis did not infringe Article 20 of the Constitution, since the right to freedom of religion or belief was "subject to law". It went on to interpret "law" broadly to include injunctions of Islam and Islamic norms, even where they were not part of any legislation. Pursuing this line of reasoning, the Supreme Court ruled that "Anything, in any fundamental right, which violates the injunctions of Islam thus must be repugnant".

The Court also observed that the acts criminalized by Ordinance XX did not form an integral part of the Ahmadiyya faith, and wondered why Ahmadis do not coin their own epithets as the Court did not think that Ahmadis will "face any difficulty in coining new names, epithets, titles and descriptions for their personages, places and practices."

The Supreme Court's judgment also appeared to condone violence against those alleged to "blaspheme" against the Prophet Muhammad, including Ahmadis:

> *It is the cardinal faith of every Muslim to believe in every Prophet and praise him. Therefore, if anything is said against the Prophet, it will injure the feelings of a Muslim and may even incite him to the breach of peace, depending on the intensity of the attack…*[79]

After reproducing some of the teachings of Mirza Ghulam Ahmad, the Court added:

> *Can then anyone blame a Muslim if he loses control of himself on hearing, reading or seeing such blasphemous material as has been produced by Mirza Sahib?*[80]

This judgment was a disavowal of the human rights of minority Ahmadi Muslims in Pakistan. It provided legitimacy to their legal as well as societal persecution, invalidated their right to religious belief in its entirety, and left them with no forum for redress.

Since then, dozens of Ahmadis have been prosecuted and sentenced under these laws, as well as laws relating to "blasphemy" discussed above. Courts have on occasion even held that Ahmadis' expression of their faith is necessarily "blasphemy" as it defiles the sanctity of the Prophet Muhammad. In a 1994 judgment, for example, the full-bench of the Lahore High Court held that the belief that "the status of Mirza Ghulam Ahmed was not less than that of Hazrat Muhammad (PBUH)" and that "the number of miracles of Mirza Ghulam Ahmed was three lakhs while that of the Holy Prophet Hazrat Muhammad (PBUH) three thousand" *prima facie* amounted to defiling and dishonoring the Prophet Muhammad, and was an offence under section 295-C.[81]

Inconsistency with international human rights law

The constitutional provision declaring Ahmadis non-Muslim, as well as the criminalization of any public practice of their religious beliefs are wholly inconsistent with the right to freedom of religion or belief. These criminal provisions and their enforcement violate the right of Ahmadis to freedom to have or to adopt a religion or belief of their choice; the freedom to manifest their religion or belief in worship, observance, practice and teaching, either individually

[79] *Zaheeruddin v. the State*, 1993 SCMR 1718, para 83.
[80] *Ibid.,* para 84.
[81] 1994 PCRLJ 2346.

or in community with others, in public or private; as well as the freedom not to disclose their religion or belief.[82] They also contravene the right of Ahmadis not to be discriminated against on prohibited grounds and their right to equality before the law and equal protection of the law without discrimination.

A number of UN human rights mechanisms have raised concern about these laws. Soon after they were enacted, the then United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities expressed "grave concern" at the promulgation of Ordinance XX, and found that it openly violated the right to liberty and security of Ahmadis; the right to freedom from arbitrary arrest and detention; the right to freedom of thought, expression, conscience and religion; the right of religious minorities to profess and practise their own religion, and the right to an effective legal remedy. The Sub-Commission expressly asked the Government of Pakistan to "repeal Ordinance XX and to restore the human rights and fundamental freedoms of all persons in its jurisdiction."[83]

Similarly, the UN Special Rapporteur on freedom of religion and belief, following a visit to Pakistan in 1995, found that law "applied specifically to the Ahmadi minority is particularly questionable and in some respects frankly unwarranted."[84]

Violence and discrimination

Those provisions of the Constitution and the Penal Code that violate the right of Ahmadi Muslims to freedom of religion or belief and discriminate against them also contribute to acts of violence, hostility and other discrimination against them by non-State actors. Ahmadi "places of worship", which, by law, minority Ahmadi Muslims are prohibited from calling mosques, are routinely targeted by violent mobs, and Ahmadis are assaulted and even killed only because of their faith.[85] The police have often been complicit in harassment of Ahmadis, and have brought fabricated charges against Ahmadis or have not intervened to stop anti-Ahmadi violence. The Government's failure to address the religious persecution of minority Ahmadi Muslims has further facilitated violence against them in the name of religion.

