

**DISCRIMINATION AGAINST RELIGIOUS MINORITIES  
IN PAKISTAN: AN ANALYSIS OF FEDERAL AND  
PROVINCIAL LAWS**



## Preface

This research paper is part of a large project designed to examine the state of freedom of religion and belief in Pakistan and the problems faced by religious minorities. The project is to be executed by a consortium of six civil society organizations – the Human Rights Commission of Pakistan (HRCP), AGHS Legal Aid Cell, Catholic Commission for Justice and Peace (CCJP), Simorgh, Faiz Foundation Trust, and Centre for Civic Education (CCE).

The project's justification lies in Pakistan's need to provide institutional guarantees for the fundamental rights of religious minorities including their primary right to enjoy freedom of religion and belief. The fact that for years minority communities have been suffering a decline in the scale of rights available to them lends special urgency to the project. The project is also important because it focuses on an issue which does not only concern the people of Pakistan (those belonging to the majority (Muslim) as well as minority communities), but also affects the future of religious minorities in India and the relations between the two South Asian neighbours.

The Lahore Resolution of 1940, which provided the basis for the division of India in 1947 into two independent states of India and Pakistan, had two parts. While the first part demanded the grant of statehood to territories where the Muslims were in majority, the second part dealt with safeguards for the rights of religious minorities which the two authorities succeeding the British administration were supposed to guarantee. It is no secret that Pakistan has not been able to meet its obligations under the resolution nor has it succeeded in ensuring protection of minorities' rights as laid out in its national constitution and in international treaties ratified by it. Apart from the denial of rights to minorities, this issue affects Pakistan's relations with India (where too the minorities' issue has not yet been satisfactorily resolved) and both countries try to assume responsibility for religious minorities in one another's territory. Thus freedom of religion and belief in Pakistan is not only an important human rights issue it also has a bearing on the South Asian people's right to peace.

The part of the project assigned to AGHS Legal Aid Cell relates to the urgency of creating a legal mechanism conducive to the protection and promotion of the rights of religious minorities. All those who approach this subject from the minorities' perspective

usually argue that discrimination against minorities is embedded in the country's constitution and laws but not many can validate their assertion. The present research offers evidence of what is wrong with the legal system and where. In the following pages, experts and laymen both will find precise answers to all such queries by analyzing the constitution, and the federal and provincial laws relevant to the subject.

Besides thanking the European Union, which is funding the project, AGHS wishes to acknowledge its debt to the distinguished legal authorities who have contributed the various sub-sections, and the entire AGHS team that has been working on this project.

We hope this study will become a permanent work of reference for all those who are in any way concerned with the rights of religious minorities.

I. A. Rehman

Lahore

## Introduction

### Pakistan: 1947-2014

Mohammad Ali Jinnah, address to the Constituent Assembly, August 11, 1947:

*“You are free: you are free to go to your temples, you are free to go to your mosques or to any other places of worship in the State of Pakistan. You may belong to any religion, caste or creed-that has nothing to do with the business of the State... We are starting with this fundamental principle: that we are all citizens and equal citizens of one State. Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not so in the religious sense because that is the personal faith of each individual, but in the political sense as a citizen of the State.”*

The vision of Pakistan at the time of partition was very different to what Pakistan has become. A country, which was envisioned to be a home for all, without regard to one's caste, creed or religion, to provide equal rights to all citizens of the state, and a state that was not to interfere with the religious beliefs of its citizens has failed miserably in honouring the very principle on which it was founded. Pakistan now ranks as the 7<sup>th</sup> most dangerous country in the world for religious minorities.

The Objectives Resolution introduced by Liaquat Ali Khan in 1949 attempted to establish nationhood in Pakistan through religious conformity. This meant that the laws and regulations would be framed in accordance with Islam, exposing the vulnerable communities of the new state to religious exploitation. The ulema who felt empowered by this 'Islamic' way of running the state, made their first unreasonable demand for declaring the Ahmadiya community as non-Muslim and removing the first Pakistani Foreign Minister, Sir Zafrullah Khan, who was an Ahmadi, from the cabinet. The violence that ensued led to the very first martial law in Pakistan. Among others, Abul Ala Maudoodi, founder of the Jamat-e-Islami was arrested and sentenced to death- a sentence which was commuted shortly after. This was the first major event in the ever increasing polarization between the orthodox and moderate Muslims.

From here on, the appeasement of the religiously oppressive began, leading to increased discrimination against religious minorities. When the 1973 Constitution was introduced by Zulfikar Ali Bhutto, the Objectives Resolution was retained as the Preamble to the constitution, which also declared Pakistan as an Islamic state. It restricted the offices of prime minister and president of Pakistan to Muslims only. Article 260 of the constitution unequivocally declared the Ahmadiya community as a non-Muslim minority. General

Zia-ul-Haq's regime changed the entire continuum of policies for minority rights. Zia's own religious inclinations further empowered parties like the Jamat-e-Islami and the Jamiat Ulema-e-Islam. During his tenure Zia introduced several amendments which significantly altered the 1973 Constitution.

Since the Islamization during the Zia regime, polarization in society has increased. Violence against religious minorities has been escalating over time, with the highest amount of violence instances recorded in the years 2011 and 2012. The Ahmadis, Hindus and Christians have all fallen victim to the controversial Section 295-C of the Pakistan Penal Code (PPC), 1860 dealing with blasphemy. Though this section should only be applicable to Muslims, religious minorities continually fall into this black hole. The Ahmadiya community has been under constant threat from Muslim extremists, with mass attacks being carried out in their prayer houses and target killings taking place in various parts of the country.

The Christian community is also victim to discrimination and violence by Muslim extremists in the country. The year 2012 saw a sharp increase in violence against Christians in Pakistan. Churches in various parts of the country were set ablaze and looted and worshippers were seriously injured. Joseph Colony, a Christian community in Lahore was recently burnt down by these extremists. Christian girls are not only victims of rape but also of forced conversions and marriages to Muslim men. Children from this community have continuously fallen victim to Section 295 of the PPC, with false cases being registered and pursued against them. The Minorities' Minister, Shahbaz Bhatti was also assassinated in 2011.

The Governor of Punjab, Salman Taseer, was shot dead in 2011 by his bodyguard. Mr. Taseer had only stated that the law on blasphemy was a 'bad law' and had shown support for a Christian woman, Asia Bibi, who had been convicted of blaspheming. Such has become the state of affairs that this act of cowardice was applauded by showering flowers on the assassin and was condoned by some religious parties and Muslim extremists.

Hindus also face forced conversions; young Hindu girls are abducted, forced to marry Muslim men and converted to Islam.

## **Executive Summary**

The citizen portfolio of Pakistan is largely pluralistic as it is home to many religious, sectarian and ethnic groups. The current population of Pakistan is 192 million out of which the majority are Muslims. Pakistan is home to several religious minorities: Bahais, Buddhists, Christians, Hindus, Jains, Kalasha, Parsis and Sikhs. As per the last recorded census (1998), 2.7 million Christians, 1.8 million Hindus, 106,989 Buddhists, 30,000 Sikhs, and 25000 Parsis constitute the religious minorities in Pakistan.

The laws applicable to the rights of religious minorities in Pakistan have shifted from being neutral to blatantly discriminatory. The object of this Report is to recognize laws in Pakistan which are discriminatory to religious minorities, have led to their marginalization in society, which violate their fundamental rights under the constitution, and pose a threat to their security as citizens of Pakistan. The Report is divided into 16 sub-sections each discussing a different aspect of law and minority rights in Pakistan.

Pakistan is signatory to several international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and it also adheres to the Universal Declaration of Human Rights (UDHR). It has taken a reservation on most of these and made their observance subject to the injunction of Islam, which limits the scope of the treaties immensely. Article 18 of the UDHR guarantees the right to freedom of thought, religion and conscience to every human being. Under the international treaty and customary law, Pakistan is bound to enforce the right of freedom of religion and belief of its people, especially the minorities, who are equal citizens of Pakistan and are entitled to equal rights and protection.

Since the rights enshrined in the constitution are fundamental and should be equally available to all citizens, the confinement of minority rights according to the constitution is looked at in detail in the sub-section titled 'The Constitution and Freedom of Religion and Belief.'

Electoral laws are an extremely pressing issue when it comes to the rights of religious minorities in Pakistan. They have been looked at provincially and federally to bring out the problems faced by minorities. The law explicitly states that minorities' representation will be on the basis of proportional strength of political parties. This sub-section concludes with recommendations for giving minorities dual voting rights and a separate electoral system for local body elections.

“The Glory of Islam” is a phrase frequently used in the constitution, and the motivation underlying the use of this phrase has also been studied in legal terms. The aim is to understand the use of the said phrase for excluding religious minorities of Pakistan.

The Hudood laws and the offences relating to religion have been looked at in detail to recognize the blatant injustices caused by these laws. This ties into the discrimination against women from religious minorities who are victims of abductions, rape, forced marriages, forced conversions and allegations of blasphemy. Each of these has been looked at to highlight the problems caused and the rights abused. Recommendations for change have also been made.

The religious minorities face discrimination under the Evacuee Trust Properties Management and Disposal Act, 1975 which is highlighted in sub-section titled “Evacuee trust property law.” The issue of domicile and debarring of religious minorities from citizenship on migrating into Pakistan have been discussed at length under sub-section “Citizenship and Naturalisation.” The laws regarding Zakat and Ushr are mostly Muslim-centric and they either ignore religious minorities or exclude them. The discrimination is discussed at length. Most of the offences contained in the chapter XV “Offences Relating to Religion” in the PPC, including certain blasphemy provisions are categorised as cognizable offences which has been elaborated in sub section titled Criminal Procedure Code, (CrPC),1890. Last but not the least, discrimination towards non-Muslims, which disqualifies them from being competent witnesses under the Qanun-e-Shahdat Order, 1984 has also been highlighted.

Since religious minorities are spread out all over Pakistan, each province has been looked at separately under the chapter titled Provincial Laws. This detailed analysis of provincial laws has helped recognize discrimination specific to religious groups in each province.

The Report has recognized lapses and gaps in the field of law regarding religious minorities which require further field research. These have been pointed out in the recommendations.

The research team has thoroughly discussed all the federal and provincial laws, which are highly discriminatory towards minorities. As a result, a concrete and substantive research paper in the form of this Report is now available and it will serve as a baseline for a prospective legislation in favour of religious minorities.



# The Constitution of Pakistan 1973

## 1. Introduction

Islam, by express mention in Article 2 of the 1973 Constitution of Pakistan is the “state religion.” Article 20 in the chapter on ‘Fundamental Rights’ guarantees to every citizen a right to profess, practice, and propagate his/her religion. The right granted under Article 20 is not necessarily practiced and followed in the application of law in Pakistan and this Report will attempt to highlight the dichotomy in theory and practice.

Pakistan is a signatory to the Universal Declaration of Human Rights (UDHR) 1948, which in Article 18 guarantees the right to freedom of thought, conscience and religion to every human being. It has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), which provides the above mentioned right under Article 18. It can therefore be stated that under international treaties and customary law Pakistan is bound to enforce the right of freedom of religion and belief of its people, in particular of its minorities, who as equal citizens of Pakistan are entitled to equal protection of law.

The exercise and enforcement of this fundamental right must be understood and appreciated in light of the peculiar evolution of the Islamic character of the constitution. Quaid-e-Azam Mohammad Ali Jinnah in his famous speech before the first Constituent Assembly of Pakistan on August 11, 1947, in describing the ideal way forward, uttered the memorable words, “You are free; you are free to go to your temples, you are free to go to your mosques... You may belong to any religion or caste or creed --that has nothing to do with the business of the State...” However, Jinnah also referred to an ‘Islamic form of democracy’ in several speeches and thus emphasized the role of Islam in the state where he had hoped that religious minorities and women would enjoy equal rights. The constitution (even the original 1973 Constitution) has within its framework an Islamic character and democratic principles.