Pakistan's election laws also effectively exclude Ahmadis from voting. To register to vote, minority Ahmadi Muslims must either renounce their faith or agree to be on a separate electoral list and accept their status as non-Muslim. Because many Ahmadis refuse to do so, they are disenfranchised. Furthermore, all Pakistani Muslim citizens applying for passports are obliged to sign a declaration explicitly stating that they consider the founder of the Ahmadi community an "imposter", and consider Ahmadis to be non-Muslims.

While the Constitution labels Ahmadis as non-Muslims, it recognizes their religious minority status. However, certain religious groups – as well as Members of Parliament and Government officials – argue that Ahmadis are not a "religious minority", as they do not identify as such. In 2020, for example, the Government constituted a Commission on Minorities to safeguard the right of religious

[82] UN Human Rights Committee (HRC), General Comment 22, paras 1 – 2.
[83] The Situation in Pakistan, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, 41st Sess., at 102, U.N. Doc. E/CN.4/Sub.2/1985/57(1985).
[84] Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/23, Addendum, Visit by the Special Rapporteur to Pakistan, UN Doc E/CN.4/1996/95/Add.,12 January 1996.
[85] See, for example, International Commission of Jurists, Human Rights Watch and Amnesty International, "Pakistan: surge in targeted killings of Ahmadis", 26 November 2020, accessed at: https://www.icj.org/pakistan-surge-in-targeted-killings-of-ahmadis/

minority communities. However, it decided to exclude Ahmadis from membership of the Commission. The Information Minister defended this decision by arguing Ahmadis do not "fall in the definition of minorities."[86]

UN human rights experts have expressed concern about discrimination and violence against Ahmadis on multiple occasions. In 2018, for example, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on Minority Issues, and the Special Rapporteur on extrajudicial, summary or arbitrary executions called on Pakistan to "repeal discriminatory provisions in its electoral law which is leading to members of the Ahmadiyya minority being persecuted and targeted in violent attacks."[87]

The State, therefore, is responsible not only for directly persecuting Ahmadis and denying their right to freedom of religion or belief, it has also failed in its obligation to protect their human rights, which requires it to take measures to protect individuals and groups against human rights abuses by non-State actors.

Furthermore, as noted above, under international human rights law, the principle of non-discrimination applies and is integral to the enjoyment of all human rights, whether civil, cultural, economic, political or social. States, therefore, have the duty to refrain from discriminating against individuals or groups of individuals because of their religion or belief, as well as the obligation to take necessary measures to prevent discrimination by non-State actors. Successive Pakistani Governments have failed in this regard on both counts.

Recommendations

- Repeal provisions of the Constitution of Pakistan, 1973, and the Pakistan Penal Code that declare Ahmadis non-Muslim and criminalize the practice of their religious beliefs;
- Ensure that the full range of human rights be guaranteed in law and in practice to minority Ahmadi Muslims; and
- Ensure prompt, independent and impartial investigations into attacks on Ahmadis, bring perpetrators to justice, ensure Ahmadis have access to justice and effective remedies for human rights violations.

Forced conversion and forced marriage

In this final section, this briefing paper addresses alleged violations of the right to freedom of religion or belief in Pakistan and of other human rights in the context of reported cases of forced conversion to Islam of girls and young women hailing from religious minority communities, particularly Hindus and Christians, followed by their forced marriage to Muslim men.

Applicable international human rights law and standards

The right to convert

Under international law, the right to convert is an essential component of the right to freedom of religion or belief. Article 18 of the Universal Declaration of Human Rights establishes the "freedom to change" one's religion or belief as an

[86] https://www.dawn.com/news/1554927
[87] Pakistan must repeal discriminatory measures leading to persecution of Ahmadis, say UN experts, 25 July 2018, accessed at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23401&LangID=E,

inextricable component of the human right to freedom of religion or belief. Article 18 of the ICCR provides that freedom of thought, conscience and religion includes "freedom to have or adopt a religion or belief of his choice". Article 18 (2) was included partly to reinforce the protection of the right to conversion, and states that: "no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice".

The UN Human Rights Committee has stated that under article 18 "the freedom 'to have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as to retain one's religion or belief."[88]

The UN Special Rapporteur on freedom of religion or belief has affirmed that States have a number of obligations related to the right to convert: first, States should respect everyone's right to convert, including by abolishing punishments against converts and removing administrative obstacles; second, States are obliged to protect the right to conversion against possible third-party infringements and abuses, such as violence or harassment against converts by their previous communities or their social context; and third, States should promote a societal climate in which converts can generally live without fear and free from discrimination.[89]

The right not to be forced to convert

The right not to be forced to convert is implied in the right to religious conversion, which must necessarily mean voluntary or "non-coerced" conversion.

In this regard, how "force" is defined becomes critical. The Human Rights Committee has emphasized that policies or practices having the "intention or effect of compelling believers or non-believers to convert" – for example, by restricting access to education, medical care or employment – are inconsistent with Article 18(2) of the ICCPR.

Under Article 18 and Article 2(3) of the ICCPR, States have the obligation to protect people from the acts of private persons and other non-State actors that would impair the enjoyment of human rights.[90] The UN Special Rapporteur on freedom of religion or belief has observed that the right not to be forced to convert is also relevant to private individuals or organizations. If individuals or organizations try to convert people by resorting to means of coercion or by "directly exploiting situations of particular vulnerability", it may be necessary for the State to intervene and provide protection.

Notably, the Special Rapporteur has expressed concern about "pressure or threats experienced by women, sometimes in the context of marriage or marriage negotiations, to convert to the religion of their (prospective) husband." He has also said

[88] Human Rights Committee, General Comment 22, Para 5,
[89] Interim report of the Special Rapporteur on freedom of religion or belief, August 2012, UN Doc A/67/303.
[90] See also, UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add. 13 26 May 2004, para 8.

Although many such conversions may be undertaken on a voluntary basis, there are also cases of threats or coercion. The Special Rapporteur has received disturbing reports about the abduction and forced conversion of women, sometimes minors, especially from religious minorities. He is concerned that such incidents seem to occur in a climate of impunity, thus leading to the impression that law enforcement agencies systematically fail to provide effective protection for women and girls.[91]

Reports of forced conversions

The issue of forced conversion is complex and requires an understanding of what motivates religious conversions to Islam in a country such as Pakistan where religious minorities are discriminated against, and Islam enjoys a special status by virtue of being the State religion. It is also necessary to unearth and investigate the relationship, if one exists, among forced conversion, child marriage, inter-faith marriage, and the failure of the State to implement and enforce laws relating to abduction, child marriage and forced marriage, especially where the victim hails from a religious minority community. Finally, it is also essential to recognize that converting to another religion of one's free will concerns the exercise of a fundamental aspect of the right to freedom of religion or belief, and any restrictions or limitations on the exercise of such a right are inconsistent with international human rights law provisions binding on Pakistan, including Article 18 of the ICCPR.[92]

With respect to this, the Human Rights Committee, for example, has called on States parties to "take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice - including the freedom to change religion or belief and to express one's religion or belief - will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others."[93]