The first Prime Minister of Pakistan, Liaquat Ali Khan, while moving the Objectives Resolution in the Constituent Assembly in 1949, enunciated the principle that the state shall exercise all its powers through the chosen representatives of the people and that this would naturally eliminate the danger of a theocracy gaining dominance in Pakistan. However, the insertion of the Objectives Resolution in the nation’s first 1956 Constitution was bitterly opposed by liberal members of the constituent assembly (mainly

from East Pakistan). They predicted that the Objectives Resolution would form the foothold for the religious right wing to drag the country into a theocratic political system.

A review of the constitutional history of Pakistan reveals that civilian as well as military contributions to the constitution tended to give Islam a special place. The drafters of the constitution protected individual rights under the chapter 'Fundamental Rights' and also gave an Islamic character to it. Islam was declared the "state religion" and the president was required to be a Muslim. The original 1973 Constitution stated:

*Article 227 (1) 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.*

In 1974, an amendment was made in Article 260 through the Second Amendment Act, 1974<sup>1</sup>, wherein after clause (2) a new clause was added setting forth a criterion for a person to be declared a non-Muslim. It reads as follows;

*Article 260 (3) 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 a religious reformer, is not a Muslim for the purposes of the Constitution or law.*

Further amendment to Article 260 was made through the Third Amendment Order, 1985<sup>2</sup>, wherein clause 3 was deleted and replaced by a clause 3(a) (b) thereby giving a definition of Muslim and non-Muslim. It now reads as follows;

*Article 260 (3) 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*

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<sup>1</sup> The Constitution (Second Amendment) Act, 1974, (Act No. XLIX of 1974).

<sup>2</sup> The Constitution (Third Amendment) Order, 1985, (P.O.No.24 of 1985).

*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 Qadiani 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.*

The pre General Zia-ul-Haq constitution carried Islamic principles and modern concepts of state governance in an awkward manner but often modern (not always democratic) concepts of state governance took precedence. This underwent a radical change once Zia usurped power in 1977 and imposed martial law. In order to consolidate and extend his unconstitutional rule in Pakistan, he preyed on the gullibility of the masses and portrayed himself a champion of the process of Islamisation in Pakistan. Taking his cue from the **Zia-ur-Rehman case**,<sup>3</sup> wherein it was held that the “Objectives Resolution” had never been a substantive part of the Constitution and will not be so, until incorporated and made a part of it, he inserted a new Article 2A in the constitution making the “Objectives Resolution” its substantive part and provided that it should have effect accordingly. However, his extreme prejudice could not bear the fact that the Objectives Resolution allowed minorities to “freely” profess and practise their religions. The word “freely” was deleted from the Preamble and Article 2A that carried the original Objectives Resolution.

The insertion of Article 2A reignited the debate as to whether the “Objectives Resolution” was the grundnorm of Pakistan, with a supra-constitutional status. The Supreme Court of Pakistan in 1992, in the **Hakim Khan case**,<sup>4</sup> definitively decided that Article 2A has no such supra-constitutional status. However, the vested and parochial interests in Pakistan exploited the Zia amendment in order to discriminate and carry out nefarious personal vendettas against the hapless and helpless religious minorities in Pakistan. There have also been instances of personal vendettas being carried out against Muslims. More importantly the Objectives Resolution became the legal pick on which the Islamisation process was given space and liberal values superseded.

Under the constitution, the universal fundamental right of freedom of religion is recognized subject to a rider at the beginning of Article 20, namely “Subject to law, public order and morality.” This proviso has lent itself to mischief and abuse by the

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<sup>3</sup>The State v. Zia-ur-Rehman and Others, PLD 1973 SC 49.

<sup>4</sup>Hakim Khan v. Government of Pakistan, PLD 1992 SC 595.

vested and parochial interests in Pakistan and has been the bone of contention in most cases that have come before the superior courts. This exception intended merely to protect public order in exceptional cases, has swallowed the rule of freedom of religion in Pakistan. In leading cases on the subject, the superior courts have been at pains to declare that its validity in any given case depends upon the “rational connection” and “proportionality” test. The legislature and the executive have to choose from amongst all the means to advance the purpose of public order, the one that would least limit the fundamental right in question. If the correct balance is not found, this invaluable human right would be rendered nugatory in practice.

Article 21 of the constitution, without any qualification whatsoever, ensures that 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. Further, Article 22 provides safeguards with respect to educational institutions of religious denomination and was intended to ensure that no person shall be required to receive religious instruction if it relates to a religion other than his/her own.

This Report will highlight the articles of the constitution and case law affirming “Freedom of Religion and Belief” and “Protection of Minority’s Interests.” Cases in which the superior courts have given a progressive and liberal interpretation and provided judicial relief to the minorities will be discussed. In addition to this, the cases in which the courts have strictly interpreted the articles and in so doing perpetuated the discrimination will also be documented.

An attempt will also be made to suggest possible amendments to the relevant articles of the constitution in order to better safeguard freedom of religion and belief in Pakistan.

## **2. International obligations of Pakistan for the protection of freedoms under international law.**

Pakistan, as a signatory to the Universal Declaration of Human Rights (UDHR) 1948,<sup>5</sup> has agreed in the relevant part, to provide the following freedoms to all citizens:

**Article 1:** *All human beings are born free and equal in dignity and rights...*

**Article 2:** *Everyone is entitled to all the rights and freedom(s) set forth in this Declaration, without distinction of any kind, such as race, colour,*

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<sup>5</sup> The Universal Declaration of Human Rights, 1948 available at: [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

*sex, language, religion, political or other opinion, national or social origin, property, birth or other status...*

**Article 7:** *All are equal before the law and are entitled without any discrimination to equal protection of the law...*

**Article 8:** *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law; and*

**Article 18:** *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR), in 2010. It is therefore obliged under Article 18 to provide freedom of thought, conscience and religion to its people.

**Article 18:** *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.*

The covenant mentioned above is binding on Pakistan under international customary and treaty law. The constitution and the courts, within its territory are bound to enforce the freedom of religion and belief of its people and, in particular, those of its minorities, who being equal citizens of Pakistan are entitled to equal protection of law.

### **3. The Islamic character of the 1973 Constitution of Pakistan. Does it provide freedoms to religious minorities? A critical analysis**

#### **3. (a)-Liberal approach of Quaid-e Azam and Liaquat Ali Khan**

It is widely believed that the demand by Muslims for the partition of the sub-continent of India was out of fear of oppression and overwhelming economic and political domination by the Hindu majority and not the establishment of a religious state. This view is disputed and a strong lobby in Pakistan believes that the country was founded purely for Muslims

and by Muslims. The latter view does not have any bearing on reality, as non-Muslim members of the legislature also voted for Pakistan. Historians have commented that a country founded in the name of religion would eventually move towards theocracy. Their prediction is not unfounded.

There are a number of statements attributed to the founding fathers of Pakistan. These statements also contradict each other but the liberal section of society believes that Quaid-e-Azam accorded the greatest possible sanctity to the freedom of religious belief in the future Pakistan; in his presidential speech to the first Constituent Assembly on August 11, 1947.<sup>6</sup> In describing the way forward for the nation, his advice was:

“...Now, if we want to make this great State of Pakistan happy and prosperous, we should wholly and solely concentrate on the well-being of the people...If you will work in cooperation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that every one of you, no matter to what community he belongs ,...no matter what is his color, caste or creed, is first, second and last a citizen of this State with equal rights, privileges, and obligations, there will be no end to the progress you will make...**You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed-- that has nothing to do with the business of the State...**Now I think we should keep that in front of us as our ideal.”

Liaquat Ali Khan spoke about democracy in his speech on March 7, 1949, while moving the Motions on Aims and Objectives, in the following terms:

“...it has been made clear in the Resolution that the State shall exercise all its powers and authority through the chosen representatives of the people...This is the very essence of democracy...Sir, I just now said that the people are the real recipients of power. This naturally eliminates any danger of the establishment of a theocracy...the question of a theocracy simply

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<sup>6</sup> Quaid-e-Azam's presidential address to the Constituent Assembly of Pakistan available at: <http://pakistanconstitutionlaw.com/quaid-address-to-constituent-assembly-2/>.

does not arise in Islam. If there are any who still use the word theocracy in the same breath as the polity of Pakistan, they are either labouring under a grave misapprehension, or indulging in mischievous propaganda.”

The original 1973 Constitution retained all the Islamic provisions of the 1956 Constitution. Mr. A.K. Brohi, a prominent politician and lawyer from Sindh, in his well-received treatise entitled “Fundamental Law of Pakistan” referred to the provisions of the 1956 Constitution.<sup>7</sup> These in his view, are religious in nature, such as:

- i. The opening sentences of the Preamble, namely:
  - (a) *Whereas sovereignty of the entire Universe belongs to Allah Almighty alone....*
  - (b) *Wherein Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Qur’an and Sunnah;*
- ii. Article 25: *Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Qur’an and Sunnah;*
- iii. Article 32: *the President of the Republic shall be a Muslim;* and
- iv. Article 198: *no law shall be enacted which is repugnant with the injunctions of Islam as laid down in the Qur’an and Sunnah; and the President shall appoint a commission to make recommendations.*

### **3. (b)-Relevant provisions of the 1973 Constitution**

#### **Preamble of the 1973 Constitution:**

*Whereas sovereignty over the entire Universe belongs to Almighty Allah alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;*

*And whereas it is the will of the people of Pakistan to establish an order; ...*

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<sup>7</sup> Mr. A.K. Brohi, “Fundamental Law of Pakistan”, published by Din Muhammadi Press, Karachi at 740-742.

*Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;*

*Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;...*

*Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;*

*Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;*

*Wherein the independence of the judiciary shall be fully secured...*

**Article 1 of the 1973 Constitution: The Republic and its territories-**

*(1) Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.*

Mr. Brohi has devoted an entire section to the implications of the name “Islamic Republic of Pakistan.” Article 1 of the 1956 Constitution provided that, “Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan.”

Mr. Brohi was of the view that:

“...upon the plain construction of the language used in the Article under question, the legal character of the State of Pakistan is no other than that it is to be Federal Republic and it is only its name that is “Islamic Republic of Pakistan”. And for the purpose of law, nothing depends on what name you give to the State so long as the provisions of the Constitution confer upon it a character which is at variance with, or is in any sense different from, the one that is connoted by its name...It is difficult for a lawyer, having regard to what is contained in the Constitution, to see how and in what sense Pakistan can be described as an Islamic State. Its provisions do not in any manner establish the possibility of the State being regarded as Islamic...”



Mr. Brohi was not prepared to concede that Pakistan could be described as an Islamic state, under the 1956 Constitution.

**Article 2 of the 1973 Constitution: Islam to be State religion-**

*Islam shall be the State religion of Pakistan.*

The starting point of any discussion on the enforcement of freedom of religion and belief, must at least in theory deal with the issue raised by Article 2 of the constitution.

What Mr. Brohi, writing in 1958, stated on the possibility of Islam being made the official religion of the state, actually transpired in 1973. In his book “Fundamental Law of Pakistan” he expressed the view on page 739 that:

“From the very nature of the case, Islam cannot be a “State Religion”, for that would amount to narrowing its appeal and denying to it that universal character...and cannot be extended to cover the cases of artificially created and contrived institutions like the State.”

Chief Justice Muhammad Munir’s views on Article 2, in his leading commentary on the constitution are also relevant in this regard.<sup>8</sup> He observed:

“Apparently what the Article means is that in its outer manifestations the State and its government should carry an Islamic symbol. The Head of State must be a Muslim under Article 41 of the Constitution. The provision is vague and general and [a] should not be construed strictly so as to exclude non-Muslim citizens from the National Assembly and Provincial Assemblies, local councils, public services and armed forces. [b] Nor does the Article by its own force make all Islamic Law the Law of land.”

**The Nazim Khan v. Additional District Judge, Lyallpur,**<sup>9</sup> is one of the first few cases on the interpretation of Article 2 of the constitution. It was held by the Lahore High Court in the relevant part that:

“...Articles 2 and 3 provide two fundamental bases of the polity in Pakistan---one deals with the ‘statecraft’ and ‘way of life’ and the other, with one of its (life’s) major facets, namely, economic and

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<sup>8</sup> Mr. Justice Muhammad Munir, “A commentary on the Constitution of Pakistan 1973”, published by PLD Publishers, Lahore at 166- 167.