There is no official data regarding the number of forced conversions to Islam of girls and young women hailing from religious minority communities, particularly Hindus and Christians, because of their forced marriage to Muslim men; NGO estimates vary from 300 to 1000 cases per year.[94] The variation in numbers are in part due to the different definitions of forced conversion used: while some NGOs consider religious conversions of economically or socially marginalized

[91] Ibid, para 43.
[92] See also section above entitled "The right to convert".
[93] Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women) HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 21.
[94] See, for example, report on forced marriages & forced conversions in the Christian community of Pakistan, Movement for Solidarity and Peace, April 2014, accessed at: https://d3n8a8pro7vhmx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP_Report_-_Forced_Marriages_and_Conversions_of_Christian_Women_in_Pakistan.pdf?1396724215, South Asia Partnership – Pakistan, "Forced Conversion of Religion", 2015, and Human Rights Commission of Pakistan, "Forced Conversion in Ghotki? A Field Investigation Report", June 2019, accessed at: http://hrcp-web.org/alarm//wp-content/uploads/2019/07/Fact%20Finding%20Mission%20Report.pdf

individuals as "forced" conversions, others consider "forced" only those conversions where the element of coercion is more direct.[95]

According to NGO reports, common cases of forced conversion and marriage involve girls aged between 12 and 16 years, who are abducted, "forcibly converted" to Islam, and then "forcibly married" to their abductor or to a third party. In a typical case, the girl's family will file a criminal complaint for abduction or rape with the police. At the same time, the abductor, reportedly on behalf on the victim, will file a counter-complaint, attesting that the girl concerned converted and married of her free will, and accusing the victim's family of harassment. The girl is then asked to testify in court whether she married and converted of her own free will or was abducted. In most cases, the girl remains with the alleged abductor while judicial proceedings are ongoing. NGO reports indicate that, as a result, she will often be subjected to further threats, intimidation and coercion and, therefore, will testify in favour of the abductor. In most cases, NGOs argue, therefore, there is no effective remedy for the girls or their families.[96]

Some NGO reports also document forced conversion in the context of forced or bonded labour.[97]

However, outside of these contexts, it is unclear whether other individuals hailing from minority religions – such as boys or men, or girls and women who are not subsequently married to Muslim men – are "forcibly converted". There are also no reports of Muslims being forcibly converted to other religions.

In November 2019, the Senate and the National Assembly of Pakistan constituted a parliamentary committee to protect religious minorities from forced conversions. According to media reports, the Committee is consulting with a number of stakeholders to draft a bill on the prohibition of "forced conversion."[98]

A number of international human rights bodies have expressed concern about the issue of forced conversion and forced marriage in Pakistan.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed deep concern about the "abduction of women and girls belonging to religious minorities for the purpose of forced conversion and forced marriages" and has recommended that Pakistan

> *Conduct research on the extent of the phenomenon of abduction of girls for the purposes of forced conversion and forced marriages and develop a comprehensive strategy to address this phenomenon to ensure the effective*

[95] See, for example, Working Paper on Forced Conversions, *Center for Social Justice*, November 2019, accessed at : http://www.csjpak.org/pdf/Working%20Paper%20on%20Forced%20Conversions%20(English).pdf

[96] For case studies on forced conversion, see http://www.csjpak.org/pdf/reports-studies/Fact%20Sheet%20on%20Forced%20Conversions.pdf

[97] See, for example, Pakistan Dalit Solidarity Network and International Dalit Solidarity Network, ALTERNATIVE REPORT to the UN Human Rights Committee, 120th session, review of Pakistan, CASTE-BASED DISCRIMINATION IN PAKISTAN, June 2017.