<sup>9</sup> Nazim Khan v. Additional District Judge, Lyallpur, PLD 1976 Lahore 930 at 982-983.

social justice. They can certainly be kept in view while interpreting other provisions of the Constitution and the laws made under any by its authority. But, with respect, I do not agree with the learned Additional Advocate General that when the Supreme Court held, in the case of **Ch. Manzoor Elahi**, that Article 4 was directly enforceable, they also meant that all other Articles in the Introductory Part I of the Constitution were similarly directly enforceable. There is another additional reason for coming to this conclusion that Article 2 as such is not so enforceable in Courts. Some mechanism has been provided in various other parts of the Constitution wherein the content and meaning of this Article has been sought to be applied in concrete forms. One of those Parts of the Constitution is Chapter 2, which contains the Principles of Policy. It is not a mere coincidence that Article 31, which has been discussed above, deals with the particular steps which “shall be taken” to enable the Muslims of Pakistan to conduct themselves in, what the heading of Article 31 describes, “Islamic way of life”. As discussed above, it is only through such like provisions of the Constitution the Article 2 can be given an operative shape.”

However, in 1997, in the **Haq Nawaz case**,<sup>10</sup> the Lahore High Court observed that Article 2 is not an empty slogan and held:

“This Article being a substantive part of the Constitution certainly has a meaning, purpose and practical utility. It is singularly different from an empty slogan. The purpose is to declare unequivocally that in the State of Pakistan, the Islamic way of life shall be followed and that it shall be governed in accordance with the Islamic Sharia.”

In the **Shahid Orakzai case**,<sup>11</sup> the Supreme Court in interpreting Articles 2 and 2A ruled that the said articles do not per se prohibit non-Muslim from being appointed as chief justice of Pakistan. The court held:

“...The petitioner has not been able to show us any bar in any of the Articles of Constitution, including Articles 2 and 2A of the

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<sup>10</sup> Haq Nawaz and Others v. Province of Punjab through Chief Secretary, Lahore, 1997 MLD 299.

<sup>11</sup> Shahid Orakzi and Another v. Federation of Pakistan, PLD 2008 SC 77 at 79.

Constitution that a non-Muslim cannot be appointed as Chief Justice or Acting Chief Justice of Pakistan or a Judge of the Supreme Court...The legislature may in its domain subject to the Constitution and the principle of equality before law and equal treatment before law can make a law that a non-Muslim citizen cannot be appointed against a particular post but there is no prohibition in the Constitution or any law that a non-Muslim cannot be appointed as a Judge or Chief Justice in the superior courts.”

**Article 2A of the 1973 Constitution: The Objectives Resolution to form part of substantive provisions-**

*The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.*

**Background of insertion of Article 2A in the 1973 Constitution**

General Zia-ul-Haq usurped power in Pakistan in 1977, imposed martial law, and through the instrumentality of the Provisional Constitution Order (PCO), held the constitution in abeyance, including the provisions relating to fundamental rights. In order to consolidate and extend his unconstitutional one-man rule in Pakistan, he preyed upon the sentiments of the masses of Pakistan by creating an unholy axis of power between the military and the orthodoxy.

Zia’s extensive program of Islamisation, included the enforcement of the Hudood Ordinances, the Qanun-e-Shahadat Order, 1984 and Ordinance XX of 1984. The last enactment debars Ahmadis from posing as Muslims and makes acts like the use of any horrific titles and modes of address specific to the Muslim community such as greeting “As-salamu alaykum” or reciting the six Kalimas (Shahada) etc., punishable.

In 1985, the constitution was revived through the Revival of Constitution Order, 1985 (RCO). Through the mechanism of the said RCO, Zia extensively tampered with the constitutional machinery of the country. Taking his cue from the **Zia-ur-Rehman case**, he inserted Article 2A in the constitution. Through the insertion of this Article the “Objectives Resolution” was made a substantive part of the constitution and was to have

effect accordingly. The RCO was later granted constitutional cover by the Eighth Amendment Act, 1985,<sup>12</sup> passed by his handpicked parliament.

In 1973, the Supreme Court of Pakistan, for the first time, gave a definitive ruling on the constitutional status of the “Objectives Resolution.” In **Zia-ur-Rehman case**,<sup>13</sup> the Supreme Court observed:

“...It is now necessary to examine as to whether any document other than the Constitution itself can be given a similar or higher status or whether the judiciary can, in the exercise of its judicial power, strike down any provision of the Constitution itself either, because, it is in conflict with the laws of God or of nature or of morality or some other solemn declaration which the people themselves may have adopted for indicating the form of Government they wish to be established. I for my part cannot conceive a situation, in which, after a formal written Constitution has been lawfully adopted by a competent body and has been generally accepted by the people including the judiciary as the Constitution of the country, the judiciary can claim to declare any of its provisions *ultra vires* or void. Therefore, in my view, however solemn or sacrosanct a document, if it is not incorporated in the Constitution or does not form a part thereof it cannot control the Constitution. At any rate, the Courts created under the Constitution will not have the power to declare any provision of the constitution itself as being in violation of such a document...It follows from this that under our own system too the Objectives Resolution of 1949, even though it is a document which has been generally accepted and has never been repealed or renounced, will not have the same status or authority as the Constitution itself until it is incorporated within it or made part of it. If it appears only as a preamble to the Constitution, then it will serve the same purpose as any

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<sup>12</sup> The Constitution (Eighth Amendment) Act, 1985, (Act No. XVIII of 1985).

<sup>13</sup> The State v. Zia-ur-Rehman and Others, PLD 1973 SC 49.

other preamble serves, namely, that in case of any doubt as to the intent of the law-maker, it may be looked at to ascertain the true intent, but it cannot control the substantive provisions thereof...It is contended on behalf of the respondents that this Court has in the case of **Asma Jilani v. The Government of Punjab(1)**,<sup>14</sup> already declared that the Objectives Resolution adopted by the first Constituent Assembly of Pakistan on the 7<sup>th</sup> of March 1949, is the "grundnorm" for Pakistan and, therefore, impliedly held that it stands above even the Interim Constitution or any Constitution that may be framed in the future. I regret to have to point out that this is not correct...In any event; if a grundnorm is necessary for us I do not have to look to the Western legal theorists to discover one. Our own grundnorm is enshrined in our own doctrine that the legal sovereignty over the entire Universe belongs to Almighty Allah alone...It will be observed that this does not say that the Objectives Resolution is the grundnorm, but that the grundnorm is the doctrine of legal sovereignty accepted by the people of Pakistan and the consequences that flow from it. I did not describe the Objectives Resolution as "the cornerstone of Pakistan's legal edifice" but merely pointed out that one of the learned counsels appearing in the case had described it as such... It was expected by the Objectives Resolution itself to be translated into the Constitution. Even those that adopted the Objectives Resolution did not envisage that it would be document above the Constitution. It is incorrect, therefore, to say that it was held by this Court that the Objectives Resolution of the 7th of March 1949, stands on a higher pedestal than the Constitution itself. [p. 70, 71, 72 & 73] J, K & L.”

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<sup>14</sup> Asma Jilani v. Government of Punjab, PLD 1972 SC 139 at 70- 73.

In this context, the superior judiciary made a concerted effort to restrict the scope of Article 2A, by imposing legal limitations thereon. In its interpretation of the Article, the judiciary has held in several reported cases that in spite of the fact that the Objectives Resolution as reproduced in the Annex to the constitution, has become a substantive part of the constitution, it is only equal in weight and status to other substantive provisions thereof and in case of inconsistency the proper course is to adopt the rule of harmonious interpretation whereunder the constitution is to be read as a whole in order to ascertain the true meaning of a particular provision.

It is interesting to note that a tug of war can be seen in the various decisions of the Supreme Court. The more conservative judges have dragged Article 2A into a constitutional debate in order to strengthen its Islamic character. Others have joined the debate –through the judgments – and diluted the Islamistaion of the constitution. Eventually the concept of “harmonizing” Islamic norms and the fundamental rights has left space for the judiciary to revisit this debate.

The insertion of Article 2A in the constitution reignited the debate as to whether the “Objectives Resolution” was the grundnorm of Pakistan with a supra-constitutional status. This debate was again definitively resolved by the Supreme Court in the **Hakim Khan case**.<sup>15</sup> The Supreme Court decided that Article 2A is neither self-executory nor has a supra-constitutional status. The Supreme Court observed that such a view could lead to the undermining of the constitution and pave the way of its destruction. Justice (R) Fazal Karim<sup>16</sup> summarized the ruling in the case as follows:

- (i) “That the well established rule of interpretation is that a Constitution has to be read as a whole and that it is the duty of the Court to have recourse to the whole instrument in order to ascertain the true intent and meaning of a particular provision. And where any apparent repugnancy appears to exist between its different provisions the court should harmonize them if possible;
- (ii) That if Article 2A is treated as a supra-constitutional provision then an entirely new Constitution would be required to be framed, for to hold that Article 2A is now in control of the other provisions of the Constitution would mean that most of the Articles of the Constitution will become questionable on the ground of their

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<sup>15</sup> Hakim Khan v. Government of Pakistan, PLD 1992 SC 595.

<sup>16</sup> Justice(R) Fazal Karim, “Judicial Review of Public Action”, published by Pakistan Law House, at 33-34.

alleged inconsistency with the provisions of the Objectives Resolution. Such an interpretation would result in undermining the Constitution and pave the way for its eventual destruction;

- (iii) That the intention was that the Objectives Resolution should no longer be treated merely as a declaration of intent but should enjoy the status of substantive provisions of the Constitution. In case any inconsistency was found to exist between the provisions of the 1973 Constitution and those of the Objectives Resolution they should be harmonized by the courts in accordance with the well established rules of interpretation of the constitutional documents;
- (iv) That the courts are the creatures of the Constitution and it could not have been visualized that they could now annul any existing constitutional provision on the plea of its repugnance with the provisions of Article 2A as no court, operating under the Constitution, can do so;
- (v) That if a question now arises whether any of the provisions of the 1973 Constitution exceeds in any particular respect the limits prescribed by Allah Almighty...this inconsistency will be resolved in the same manner as was originally envisaged by the authors and movers of the Objectives Resolution namely by the National Assembly itself. In practical terms, this implies in the changed context that the impugned provision of the Constitution shall be corrected by suitably amending it through the amendment process laid down in the Constitution itself;
- (vi) That the provisions of Article 2A were never intended to be self-executory or to be adopted as a test of repugnancy or of contrariety.”

In the **B.Z. Kaikaus case**,<sup>17</sup> the lead counsel for the respondents pointed out that the Preamble, Articles 1 to 5, 8 to 40 and 227 to 230 of the constitution contain a scheme and procedure for Islamisation of laws of Pakistan. The judgment states:

- (j) “Reference may be made to the Preamble of the Constitution and Articles 1 to 5, 8 to 40 and 227 to 231. In pursuance of these

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<sup>17</sup> B.Z. Kaikaus and Others v. President of Pakistan and Others, PLD 1980 SC 160 at 180.

provisions the State has promulgated Offence of Zina (Enforcement of Hadd) Ordinance VII of 1979; Offence of "Qazf" (Enforcement of Hadd) Ordinance VIII of 1979; and Zakat and Usher (Organization) Ordinance XXIX of 1979. It has set up a Shariat Bench in each High Court of a Province and an Appellate Shariat Bench in the Supreme Court giving them power to strike down any relevant law which may be in conflict with or against the Sharia. See Articles 203-A to 203-E of the Constitution as added by the President's Order No. 3 of 1979 which should be read with the relevant rules which authorise the superior Courts to avail of the services, suggestions, and the views of "the learned" in the Islamic Law, on any relevant point coming up before them. By the time this judgment has been completed, the pattern has further been changed; now there will be a Federal Shariat Court instead of a Shariat Bench in each High Court. Similarly the Islamic Ideology Council has been directed to finalize its recommendations for Islamisation of laws as quickly as possible. The said Council in its own turn has availed of the services of the foreign Islamic experts for guidance and advice, and this way the work is gradually proceeding ahead...Be that as it may, the point which we want to emphasize is that the job above-mentioned in its very nature, is of a legislative and political character to be performed by the State by enacting the necessary laws for Islamisation of the existing laws or even to promulgate new laws on that pattern but within the hemisphere of the Holy Qur'an and the Sunnah."

In the **Haji Bismillah case**,<sup>18</sup> the Balochistan High Court endorsed the view that Article 2A is not a supra-constitutional provision:

“There is no cavil with the proposition that the President in exercise of his powers under Article 45 of the Islamic Republic of Pakistan can grant remissions or pardon to any prisoner, who has been convicted and sentenced under any offence contained in general law or in special law. The said Article of the Constitution overrides the provisions of Pakistan Penal Code or the Code of

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<sup>18</sup> Haji Bismillah v. Government of Balochistan and 5 Others, PLD 2004 Quetta 1 at 6.



Criminal Procedure. The Hon'ble Supreme Court in the case of **Hakim Khan and 3 others v. Government of Pakistan and others, PLD 1992 SC 593**, has held that Article 2A was not a supra-Constitutional measure. The scope of the powers of President under Article 45 of the Constitution has also been discussed in the case titled **Eid Muhammad and another v. The State, PLD 1992 SC 14.**"

In the **Watan Party case**,<sup>19</sup> the Supreme Court gives a very progressive interpretation to the principles enshrined in the "Objectives Resolution" including the freedom of belief, faith and worship and held that:

"...The Constitution, in its very Preamble, postulates that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed and the fundamental rights, including equality of status, of opportunity and before the law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality; shall be fully guaranteed. These very principles have been made a substantive part of the Constitution under Article 2A. Thus, it is the duty of the State to protect and safeguard all these Fundamental Rights including the right to life and liberty as envisaged by Article 9 of the Constitution..."

In the **Zafar Ali Shah case**,<sup>20</sup> the Supreme Court highlighted the virtue of an independent judiciary in guaranteeing fundamental freedoms. Its obiter dicta in relevant part is as follows:

"210. The independence of Judiciary is a basic principle of the constitutional system of governance in Pakistan. The Constitution of Pakistan contains specific and categorical provisions for the independence of Judiciary. The Preamble and Article 2A state that "the independence of Judiciary shall be fully secured..."

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<sup>19</sup> Watan Party and Another v. Federation of Pakistan and Others, PLD 2011 SC 997.

<sup>20</sup> Zafar Ali Shah v. Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869 at 1120 -121.

212. It is such an efficient and independent Judiciary which can foster an appropriate legal and judicial environment where there is peace and security in the society, safety of life, protection of property and guarantee of essential human rights and fundamental freedoms for all individuals and groups, irrespective of any distinction or discrimination on the basis of cast, creed, colour, culture, gender or place of origin, etc. It is indeed such a legal and judicial environment, which is conducive to economic growth and social development.”

**Article 20 of the 1973 Constitution: 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, practise 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.*

A comparison of the express wording of Article 20 to the First Amendment (Amendment 1)<sup>21</sup> to the United States constitution, namely, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” reveals that the US constitution remains religiously neutral and grants autonomy to all religions.

In contrast, Article 20 of the 1973 Constitution of Pakistan was intended, by express mention, to guarantee free exercise of the profession, practice and propagation of every religion of the majority and the minority communities residing in Pakistan; in view of the Preamble and Articles 1 to 5, 8 to 40, 203A to 203J, and 227 to 231 of the constitution, it was not possible to provide that the state shall not establish a particular religion.

Article 2 provides that, ‘Islam shall be the State religion of Pakistan’ and the Objectives Resolution, read with Article 2A, provides that the state shall ‘enable’ the majority of its citizens, namely the Muslims, “...to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah.”

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<sup>21</sup> First Amendment to US constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

It is also clear that whereas the right to freedom of religion and belief under the US constitution is not restricted to the citizens of the US, the fundamental right under Article 20 is guaranteed only to the citizens of Pakistan under the constitution.

Furthermore, the enforcement of the fundamental right to profess, practice and propagate one's religion is subject to restrictions imposed by law, public order and morality.

The fundamental right is subject to limitations imposed by law and the maintenance of public order. The authors of the constitution have also subjected the exercise of this basic right to protection by the state to vague notions of morality.

In the **Jibendra Kishore case**,<sup>22</sup> Mr. Brohi repeated in the Supreme Court the bold assertion he had made earlier in the high court, namely that fundamental rights referred to in Article 18 (*now Article 20 of the constitution*), are "subject to law" and may therefore be taken away by the law. The Chief Justice Muhammad Munir had no hesitation whatsoever in dismissing the said assertion. In relevant part, he held:

“...The very conception of a fundamental right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a Constitution to say that a right is fundamental but that it may be taken away by the law...If the argument of Mr. Brohi is sound, it would follow, and he admitted that it would, that the legislature may today interdict the profession of Islam by the citizens...In the light of these rules of construction of constitutional instruments it seems to me that what Article 18 means is that every citizen has the right to profess, practice and propagate his religion and every sect of a religious denomination has the right to establish, maintain and manage its religious institutions, though the law may regulate the manner in which religion is to be professed practiced and propagated and religious institutions are to be established, maintained and managed. The words "the right to establish, subject to law, religious institutions" cannot and do not mean that such institutions may be abolished altogether by the law...The Article appears to me to proceed on the well-known principle that while Legislature may

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<sup>22</sup> Jibendra Kishore v. Province of East Pakistan, PLD 1957 SC 9 at 41.

not interfere with mere profession or belief, law may step in when professions break out in open practices inviting breaches of peace or when belief, whether in publicly practicing a religion or running a religious institution, leads to overt acts against public order. In the present case no question of law and order being involved; I am constrained to differ from the view taken of this fundamental right by the High Court.”

The view of the Supreme Court in the **Jibendra Kishore case** was followed in the **D.G. Khan Cement case**.<sup>23</sup> The Lahore High Court observed and held that:

“19. “Laws could restrict human rights, but only in order to make conflicting rights compatible or to protect the rights of other persons or important community interests. Any restriction of human rights not only needs a constitutionally valid reason but also to be proportional to the rank and importance of the right at stake.”<sup>4</sup> “Reasonable restriction” or any sub-constitutional limitation ('law') on a constitutional fundamental right must also flow from the Constitution to protect lawful rights and interests of the others or the society at large. The "law" or "reasonable restrictions" in pith and substance must promote and advance fundamental rights of the community at large in order to qualify as a limitation to override the fundamental rights guaranteed to an individual under the Constitution. The "law" or the "reasonable restrictions" must be fashioned to uphold the constitutional themes of democracy, freedom, equality, tolerance, social justice and advance the principles of policy under the Constitution...

22. Our Constitution with its preamble, fundamental rights and principles of policy hold out our democratic values. The proper purpose behind sub-constitutional legislations is to uphold these constitutional values.

23. What is required by the "rational connection"...test? The requirement is that the means used by the limiting law must fit (or are rationally connected to) the purpose the limiting law was

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<sup>23</sup> D.G. Khan Cement Company Ltd.v. Federation of Pakistan through Secretary Ministry of Law and 3 Others, PLD 2013 Lahore 693.

designed to fulfill. The requirement is that the means used by the limiting law can realize or advance the underlying purpose of that... Accordingly, if the realization of the means does not contribute to the realization of the "laws" purpose, the use of such means would be disproportional. There must be a rational connection between proper purpose and the sub-constitutional limitation.

24. The next component of proportionality is the "necessity test." It is also referred to as the requirement of "the less restrictive means." According to this test, the legislator has to choose - of all those means that may advance the purpose of the limiting law that which would least limit the human right in question.

25. The last test of proportionality is the "proportional result" or "proportionality stricto sensu." This test requires a balancing of the benefits gained by the public and the harm caused to the constitutional right brought the use of the means selected by law to obtain the proper purpose. Accordingly, this is a test balancing benefits and harm. It requires an adequate congruence between the benefits gained by the law's policy and the harm it may cause to the constitutional right.

31. It follows that the aim of having a declaration of Fundamental Rights is that certain elementary rights of the individual such as his right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions...The collective interests of the society, peace and security of the State and the maintenance of public order are of vital importance in any organized society. Fundamental Rights have no real meaning if the State itself is in danger and disorganized. If the State is in danger, the liberties of the subjects are themselves in danger. It is for these reasons of State that equilibrium has to be maintained between the two contending interests at stake..."

The **Manzoor Hussain Bokhari case**,<sup>24</sup> involved the issue of blanket bans on religious processions and assemblies. The Lahore High Court was required to decide the issue of vires of the addition of the second proviso to Section 30 of the Police Act, 1861 (V of 1861) in the light of Articles 16 and 20 of the constitution. The second proviso purported to grant a magistrate of a district or sub-division the discretion to refuse a grant of a license for an assembly or procession if he was satisfied that the license is likely to cause a breach of peace or to be prejudicial to the public safety or public interest or the maintenance of public order. The court held that:

“It is plainly clear from section 30 of the Police Act that processions cannot be banned altogether under the provisions of that section. But that does not mean that license to take out processions can never be refused to any one on any ground or that the number of processions to be taken out in any particular area cannot be regulated under any circumstances. The expression “he may issue a license” occurring in section 30(3) of the Police Act implies that in a fit case license may not also be issued to any particular applicant...The recent restoration of fundamental rights, as contained in Articles 16 and 20 of the Constitution of 1973, gave it a constitutional cover. This was the correct legal position and it shall continue to hold good. This being so, there was no dire necessity of adding second proviso to section 30 *ibid*...whatever may be the intention behind the second proviso, the fact remains that it goes beyond the scope of Articles 16 and 20 (a) of the 1973 Constitution so far as it relates to ‘public interest’ which is a much wider phrase than the ‘public order’ used in the said Articles and to that extent it is declared ultra vires of these fundamental rights.”

After reviewing judgments from other jurisdictions including the USA, enforcement of law and public order were considered to be of paramount importance in the **Zaheeruddin case**; <sup>25</sup> the Supreme Court concluded that even where religious practices have been considered essential and an integral part of the religion of a particular minority, they have been sacrificed at the altar of public safety and tranquility. The court held that:

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<sup>24</sup> Syed Manzoor Hussain Bokhari and Another v. S.P. City Lahore and 2 Others, 1990 MLD 1807.

<sup>25</sup> Zaheeruddin and Others v. The State and Others, 1993 SCMR 1718 at 1778.

“...when an Ahmadi or Ahmadis display in public...the `Kalima', or chant other `Shaa'e're Islam' (and) it would amount to publicly defiling the name of Holy Prophet (p.b.u.h.) and also other Prophets, and exalting the name of Mirza Sahib, thus infuriating and instigating the Muslims so that there may be a serious cause for disturbance of the public peace, order and tranquility and it may result in loss of life and property. The preventive actions, in such situations are imperative in order to maintain law and order and save loss or damage to life and property particularly of Ahmadis...”

The **Ata Ullah case**<sup>26</sup> concerned the use of epithets and “Shaa’ir-e-Islam” by Ahmadis, which was an offence under Section 298-B of the Pakistan Penal Code (PPC). The Lahore High Court was of the view that such epithets cannot be used in situations other than for which they have been prescribed. The court relied on the **Zaheeruddin case** to emphasize and held:

“...that the Quadianis must honour the Constitution and the law.”

The relevant part reads as under:

"The Ahmadis like other minorities are free to profess their religion in the country and no one can take away that right of theirs either by legislation or by Executive Orders. They must however, honour the Constitution and the law and should neither desecrate or defile the pious personages of any other religion including Islam nor should they use their exclusive epithets, descriptions and titles and also avoid using the exclusive name like mosque and practice like 'Azan' so that the feelings of the Muslim community are not injured and the people are not misled or deceived as regards the faith.”

The **Mirza Khursheed Ahmed case**,<sup>27</sup> involved the banning of celebrations of Ahmadis by the district magistrate. The Lahore High Court held:

“The reasons of public policy, public good and interests of the ordinary people of the country thus provide justifiable basis for

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<sup>26</sup> Ata Ullah v. The State, PLD 2000 Lahore 364 at 379-K.