[98] Dawn News, "Parliamentary panel against forced conversion notified", November 2019, accessed at: https://www.dawn.com/news/1518513

investigation of cases, prosecutions and punishment of perpetrators as well as the provision of remedies and support services for victims.[99]

In its Universal Periodic Review process, Pakistan received a number of recommendations from other States regarding forced conversions. During Pakistan's third Universal Periodic Review, the country received recommendations from India and Australia to take steps to end forced conversions. Pakistan did not accept, but simply "noted" both recommendations.[100]

Child marriage[101]

Child marriage in international human rights law

The CEDAW Committee has made clear that it "considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act."[102]

The CEDAW and the CRC Committees have jointly held that "A child marriage is considered to be a form of forced marriage, given that one and/or parties have not expressed full, free and informed consent. As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition."[103] The CEDAW and the CRC Committees have called on States to ensure that "a minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years. When a marriage at an earlier age is allowed in exceptional circumstances, the absolute minimum age must not be below 16 years, the grounds for obtaining permission must be legitimate and strictly defined by law and the marriage must be permitted only by a court of law upon the full, free and informed consent of the child or both children, who must appear in person before the court".[104]

[99] Concluding observations on the fourth periodic report of Pakistan adopted by the Committee at its fifty-fourth session (11 February – 1 March 2013), UN Doc CEDAW/C/PAK/CO/4, March 2013, para. 38(d).

[100] Report of the Working Group on the Universal Periodic Review on Pakistan, UN Doc A /HRC/37/13, November 2017.

[101] "Child marriage, or early marriage, is any marriage where at least one of the parties is under 18 years of age. Forced marriages are marriages in which one and/or both parties have not personally expressed their full and free consent to the union. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent", see, Child, early and forced marriage, including in humanitarian settings, UN Office of the High Commissioner for Human Rights, accessed at: https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx.

[102] CEDAW, General recommendation No. 21: Equality in marriage and family relations, 1994, para. 36.

[103] CEDAW and CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 2014, para. 20.

[104] CEDAW and CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 2014, para. 55(f).

NGOs and religious minority groups have documented a strong correlation between reports of forced conversion and child marriage. In Pakistan, setting the legal age of marriage is a provincial subject. In Sindh, the legal age for marriage is 18 years for men and women. In the rest of the country, the minimum legal age for marriage is 16 years for girls and 18 years for boys. Furthermore, while laws that relate to child marriage, such as the Child Marriage Restraint Act, make it a crime to solemnize the marriage of children, for adults to marry children, for parents or guardians to facilitate such marriages, and officials from solemnizing child marriages, ultimately, they do not expressly state that the marriage will be void.[105] Courts have interpreted this to mean that child marriage will be valid if permitted by the children's religious personal laws. In the case of Muslims, marriage is permissible if the parties have reached puberty, even though this goes against the spirit of the Child Marriage Restraint Act. It is also inconsistent with section 375 of Pakistan Penal Code, according to which sexual intercourse with a girl under sixteen years of age "with or without her consent" is statutory rape.

The difference in age between boys and girls is itself discriminatory and an age of marriage of 16 years for girls violates the prohibition under international human rights law against child, early and forced marriage, which provides that the minimum legal age for marriage should be 18 years,[106] in keeping with, among others, the principle of gender equality, the non-discrimination principle, the principle of the best interests of the child, and States' obligation to ensure that marriage be entered into with the free and full consent of the intending spouses.[107]

Moreover, throughout the country, the enforcement of provincial laws setting the legal age for marriage remains weak for a number of reasons: courts apply Shariah (Islamic) law, which is interpreted to allow girls who have reached puberty to marry; law enforcement agencies' fail to take action against those who facilitate child marriage; lack of awareness; poor records when it comes to birth certificates and identification documents; low reporting rates; and inadequate measures of remedy and redress for the victims.

Inter-faith marriage

Under Islamic law as interpreted in Pakistan, Muslim women can only marry Muslim men, whereas Muslim men can marry women who are from other religious communities practising other Abrahamic faiths, i.e., Christians and Jews. Hindu women, therefore, must convert to Islam if they are to marry Muslim men. While Christian women can marry Muslim men without renouncing their faith, many convert to Islam because of societal pressures, as well as better protection in the marriage.