<sup>27</sup> Mirza Khursheed Ahmed and Another. v. Government of Punjab and Others, PLD 1992 Lahore 1 at 34.

banning the celebrations, making of the directions by the District Magistrate as well as Resident Magistrate. It has already been pointed out that activities of Ahmadis and propagation of their faith is resisted by people in general i.e. Muslim Ummah to keep the mainstream of faith pure and unpolluted and also to maintain integrity of the Ummah. While doing so that right to profess and practice faith by Qadianis in no manner stands infringed or violated.”

In the case of **Pakistan Hindu Council v. Pakistan**,<sup>28</sup> the Supreme Court was asked to direct the government of Pakistan to promulgate a law whereby any person who attempts to convert any person from one religion to another by use of force, allurement or by fraudulent means or aid or abets such conversions would be punished with imprisonment. The court held that:

“...we are of the opinion that there is no necessity of specific legislation as it has been prayed for, because every citizen has a fundamental right to profess, practice and propagate his religion.

However, if there is force conversion, the law always takes its own course. With this observation the listed petition is disposed of.”

The case of **Sheikh Shaukat Ali**,<sup>29</sup> involved the issue of contempt of court under Islam. The counsel for the respondents had contended that Article 20 of the constitution guarantees every citizen the right to profess, practise and propagate his religion. It was further submitted that the respondents in taking out a procession and displaying placards against this court were quite within the protection under this Article, in as much as according to their religion Islam they have every right to take out the procession and indulge in displaying the placards even though it amounted to contempt of court.

In connection with this, the Lahore High Court relied upon Quranic verse 58 Chapter V Part V, as reproduced in “Tafheem ul Quran” by Abul A’la Maududi. According to him, “the term ‘Oolul-Amar’ includes all those charged with the administration of the affairs of the Muslims as a body and these also include Judges of the court charged with the duty to administer Justice.” (Page 366) The court held that, “...This is sufficient to belie the

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<sup>28</sup> Pakistan Hindu Council v. Pakistan through Ministry of Law, PLD 2012 SC 679 at 680.

<sup>29</sup> The State v. Sheikh Shaukat Ali and 3 Others, PLD 1976 Lahore 355 at 366-367 H.I.J & K.



contention advanced before us that the judges are not entitled to the respect due to them and that in Islam there is no contempt of court.” The court further held that:

“...the freedom to profess, practice and propagate religion is, as Article 20 itself shows, "subject to law, public order morality". Munir in his "Constitution of Islamic Republic of Pakistan" at pages 166-167 has said that "the right of freedom to propagate religion has to be exercised subject to the requirements of public order and safety it does not extend to the doing of acts which are a crime under the law. Wrongs, practiced in the name of religion are not protected by the Constitution providing for the free exercise and enjoyment of religious profession and worship. The fact that an act is done only as a matter of religious worship will not protect a person from the consequences if such an act has been prohibited by law...Freedom of religion does not mean that acts inimical to the peace, good order and morals of society may go unpunished because of what some particular group may call religion, and religious liberty does not protect one who conceives of a God and the worship of such God in a manner which may endanger the lives of members of the community in which he lives. The right to worship is not a right to disturb others in their worship, and a religion may by its teachings interfere with the process of Government. Everything which may be equally an exercise of religion is not required to be tolerated and the right to exercise religious freedom ceases where it overlaps and transgresses the rights of others.”

“There does not appear to be anything Un-Islamic about the contempt of Court laws. Indeed before us the respondents failed to cite any verse from the Holy Koran or the Traditions of the Holy Prophet (may peace be upon him) in support of their contention to the effect that the judicial acts of a Kazi in office could be allowed to be criticised in public.”

In the **Darwesh M. Arbey case**,<sup>30</sup> the issue to be decided was whether the imposition of an indefinite curfew without relaxation of time for prayers in mosques was valid under Article 20 of the constitution. The Lahore High Court relied upon verse 114 of Sura Al-Baqarah, translated as “And who doth greater wrong than who forbiddeth the approach to the sanctuaries of Allah lest His name should be mentioned therein, and striveth for their ruin. As for such, it was never meant that they should enter them except in fear... Theirs is the world in ignominy and theirs in the Hereafter is an awful doom” and held:

“(A) Curfew can be clamped when such a situation demands but reasonable time has to be allowed for offering prayers in the mosques. Imposition of curfew for an indefinite period without relaxation of time for prayers in mosques violates Article 20 of the Constitution of the Islamic Republic of Pakistan and the Command of God.”

The **Malik Ghulam Yusuf case**,<sup>31</sup> involved the question of refusal to grant permission to take ‘Zuljannah’ and “Alam” processions. Relying on the **Jibendra Kishore case**, the Peshawar High Court held:

“...To accept the proposition that the operation of fundamental right to profess or practice any religion is dependent upon the objection of a hot-head of a different religion or sect would make the fundamental right entirely illusory without any substance. Therefore, we see considerable force in the argument that the permission to the petitioner to take out processions was refused rather lightly without taking into consideration that the permission was sought in relation to the performance of what is accepted by common consent as religious rite among, Shia Muslims, and which is guaranteed by the Constitution.”

The **Syed Abdur Rehman Shah case**,<sup>32</sup> also dealt with the issue of absolute refusal to grant permission to take out a “Zuljannah” and “Alam” procession. The Peshawar High Court held:

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<sup>30</sup> Darwesh M. Arbey Advocate v. Federation of Pakistan, through the Secretary Law and 3 Others, PLD 1980 Lahore 206 at para 21 at 284.

<sup>31</sup> Malik Ghulam Yusuf v. District Magistrate, Attock, 1995 MLD 1510.

<sup>32</sup> Syed Abdur Rehman Shah v. Superintendent of Police, Mansehra and Another, 1999 CLC 855 para 5.

“A perusal of section 30 (of the Police Act, 1861) would indicate that the taking out of a procession, even in case where breach of peace is apprehended, is not forbidden under section 30 of the Police Act. The only restriction laid down under such eventuality is that the sect intending to take out such procession, in case of apprehension of breach of peace, shall apply to the Authority concerned for a license to be issued under section 30 of the Police Act. If such procession intended to be so taken is not unusual, based on mala fides and intended to be taken for ulterior motives and purposes, the Authority concerned can put certain reasonable and bona fides conditions. Mere fact that the route which procession had to follow was predominantly resented or occupied by people of other religions or sects is no ground at all for refusal to grant the license. Such absolute refusal is obviously without lawful authority. Keeping of law and order, however, in the words of Mr. Justice Naseem Hasan Shah of the Lahore High Court (as he then was), was not to be secured by refusing citizens their right of assembling and forming processions.”

However, in the **Syed Tausif Hussain Shah case**,<sup>33</sup> the Lahore High Court refused to interfere with the decision to disallow the “Zuljannah” procession based on the reports that the atmosphere in the village Dhauhar is not peaceful and the “Alam” procession would create a law and order situation. In the circumstances, the court observed and held that:

“It is in the report of District Magistrate and of the Assistant Commissioner, Tallagang, made to the District Magistrate, Chakwal, on 24-6-1996 and reports submitted in this Court that the atmosphere in the village Dhauhar is not peaceful. According to Assistant Commissioner’s report, dated 10-12-1998, in the said village the Sunni people are in majority and any permission allowing the other sect to take out ' Alam procession' is certainly likely to create law and order situation. The factum of the alleged agreement between the persons of two sects in the year 1992, filing of criminal cases against each other and filing of successive

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<sup>33</sup> Syed Tausif Hussain Shah and Others v. District Magistrate, Chakwal and Others, 2000 MLD 199 at 11.

Constitutional petitions in this Court are the clear indicative of the fact that everything was not as congenial as it was claimed by the petitioners. In these days, when the disputes between two sects are aggravating day by day, any declaration for grant of a license to the petitioners may tantamount to unnecessary interference in the affairs of the administration which is of the opinion that grant of license under section 30 of the Police Act, 1961, to the petitioners for taking ' Alam procession' on the 14th of Saffar is bound to create problems of law and order and would be prejudicial to public safety and public interest. If the district administration is having a different opinion this Court cannot in Constitutional jurisdiction without any material on the record, substitute with its own opinion in respect of prevailing law and order situation on the village Dhauhar and District Chakwal.”

In the **Hafiz Asmatullah case**,<sup>34</sup> the petitioner wanted the Lahore High Court to impose a ban on the book entitled “God’s Special Agents” and that William Johnson, the author, be restrained from preaching and projecting Christianity in Pakistan. The learned single judge in dismissing the petition observed:

“...”Under Article 20 of the Constitution of the Islamic Republic of Pakistan, 1973 every citizen enjoys a fundamental right to profess, practice and propagate his religion and every religious denomination and every sect thereof has a right to establish, maintain and manage its religious institutions. The petitioner has failed to point out in his petition and has also failed to address any argument before this Court as to how the actions of respondent No.4 offend against any particular law, public order or morality so as to exclude the application of Article 20...”

The decision of the single judge was affirmed by a Division Bench, which found no error or illegality in the order of the learned single judge while dismissing the petition. Before the division bench reliance was also placed by the learned counsel of the appellant on Article 227 of the constitution.

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<sup>34</sup> Hafiz Asmatullah v. Government of Punjab and Others, PLD 2005 Lahore 354 at 355-356.

The Division Bench held that: “Such reliance “...in the context is inapt inasmuch as clause (3) thereof ensures that "Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.” It rather gives added strength to fundamental right under Article 20 and is also consistent with the Principles of Policy as contained in Article 36...Needless to reiterate that benevolence and tolerance is the hallmark of religion of Islam and our faith. Indeed the provisions of Articles 20, 36 and clause (3) of Article 227 is reflection thereof. We, therefore, find no valid justification to interfere with the order passed by the learned Single Judge.”

In the **Saira Rana case**,<sup>35</sup> a female student was given admission in a medical college on a self-finance basis and the authorities directed her to furnish a bank guarantee regarding college dues for five (5) years. The plea raised by the petitioner was that the demand of such bank guarantee was unreasonable. While ruling in favour of the candidate, the Lahore High Court held that:

“In Article 9 of the Constitution, the word life has been given prominence. If the word life is taken in a broader sense, the same cannot be limited to life without knowledge especially when the same is referred to a human being. We being Muslims acknowledge the importance of education in broader sense as compared to any other section of society of the world. The importance of the same has been visualized from the Qur'anic revelation. The life of Holy Prophet (P.B.U.H.) and teachings of other most prominent dignities of Islam have made acquiring the knowledge obligatory upon the Muslims irrespective of colour, caste, creed or sect. The thought of acquiring knowledge not only has been sanctioned in the teachings of Islam, rather same has been made obligatory in any case, that is why the same has been made part of Article 20 of the Constitution. From religious point of view, pursuit of education is one of the religious obligations of a Muslim. The first five Verses revealed to Prophet Muhammad (P.B.U.H.) were that of Surah Alaq, which relate to acquiring knowledge and thus that has been stressed upon. Further during the famous war

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<sup>35</sup> Saira Rana v. University of Central Punjab and 4 Others, 2014 YLR 475.

Badar' in history of Islam, the POWs were not punished rather they were given the task of teaching, which further reflects the importance of acquiring education and knowledge.”

**Article 20(b) of the 1973 Constitution: Right to establish and maintain religious institutions-**

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

Article 20(b) of the constitution guarantees to every religious denomination and sect the right to establish, maintain and manage its religious institutions. This right too is subject to limitations imposed by law and maintenance of public order.

In the **Muhammad Iqbal Ahmed Siddiqui case**,<sup>36</sup> there was a dispute as to whether a particular mosque could be declared as Barelvi mosque or Deobandi mosque and the Sindh High Court held:

“Respectfully following the teachings of the Holy Quran (supra) I am of the view that discretionary relief in the form of declaration under section 42 of the Specific Relief Act cannot be given to get a mosque declared as Barelvi mosque or Deobandi mosque. Moreover, Article 20 of our Constitution guarantees fundamental right to all citizens to profess practice and propagate their religion and to establish, maintain and manage their religious institutions subject to law, public order and morality....”

In the **Jibendra Kishore case**,<sup>37</sup> Chief Justice, Mr. Muhammad Munir held in relevant part:

“The words ‘the right to establish, subject to law, religious institutions’ cannot and do not mean that such institutions may be abolished altogether by the law...The Article appears to me to proceed on the well-known principle that while legislature may not interfere with mere profession or belief, law may step in when professions break out in open practices inviting breaches of peace or when belief, whether in publicly practicing a religion or running a religious institution, leads to overt acts against public order. In

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<sup>36</sup> Muhammad Iqbal Ahmed Siddiqui v. Ghulam Yasin, 2001 YLR 1789 at 1796 C.

<sup>37</sup> Ibid. See footnote 22.

the present case no question of law and order being involved; I am constrained to differ from the view taken of this fundamental right by the High Court.”

In the **Naseem Deen case**,<sup>38</sup> the Sindh High Court dealt with the issue of protection of abandoned Christian cemeteries under Article 20 of the constitution. The court held:

“...The learned counsel had relied upon sub-Article (b) of Article 20 and had stated that the Christian community had right to maintain and manage their cemetery which had been regarded as religious institution. The learned counsel has not placed before us any Christian literature to the effect that an abandoned cemetery is necessarily to be maintained by the Christian community or that the cemetery is regarded as sacred religious institution and, therefore, we are not in a position to comment upon this position. It was for the petitioner to substantiate that position but the same has not been done.”

In the **Haq Nawaz case**,<sup>39</sup> the Lahore High Court attempted to define the term “religious denomination” as defined in Article 20(b) of the constitution and also dealt with the issue of stopping a person from using a mosque and/or demolishing it. The court held:

“...The use of the words "religious denomination" and "sect" does not mean that the right conferred under sub-Article (b) of Article 20 can be exercised only by a religious denomination or sect collectively. A religious denomination or a sect thereof is composed of persons who may establish, maintain and manage their religious institutions individually or collectively. The above-quoted Article of the Constitution has to be interpreted in the light of the well-recognized principles and rules of the Islamic law, as held in the case of Mst. Kaneez Fatima, quoted above.

“A mosque is a vitally important religious institution of a Muslim society which is essential for practicing Islam. Any act done by any person or a State functionary which obstructs the establishment, maintenance or management of a mosque really

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<sup>38</sup> Naseem Deen v. Sind Government through the Assistant Commissioner, South Zone, Karachi and 2 Others, PLD 1987 Karachi 98 at 102.

<sup>39</sup> Haq Nawaz v. Province of Punjab and 2 Others, 1997 MLD 299 at 82-83.

deprives the Muslims using the said mosque practice their religion. Such an act is also violative of the Injunctions of the Holy Qur'an and Sunnah of the Holy Prophet (s.a.w.s.) is well recognized principle of the Islamic law and jurisprudence that once a mosque always a mosque and that its site cannot be abandoned, changed, alienated or re-located at another place, therefore, the actions of the respondents in demolishing the mosque, stopping the petitioners and other Muslims from using the original site of the mosque for offering prayers and re-locating it at a nearby site amount to stopping them from establishing, maintaining and managing their religious institution. Their actions being violative of fundamental rights secured under Article 20 of the Constitution are without lawful authority and of no legal effect.”

In the **Haji Muhammad Hanif Abbasi case**,<sup>40</sup> the appellants wanted to stop the construction of a church. In appeal the Lahore High Court held that:

3. “I have considered the contentions of the learned counsel for the petitioners. I find that the order of the learned Additional District Judge is well-reasoned. I am also guided by the provision of Article 20 of the Constitution which gives right to every citizen to profess, practice or propagate his religion. It further provides that every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions. Church is a religious institution, construction of which according to the provision of Article 20 (ibid) is a right of Christian citizens of Pakistan.

3-A. Islam is a religion of tolerance and learning. Non-Muslims are free to profess and practice their religion and for the same, are free to establish, maintain and manage their religious institutions i.e. a Church.”

**Article 21 of the 1973 Constitution: Safeguard against taxation for purposes of any particular religion-**

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<sup>40</sup> Haji Muhammad Hanif Abbasi and 2 Others v. CDA, 2005 CLC 678.



*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.*

The rights protected under this Article are absolute and not subject to any restrictions whatsoever. The only possible complaint that a person can have under Article 21 is that the aggrieved person is being compelled to pay a special tax the proceeds of which will be spent on the propagation or maintenance of a religion other than his own.

As held in a case from the US jurisdiction, **Jimmy Swaggart Ministries**<sup>41</sup> relating to general sales tax and usage tax “...the collection and payment of the generally applicable tax...imposes no constitutionally significant burden on appellant’s religious practices and belief...”

It was also held in the case of **Bashir Ahmed**<sup>42</sup> that the creation of an education fund under Section 27 of the West Bengal Wakf Act, 1934, for the exclusive benefit of the Muslim boys and girls did not amount to levy of tax for the promotion of a particular religion and it did not also amount to the maintenance of that religion.

**Article 22 of the 1973 Constitution: 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.*

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<sup>41</sup> Jimmy Swaggart Ministries v. Board of Equalization, 493 US 378, 107 L Ed 2d 796 (1990).

<sup>42</sup> Bashir Ahmed v. The State of West Bengal, AIR 1976 Cal 142.

*(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.*

In the **Abdul Qadir Bhatti case**,<sup>43</sup> the main contention on behalf of the petitioner was that admission to medical college was denied to him only on the ground of his religion and such denial contravened his fundamental right under Article 22(3) of the constitution. In this case, the Sindh High Court relied upon the case of **Jibendra Kishore** wherein the phrase ‘subject to law’ was held to mean that although a right guaranteed by the constitution cannot be taken away by law entirely, the exercise of that right may be regulated by law.

“The Division bench accordingly held that in view of the limited number of seats available for admission, as well as the necessity to provide for fair and adequate representation to all the communities, the allocation of seats to various communities according to their ratio in population was a valid method for regulating admission to the Medical Colleges, and that the rule providing that minority applicants falling in another category is not denial of admission only on the ground of religion and did not infringe Article 19(3)(b) [now Article 22(3)(b)] of the Constitution.”

Accordingly, the petitions were dismissed.

In the **Mussarat Uzma Usmani case**,<sup>44</sup> it was held by Lahore High Court that the right of a citizen not to be denied admission to any education institution does not extend to institutions that do not receive aid from public revenue.

In the **Ejaz Aslam case**,<sup>45</sup> the candidate for admission applied in the open merit category and the Peshawar High Court observed and held that:

“The seats reserved by the University for minority sects have for them the constitutional backing contained in clause (4) of Article 22 of the Constitution which reads as under:-

"(4) Nothing in this Article shall prevent any public authority from making- provision for the advancement

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<sup>43</sup> Abdul Qadir Bhatti v. Government of Sindh, PLD 1976 Karachi 1102 at 1104-1105.

<sup>44</sup> Mussarat Uzma Usmani and Another v. Government of Punjab and Another, PLD 1987 Lahore 178.

<sup>45</sup> Ejaz Aslam and Another v. University of Peshawar and 3 Others, PLD 1975 Peshawar 186.

of any socially or educationally backward class or citizens."

But this would not mean that a candidate belonging to a minority sect would have no right to compete for a seat on the basis of merit. In a point of fact, this right has been guaranteed to every citizen of the country under Article 22(3) (b) of the Constitution. In this view therefore we hold that orders without lawful authority are of no legal effect whatever."

**Article 25 of the 1973 Constitution: Equality of citizens-**

*(1) All citizens are equal, before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination on the basis of sex.*

*(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

In the **P.K. Shahani case**,<sup>46</sup> the main grievance of the Hindu petitioner was that in terms of clause 3 of Article 51 of the constitution, the reserved seats provided in the constitution had not been allocated by the authorities to each province and thus there had not been any delimitation carried out by the election commission. This failure to allocate seats in each province and delimit the constituencies according to the petitioner was in violation of Article 25 of the constitution. The Sindh High Court held:

“In our view, there has not been any violation of the above Article 25 of the Constitution. A comparison between a Muslim candidate for the National Assembly seat and a non-Muslim candidate for the reserved seat is not proper. As observed hereinabove that the reserved seats have been provided for the minority communities as an exception to the basis of the Muslim seats provided in clause (3) of Article 51 of the Constitution. If all other things would have been equal providing of single member constituency for the Muslims and multi member constituencies for the minority communities would have been violative of Article 25 of the Constitution, but since all the other things are not equal, as pointed out hereinabove and that the reserved seats stand entirely on

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<sup>46</sup> Prem Kevalram Shahani v. Government of Pakistan, PLD 1989 Karachi 123.

different footing than the Muslim seats and hence there cannot be any comparison between the two categories of the candidates.”

In the **Gul Khan case**,<sup>47</sup> clause 2.12 of the admissions policy of engineering colleges was challenged as being in violation of Article 25 of the constitution. The Balochistan High Court held:

“...It can be easily stated that clause 2.12 of the admission policy is applicable to all students who seek admission in Engineering Colleges either in Baluchistan or from the quota of this Province in other colleges. This, therefore, cannot be said to be a clause being violative of equality clause as envisaged in Article 25 of the Constitution, for the simple reason that it applies to all students of this province, who get their education outside the province but fail to satisfy the selection committee that reasons of their doing so was beyond their control. Its application is common to all such students. In fact this clause does not restrict the students not to study in educational institutions outside the province, but it of course imposes such a restriction if such students seek admission in Engineering College of this province or quota of reserved seats for this Province and fail to satisfy Selection Committee that doing so was beyond their control.”

**Article 26 of the 1973 Constitution: Non-discrimination in respect of access to public places-**

*(1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.*

*(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.*

In an **Indian case**,<sup>48</sup> the Punjab High Court (India) held that the Article only applies where the discrimination against a citizen is solely based on the ground of religion, race, etc. If the law on the basis of which a person has been discriminated against is based on

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<sup>47</sup> Gul Khan v. Government of Balochistan, PLD 1980 Quetta 8 at 14.

<sup>48</sup> AIR 1953 Punjab 30.

several factors and religion and/or race is only one of the factors involved, the law would not be held to be ultra vires to the constitution.

**Article 27 of the 1973 Constitution: Safeguard against discrimination in services-**

*(1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.*

In the **New Jubilee Insurance Company case**,<sup>49</sup> the Supreme Court observed that:

“It is manifest that the Holy Qur'an inter alia enjoins that there is no difference between the individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah. The fittest person who is strong and trustworthy is to be employed. It is evident that the concept of zone or quota system runs counter not only to the above clause (1) of Article 27 read with Article 2A and Article 25 of the Constitution, but also to the Commandment of Allah as ordained in the Holy Qur'an. We may observe that the quota system has not served Pakistan interest but on the contrary, it has generated parochial and class feelings resulting into disunity.”

The fundamental right guaranteed by Article 27 with respect to safeguard against discrimination in services is absolute and without any legal qualifications.

In the **Mushtaq Ahmed Mohal case**,<sup>50</sup> clause (1) of Article 27 was subject to judicial interpretation. The Supreme Court observed that:

“...clause (1) of Article 27 of the Constitution (which relates to one of the Fundamental Rights guaranteed by the Constitution), enjoins that no citizen otherwise qualified for appointment in the service of Pakistan shall be' discriminated against in respect of any such' appointment on the ground only of race, religion, caste, sex, residence or place of birth.

“...It may be highlighted that Clause (1) of Article 27 of the Constitution guarantees that every citizen will have equal

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<sup>49</sup> New Jubilee Insurance Company v. National Bank of Pakistan, PLD 1999 SC 1126 at 1136-1137.

<sup>50</sup> Mushtaq Ahmed Mohal and Others v. The Honourable Lahore High Court and Others, 1997 SCMR 1042 at 1055-1056.

opportunity for appointment in the service of Pakistan if otherwise qualified. Whereas clause (2) thereof also guarantees equal opportunity to all the citizens with the condition that any Province or local authority may prescribe the requirement of three years residence in the Province concerned in order to ensure that the locals of that Province should have preferential right to have a job as compared to an outsider, who has no domicile and has not been residing for a period of three years in that Province. This condition has been provided apparently in order to ensure the Provincial autonomy which the Constitution guarantees to the Federating Units.”