Pakistan's laws on inter-faith marriage are inconsistent with international human rights law and standards, including Articles 3, 2(1) and 26 of the ICCPR, guaranteeing equality before the law between men and women[108] and Article

[105] See, for example, *Dawn*, Sara Malkani, Child Marriage Complexities, January 2021, accessed at: https://www.dawn.com/news/1600526
[106] CEDAW, General recommendation No. 21: Equality in marriage and family relations, 1994, para. 36.
[107] See, for example, UNICEF, Child Marriage and the Law, Legislative Reform Initiative, accessed at: https://www.unicef.org/french/files/Child_Marriage_and_the_Law.pdf
[108] In this context, the Human Rights Committee has cautioned that "the right to choose one's spouse may be restricted by laws or practices that prevent the marriage of a woman of a particular religion to a man who professes no religion or a different religion", see,

16(1) of the Universal Declaration of Human Rights, which states that the right to marry and found a family may not be limited on grounds of religion.

Religious conversion

Religious conversion is legally permissible in Pakistan. However, conversion from Islam to other religions is rarely acknowledged publicly as there is fear it would be considered "apostasy", which is punishable by death according to some interpretations of Islamic law. While there is no law prohibiting "apostasy" or conversion from Islam in the country, some judges have interpreted section 295-C of the Penal Code that relates to "blasphemy" against the Prophet Muhammad to include "apostasy" (see the section on "blasphemy" above).

In addition, a number of bills have been tabled in provincial as well as national assemblies to criminalize "forced conversion". Some of these bills, however, define "forced religious conversion" in vague and overbroad terms such as "allurement" and "taking advantage of the poverty of a person."[109] Such definitions do not meet the principle of legality (see above), and may also be inconsistent with the obligation to guarantee respect for the right to convert under international human rights law.

Forced marriage

"Forced marriage" is a criminal offence under the Pakistan Penal Code. Section 498-B states: "Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of description for a term, which may not be less than three years and shall also be liable to fine of 500,000 Rupees." Child or early marriage is not considered "forced marriage" under this provision, and it has also not been interpreted as such by courts.

Minimum age of conversion – rights of the child

NGOs and other civil society groups have recommended setting a minimum legal age for conversion of 18 years.[110] This proposal, however, must be carefully considered in light of international human rights law and standards on the freedom of religion or belief as well as the rights of the child.

Pursuant to article 18(4) of the ICCPR, States have an obligation to "have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

At the same time, however, the Convention on the Rights of the Child, by which Pakistan is bound as a State party, recalls that parents' rights must always be taken into account in conjunction with the human rights of the child. Article 14 (1) of the Convention on the Right of the Child requires States to "respect the rights of the child to freedom of thought, conscience and religion". Article 14 (2) obliges States parties to "respect the rights and duties of the parents and, when

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Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women) HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 24.

[109] See, for example, http://www.na.gov.pk/uploads/documents/1556026200_943.pdf

[110] See, for example, *The News*, Rights bodies call for setting 18 years as minimum age for religious conversions, 29 April 2019, accessed at: https://www.thenews.com.pk/print/464426-rights-bodies-call-for-setting-18-years-as-minimum-age-for-religious-conversions

applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

The requirement to take into account the child's evolving capacities[111] reflects the insight that children themselves are rights-holders in international human rights law and, consequently, that their own convictions deserve respect. The evolving capacities concept finds further support in Article 12(1) of the Convention on the Rights of the Child, which provides that the views of the child have to be given "due weight in accordance with the age and maturity of the child."