In the **Ayaz Muhammad Khan case**,<sup>51</sup> Article 27(1) of the constitution was held to be against the subject of judicial interpretation and the Sindh High Court observed that:

“It may be pertinent to examine the rationale for reservation of seats contemplated by the first proviso to Article 27(1) and consider whether it causes any substantive discrimination violating the scheme of the Constitution or the Islamic principles of equality. What needs to be kept in view is the fact that because of uneven economic development and lack of appropriate educational facilities in certain parts of the country the residents of those areas came to be so handicapped that they were unable to compete with their more fortunate counterparts in the developed areas on the basis of straight open competition. Their relatively poorer performance in examination did not reflect any inherent lack of intelligence or capabilities but only reflected the absence of facilities available to them, which could, harness their talent. To attain the objective of genuine equality of opportunities rather than mere nominal equality in accordance with the true spirit of Islam, the Constitution makers stipulated enabling provisions to under the affirmative action, for the benefit of the under privileged.”

**Article 33 of the 1973 Constitution: Parochial and other similar prejudices to be discouraged-**

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<sup>51</sup> Ayaz Muhammad Khan v. Province of Sindh, 2003 PLC (CS) 304 Karachi.

*The State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens.*

In the case of **Mst. Zahra v The Ministry of Interior**,<sup>52</sup> the petitioners were aggrieved by the refusal of NADRA to renew their computerized national identity cards (CNIC's). In view of the large number of cases of non-issuance of CNIC's of persons belonging to ethnic Hazara community, the Balochistan High Court observed and held that:

“In conclusion we are constrained to observe that a large number of cases of non-issuance of CNICs in respect of persons belonging to the ethnic Hazara community are coming before us. The petitioners too belong to this community. It may be that there is a bias or prejudice against this community amongst the concerned local officers of NADRA. The Constitution of the Islamic Republic of Pakistan absolutely forbids any sort of discrimination, and in fact Article 33 of the Principles of Policy states, that, "the State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens". It is incumbent upon the respondents to stamp out any such bias or prejudice and to instruct their officers in this regard.”

**Article 36 of the 1973 Constitution: Protection of minorities-**

*The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.*

In the **Pervaiz Jahangir case**,<sup>53</sup> the court was required to decide whether the reservation of special seats for minorities constituted a restriction imposed on them. In this case, the Lahore High Court was of the view that:

“...the reservation of special seats is not meant to restrict the minorities to those seats alone. This provision primarily is aimed at safeguarding their interests in a Muslim majority country. Because otherwise they may not get a chance to be elected. This does not mean that they cannot contest for other seats which have not been specified in law as Muslim seats. This benign measure cannot be interpreted to their disadvantage. This legislative intent is

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<sup>52</sup> Mst. Zahra v. Government of Pakistan, PLD 2013 Quetta 133.

<sup>53</sup> Pervaiz Jahangir v. District Returning Officer, Khanewal, 2001 YLR 1001 Lahore.

reflective of the Constitutional safeguard, provided to the minorities in Article 36 of the Constitution which mandates as under:--

"Protection of minorities. ---The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial Services."

**Article 37 of the 1973 Constitution: Promotion of social justice and eradication of social evils-**

*The State shall-*

*(c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit;*

*(f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan;*

*(h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes.*

In the **Ahmad Yar Chohan case**,<sup>54</sup> the petitioner called in question the validity of the quota system for CSS, as being in violation of the constitution. The Lahore High Court observed that:

“The administration of social, economic and political justice is one of the objectives of the Constitution as envisaged by Articles 2A and 37 of the Constitution. The appointments to All Pakistan Service have always been made having regard to the representation of the Provinces/Regions. Article 36 of the Constitution makes it obligatory on the State to safeguard the legitimate rights and interest of minorities including their due representation in the Federal and Provincial Services. Similarly by Article 37 of the Constitution the State is required to promote with special care, the

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<sup>54</sup> Ahmad Yar Chohan v. Federal Public Service Commission, 1998 MLD 1832.



educational and economic interests of the backward classes or areas.”

Due to the reasons mentioned above, the impugned order in the case was set aside and the government was permitted to continue making appointments of CSS cadre in accordance with its land and recruitment policy.

**Article 41 of the 1973 Constitution: The President-**

*(1) There shall be a President of Pakistan who shall be the Head of State and shall represent the unity of the Republic.*

*(2) A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age and is qualified to be elected as member of the National Assembly.*

Article 41, while providing the qualifications for election to the office of president of Pakistan, states (in no uncertain terms) that in order to be qualified a candidate has to be a Muslim. The Third Schedule to the constitution, which contains the text of the oath to be taken by the president before entering upon the said office, specifically provides, in relevant part, that the candidate shall affirm that he is a Muslim and believes in the Oneness of Allah, the Holy Quran, and that the Prophet Muhammad (pbuh) was the last of the prophets of Allah.

Thus the constitution is, in express terms, discriminatory and excludes any member of the minority community of Pakistan from holding the office of the president of Pakistan.

Under Article 41, only a Muslim is qualified to be elected as president. Initially, there was no such bar of religion against the election of the prime minister. Article 91, in the original 1973 Constitution was substituted by P.O. No. 14 of 1985, providing that, “*after the election of Speaker and Deputy Speaker, the National Assembly shall, to the exclusion of any other business, proceeds to elect without debate one of its Muslim members to be the Prime Minister.*” All judges of the Federal Shariat Court as provided in Article 203C are to be Muslims. There exists no constitutional impediment for all other appointments including of the speakers of the parliament, judges, election commissioners, ambassadors and diplomats to foreign countries to be Muslims. Strictly speaking even an appointment of a non-Muslim as a member of the Islamic Council under Article 228 is not prohibited by the constitution if otherwise he/she fulfills the requirements and qualifications enumerated therein.

### **Article 91 of the 1973 Constitution: The Cabinet-**

*(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.*

*(3) After the election of the Speaker and the Deputy Speaker, the National Assembly shall, to the exclusion of any other business, proceed to elect without debate one of its Muslim members to be the Prime Minister.*

By virtue of Article 91, the National Assembly of Pakistan is restricted to electing only one of its Muslim members as the prime minister of Pakistan. And the Third Schedule to the constitution, which contains the text of the oath to be taken by the prime minister before entering upon the said office, specifically provides, in relevant part, that the candidate shall affirm that he is a Muslim and believes in the Oneness of Allah, the Holy Quran and that the Prophet Muhammad (pbuh) was the last of the prophets of Allah.

Thus the constitution is, in express terms discriminatory and excludes any member of the minority community of Pakistan from holding the office of prime minister of Pakistan.

It is clear from a bare reading of Articles 41 and 91 and the relevant oaths of office contained in the Third Schedule to the constitution that members of the minority communities have been denied the right to hold the high constitutional offices of the president and prime minister of Pakistan.

Articles 62 and 63 were added to the constitution by Zia but were later on protected through the eighth amendment to the constitution (P.O No.14 of 1985). Apart from other qualifications to be elected to being a member of the parliament a candidate has to be “of good character and not commonly known as one who violates Islamic injunctions.” He or she must have adequate knowledge of Islamic teachings and must be a practicing Muslim who “abstains from major sins.” He/she should be “sagacious, righteous and non profligate and honest and amin.” Non-Muslims are required to have “good moral reputation.” These provisions of the constitution have been used selectively and in a politicised manner to disqualify members of the parliament. Even otherwise hardly any member of the parliament could qualify under such rigid standards of morality. Ironically, the parliamentarians did not amend this mischief of Zia and continue to suffer under it.

### **Article 203C of the 1973 Constitution: The Federal Shariat Court-**

*(2) The Court shall consist of not more than eight Muslim [Judges] including the [Chief Justice] to be appointed by the President.*

**Article 203E of the 1973 Constitution: Powers and procedure of the (Federal Shariat) Court-**

*Sub Article (4) – A party to any proceedings before the Court under clause (1) of Article 203D may be represented by a legal practitioner who is a Muslim and has been enrolled as an advocate of a High Court for a period of not less than five years or as an advocate of the Supreme Court or by a jurisconsult selected by the party from out of a panel of jurisconsults maintained by the Court for the purpose.*

Article 203E Sub Article (4) expressly provides that the legal practitioner representing a petitioner in the Federal Shariat Court must be a Muslim. This is an anomalous legal position; a non-Muslim lawyer can represent the same party in the trial as well as the appellate court.

**Article 227 of the 1973 Constitution: Provisions relating to the Holy Quran and Sunnah-**

*(1) 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.*

*Explanation-In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.*

*(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.*

*(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.*

In the **Darwesh M. Arbey case**,<sup>55</sup> the constitutionality of the suspension of Article 14(1) of the constitution came up for discussion before the Lahore High Court, which held that:

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<sup>55</sup> Darwesh M. Arbey Advocate v. Federation of Pakistan, through the Secretary Law and 3 Others, PLD 1980 Lahore 206 para 12 at 267.

“In my humble view, suspension of certain fundamental rights and in particular Fundamental Right 14(1) comes in direct conflict with the Holy Qur'an. Any legislative or executive authority cannot enact a law or promulgate any Ordinance or Order in view of Article 227 of the Constitution which clearly prohibits the enactment of law which is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah. I am conscious of the fact that Courts are not empowered to strike down such laws. But any person or Authority acting contrary to the provisions of Article 227 is likely to run the risk of the consequences as envisaged in Article 6 of the Constitution.

“With respect to the personal law of each sect of the Muslims the Superior Court had held that it is outside the scope of the Federal Shariat Court under Article 203D. In NLR 1994 SD 566, the Court held it was necessary to protect personal law of each sect of Muslims based on interpretation of that sect's Holy Qur'an and Sunnah as otherwise it would lead to unresolvable controversies and conflicts among different sects of the Muslim Ummah. Therefore Constitutional scheme of Islamisation of Laws is intended to keep personal law of each sect of Muslims outside the scope of scrutiny of Federal Shariat Court under Art. 203D.”

#### **Article 260 of the 1973 Constitution: Definitions-**

Through the Third Amendment Order, 1985,<sup>56</sup> the definition of a “Muslim” was added. The state thus assumed the authority to determine who was a “Muslim.” The precedent could lead the parliament to declare the faith of any group, sect or belief.

It now reads as follows:

*(3) 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 Prophet hood 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*

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<sup>56</sup> Ibid. See footnote 2

*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);*

*(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 Qadiani 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.*

In the case of **Abdul Qadir Bhatti**,<sup>57</sup> one of the issues the Sindh High Court was required to decide was the religious status of the petitioners. On this point the court held:

“Under Article 260(3) (a) of the Constitution, a person belonging to the Ahmadi group is not a Muslim for the purposes of the Constitution or law and being a member of a minority community, the precedent judgement of the Division bench is directly applicable to the case of the petitioners.”

A number of decisions have emphasized that according to the constitutional amendment, Ahmadis cannot claim the rights or follow the law that are specially determined for Muslims. Ahmadi students were not granted relief by the courts when denied admissions to the medical college in Karachi. These students fulfilled the merit criteria but could not be accommodated in the list of Muslim students.

Ahmadis are denied inheritance from a Muslim relative. The Supreme Court’s ruling in the **Zaheeruddin case** <sup>58</sup> was relied upon and it was ruled that the rules of Muslim personal law cannot be applied to Ahmadis.

In two landmark cases, the **Zaheeruddin case** and the **Mujibur Rehman case**,<sup>59</sup> the courts ruled that the parliament could enact amendments to the constitution declaring Ahmadis non-Muslims and pass laws that forced them to accept their legal identity of being non-Muslims.

A Lahore High Court judgment observed that Qadianis and Ahmadis constitute “a separate ummah.” In another ruling the court observed that there was no meeting of minds between Ahmadis and Muslims and because of their own conduct Ahmadis cannot be part of the Muslim Ummah.

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<sup>57</sup> Abdul Qadir Bhatti v. Government of Sindh, PLD 1976 Karachi 1102 at 1104-1105.

<sup>58</sup> Zaheeruddin v. The State, 1993 SCMR 1718.

<sup>59</sup> Mujibur Rehman and Others v. Federal Government, PLD 1985 FSC 8.

Out of all institutions of Pakistan, the trends seen in Pakistan's judiciary are quite clear. Initially, Pakistan's judiciary remained fairly progressive and tolerant of religious diversity. The turnaround came in early 80s and continued well into 2000. However, given the fact, that Pakistan laws on religious offences and morality are extremely stringent; the courts in Pakistan have often presented some relief in this area.