Concerning the question of how to determine the maturity of the child, the UN Special Rapporteur on freedom of religion or belief has asserted that the decision should be made on a case-by-case basis instead of on the grounds of fixed age limits.[112]

The Committee on the Rights of the Child has also emphasized that "the more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views."[113]

Advocates for setting a minimum age for conversion argue that children are particularly vulnerable to coercion or other unlawful inducement in matters of religious conversion, and just like the State sets a minimum age for marriage, driving, or voting, it is in the public interest and conducive to the child's welfare to set an age limit for religious conversion as well. These comparisons miss two important distinctions. First, under international human rights law and standards, religion and belief are first and foremost personal, private matters concerning the individual, as opposed to matters of State. The State, therefore, should not intrude in the personal lives of children by setting age limits on religious conversion. Secondly, minimum age requirements to obtain certain rights or entitlements, such as voting or driving, are fundamentally different from fixing an age limit for religious conversions as often the child would already have a religion before reaching that minimum age. Setting a minimum age for conversion at 18, for example, would force the child to live with a religious identity to which the child in question, who wishes to convert to and espouse another religious belief, no longer subscribes. This in turn, may be prejudicial to the child's welfare, and constitutes, in any event, a violation of the child's right to freedom of religion or belief.

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[111] "The Convention on the Rights of the Child introduces for the first time in an international human rights treaty, the concept of the 'evolving capacities' of the child. This principle has been described as a new principle of interpretation in international law, recognising that, as children acquire enhanced competencies, there is a diminishing need for protection and a greater capacity to take responsibility for decisions affecting their lives. The Convention allows for the recognition that children in different environments and cultures, and faced with diverse life experiences, will acquire competencies at different ages. Action is needed in law, policy and practice so that the contributions children make and the capacities they hold are acknowledge", see, The Evolving Capacities of the Child, Lansdown, Gerison (2005), *Innocenti Insights* no. 11, accessible at: https://www.unicef-irc.org/publications/384-the-evolving-capacities-of-the-child.html.

[112] Interim report of the Special Rapporteur on freedom of religion or belief, August 2012, UN Doc A/67/303., para 32.

[113] Committee on the Rights of the Child, General Comment No. 12, UN Doc CRC/C/GC/12, para 84.

Enforcement of existing law

From reports of forced conversion and forced marriage, it appears that the lack of enforcement of existing domestic law remains a key impediment in preventing such practices and in allowing perpetrators to escape justice. For example, reports indicate that girls are often abducted before they are forced to convert and marry. While "forced conversion" is not an offence in Pakistan, abduction and forced marriage are both criminal offences. However, it is rare for investigations into credible reports of such offences to be instigated – let alone for prosecutions, trials or convictions to follow.

Similarly, while a large number of these cases appear to involve child marriage, and even though child marriage too is prohibited, and those involved in arranging, facilitating, or performing the marriage of children commit a criminal offence, it is rare for the relevant criminal law provisions to be enforced in cases involving religious minorities.

Recommendations

- Constitute an independent committee comprising members of religious minority groups, as well as human rights organizations, to conduct research on the incidence and modality of "forced conversions" in Pakistan; and in consultation with religious minority groups, human rights organizations and other relevant stakeholders, use such research to guide law and policy on the issue of forced conversions;

- Ensure any legislation criminalizing "forced conversions" is consistent with Pakistan's obligations under international human rights law, including, in particular, with respect to the right to freedom of religion or belief, as well as with the principle of legality;

- Ensure any legislation regarding religious conversion of children is compatible with the Convention on the Rights of the Child, including Articles 12 and 14, as well as the right of children to freedom of religion or belief under the ICCPR;

- Revise the Child Marriage Restraint Act to set the minimum age of marriage regardless of gender at 18 years across Pakistan; make the protection offered by the law more robust; and ensure the law is implemented effectively; and

- Ensure allegations of "forced conversion" and "forced marriage" are independently, impartially and promptly investigated with a view to apprehending the perpetrators to bring them to justice in proceedings that guarantee the right to a fair trial; and ensure that victims have the right to access to justice and to an effective remedy.

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