#### **4. Judiciary**

The trend of judgments in the Supreme Court shows that while courts generally upheld norms of religious tolerance in the first four decades of the country's independence, their respect for it dramatically decreased in the 80s, during Zia-ul-Haq's Islamisation period.

A recent suo moto judgment<sup>60</sup> of the Chief Justice, Tassaduq Hussain Jilani, of the Supreme Court has broken new grounds. He has directed the government to guarantee the rights of religious minorities. The salient features of the judgment are:

- a. the Federal Government should constitute a taskforce tasked with developing a strategy of religious tolerance.
- b. appropriate curricula be developed at school and college levels to promote a culture of religious and social tolerance. In 1981 in one of its seminal declarations, the United Nations resolved that "*the child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in the spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.*" (UN Declaration on the Elimination on All Forms of Intolerance and of Discrimination Based on Religion or Belief)."
- c. the Federal Government should take appropriate steps to ensure that hate speeches in social media are discouraged and the delinquents are brought to justice under the law.
- d. a national Council for minorities rights be constituted. The function of the said Council should inter alia be to monitor the practical realisation of the rights and safeguards provided to the minorities under the Constitution and law. The Council

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<sup>60</sup> Suo Moto Case No.1 of 2014 Ect. (Tassaduq Hussain Jilani, CJ).

- should also be mandated to frame policy recommendations for safeguarding and protecting minorities' rights by the Provincial and Federal Government.
- e. A special Police Force be established with professional training to protect the places of worship of minorities.
  - f. In view of the statement made by learned Attorney General for Pakistan and learned Additional Advocate Generals of Punjab, KPK and Balochistan regarding reservations of quota for minorities in the federal and provincial services. It be directed that the Federal Government and all Provincial Governments shall ensure the enforcement of the relevant policy directives regarding reservation of quota for minorities.
  - g. In all cases of violation of any of the rights guaranteed under the law or desecration of the places of worship of minorities, the concerned law enforcing agencies should promptly take action including the registration of criminal cases against the delinquents.”

## **5. Recommendations**

Pakistanis have to decide whether they want religion and its various interpretations to be the supreme law of Pakistan or that the constitution can be based on modern principles of equality, rule of law and democratic governance. If the former course is to be adopted then the citizens must be prepared to be ruled through various trends of interpretations, which range from being most rigid to less conservative in terms of granting equality to women and religious minorities. This decision is central to the development of Pakistan. Pakistanis could retain an Islamic identity –culturally –but incorporate into the constitution all basic rights and concepts of equal protection and opportunities under national laws and policies.

A turnaround from the Zia days can either be made in one swoop or gradually. This would depend on the political choices presented to its leaders. A piecemeal alteration can only ease the situation but it will never give religious minorities and progressive Pakistanis the confidence to think and act freely.

1. Islam could remain the state religion as such provisions exist in other constitutions as well. But this provision should simply be of a symbolic nature as in reality a state or a country cannot have a belief or religion.

2. The Objectives Resolution should be placed only in the Preamble. Its insertion in Article 2A has added strains on the courts while interpreting Article 2A. It also overshadows other Articles of the constitution.

3. Article 20 should be strengthened so that it reads as follows:

*Subject to any reasonable restriction imposed by law to maintain public order and to protect the fundamental rights of others;*

*(a) Every citizen shall have the right to freedom of thought, conscience and religion. This right shall include freedom of worship, observance, practice and teaching.*

*(b) No one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his/her choice.*

*Provided that any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

4. There should be no qualification of religion for holding a public or judicial office. As such oaths prescribed for public offices must also be amended accordingly.

5. The establishment of the Federal Shariat Court should be openly discussed. Its value and performance should be evaluated on the principles of independence of judiciary and separation of powers. Above all an assessment should be made on the workload of the FSC and whether the amount and value of litigation in FSC deserves the resources spent on it.

6. Articles 62 and 63 should be restored to their original form.

7. The constitution or the state should not declare the faith of any person and as such the definition under Article 260 of a Muslim is unique to Pakistan. It should be repealed.

8. There should be no restriction on the freedoms of profession of lawyers based on their religion. Therefore Article 203E (4) be repealed.

## **6. Articles**

- The Constitution of Pakistan 1973



-Articles: 1, 2, 2A, 20, 20b, 21, 22, 25, 26, 27, 33, 36, 37, 41, 91, 203C, 203E,  
227, 260

## **Electoral laws**

### **1. Introduction**

Since the creation of Pakistan, the debate on the role religion should play in the affairs of the state has continued. The August 11, 1947 speech by the Quaid-e-Azam is often quoted by liberals to demonstrate what they call his vision for the state with regard to religion and religious freedoms. Whether or not Pakistan was created as an Islamic state does not fall within the scope of this paper, but whether minority rights are sufficiently protected in Pakistan and more specifically whether electoral laws for religious minorities in Pakistan allow them democratic freedom, surely falls within its scope. In the August 1947 speech, Muhammad Ali Jinnah made it clear that all citizens were equal, *“We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State.”*

It was the All India Muslim League, which raised its voice for separate electorate for Muslims of the sub-continent before partition of India to protect their rights. It was separate electorate that allowed Muslims to gain majority in the north-western and eastern region of India, laying the foundation of Pakistan. Since independence, the State has interchangeably used joint and separate electorate systems for religious minorities. Separate electorate for minorities was protected under the 1956 and 1962 Constitutions of Pakistan but, the martial law government of General Yahya Khan introduced joint electorate in place of separate one. Separate electorate was again granted to religious minorities in 1985 via the Eighth Amendment to the constitution. In 2002, joint electorate was reintroduced by General Musharraf, which is still in place. This paper analyzes the prevailing electoral laws for religious minorities, weighing the pros and cons of separate and joint electorates.

### **2. Legal instruments outlining electoral laws for religious minorities**

The legal instruments which outline the electoral laws for religious minorities in Pakistan include the 1973 Constitution of Pakistan (hereinafter called the constitution), the National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslims (Procedure) Rules, 2002 and the Representation of the People Act, 1976. The salient features of these instruments are laid out below:

#### **2.(a)-Article 51 of the 1973 Constitution of Pakistan: National Assembly-**

*(1) There shall be three hundred and forty-two seats for members in the National Assembly, including seats reserved for women and non-Muslims.*

*(2) A person shall be entitled to vote if-*

- (a) he is a citizen of Pakistan;*
- (b) he is not less than eighteen years of age*
- (c) his name appears on the electoral roll; and*
- (d) he is not declared by a competent court to be of unsound mind;*

*(3) The seats in the National Assembly referred to in clause (1), except as provided in clause (4), shall be allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under:*

	<b>General Seats</b>	<b>Women</b>	<b>Total</b>
<i>Balochistan</i>	14	3	17
<i>Khyber Pakhtunkhwa</i>	35	8	43
<i>Punjab</i>	148	35	183
<i>Sindh</i>	61	14	75
<i>Federally Administered Tribal Areas</i>	12	-	12
<i>Federal Capital</i>	2	-	2
<i>Total</i>	272	60	332

*(4) In addition to the number of seats referred to in clause (3), there shall be, in the National Assembly, ten seats reserved for non-Muslims*

*(5) The seats in the National Assembly shall be allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital on the basis of population in accordance with the last preceding census officially published*

*(6) For the purpose of election to the National Assembly,-*

- (a) the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote in accordance with law;*
- (b) each Province shall be a single constituency for all seats reserved for women which are allocated to the respective Provinces under clause (3);*
- (c) the constituency for all seats reserved for non-Muslims shall be the whole country;*

*(d) members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:*

*Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates;*

*(e) members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly*

*Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.*

## **2.(b)-The National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslims (Procedure) Rules, 2002<sup>61</sup>**

The Act was promulgated to prescribe the method and procedure for working out the quota of seats reserved for women and non-Muslims in the National Assembly and provincial assemblies in respect of each political party, which is reproduced hereunder:

*Election for reserved seats for women and non-Muslims-*

*(1) Elections to the reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies shall be held on the basis of proportional representation system of political parties' lists of candidates in accordance with the provisions of these rules, the Order and the Act.*

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<sup>61</sup>The National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslims (Procedure) Rules 2002 available at: <http://ecp.gov.pk/Misc/Reserved/01-Reserved%20Seats%20in%20NA%20Women%2028-05-2013.pdf>.

*(2) The members to fill seats reserved for women in the National Assembly allocated to a Province shall be elected through proportional representation system of political parties' lists of candidates submitted to the Election Commission on the basis of total number of general seats won by each political party from the Province concerned in the National Assembly.*

*(3) The members to fill seats reserved for women allocated to a Province shall be elected through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the Provincial Assembly.*

*(4) The members to fill seats reserved for non-Muslims in the National Assembly and the Provincial Assemblies shall be elected through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly or as the case may be, in the Provincial Assembly.*

*(5) For the purpose of this rule the expression "total number of general seats won by political party" shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates: Provided that the independent candidate applies to the leader of political party for joining his party and the leader of political party forthwith informs the Election Commission of his joining through a letter to be delivered to the Election Commission.*

## **2. (c)-The Representation of the People Act, 1976<sup>62</sup>**

This was enacted to provide for the conduct of elections to the National Assembly and the provincial assemblies.

### **Section 47-A. Party lists for reserved seats, etc. -**

*(1) For the purpose of election to seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies, the political parties contesting election for such seats shall, within the period fixed by the Election Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Chief Election Commissioner or, as he may direct, with the Provincial Election*

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<sup>62</sup>The Representation of the People Act 1976 available at:  
[http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Pakistan\\_Representation%20of%20the%20People%20Act\\_1976\\_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Pakistan_Representation%20of%20the%20People%20Act_1976_en.pdf).

*Commissioner, who shall forthwith cause such lists to be published for information of the public at large.*

*(2) The parties' lists referred to in clause (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seat during the terms of National Assembly and Provincial Assemblies, as the case may be.*

*(3) Where a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant for death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedent from the party's list of the candidates submitted to the Election Commission under clause (1).*

*(4) Every candidate contesting election on a seat reserved for women or non-Muslims shall, along with the nomination papers and other relevant documents, submit to the Returning Officer appointed by the Election Commission in this behalf.*

*(a) a copy of the party list of the candidate's political party for such seats;*

*(b) declarations and statements as required by law or rules in support of the nomination; and*

*(c) the fee required under any law for the time being in force for filing nomination papers.*

## **2.(d)-Explanation**

Out of the 342-member house, 60 seats are reserved for women and 10 for minorities.

Article 51 of the Constitution further lays down eligibility of persons entitled to vote including the province-wise distribution of seats. As per clause 6(c) of Article 51, the whole country shall be the constituency of seats reserved for non-Muslims. Clause 6 (e) further states that members to the seats reserved for non-Muslims shall be elected through proportional representation on the basis of general seats won by a party as per lists submitted by parties.

Rule 3(4) of the National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslims (Procedure) Rules, 2002 reiterates the procedure of proportional representation for members' election to seats reserved for religious minorities.

### **3. Impact**

Whereas the joint electorate was meant to bring the religious minorities in mainstream politics it continues to alienate them. Where under the separate electorate system religious communities were proportionally represented, the joint electorate has created imbalance. Now there are no seats reserved for any one minority group, i.e. it is possible that all 10 parliamentarians from religious minority are representatives of one group, leaving other minorities unrepresented. In the province of Punjab, Christians form the largest minority group whereas in Sindh, Hindus are the largest religious minority group. According to the 1998 census, religious minorities form 3.86 percent of the total population, which brings their figure around 7 million, considering the estimated population of the country today. The whole country being treated as a constituency for the election of members on seats reserved for minorities results in unrepresentative members being elected. The criterion for election is not how popular nominated members are among their community but how close they are to any of the major political parties. This dependence on major political parties hinders religious minorities from raising voice for their interests and grievances as the true representatives of their community are not elected.

On the other hand, separate electorate has been criticized for being in violation of Article 25 of the constitution, which provides a democratic principle of equality of all citizens before the law.

The Ahmadiyya community is facing serious discrimination with respect to electoral rights. The community was declared non-Muslims in 1974, through the Second Constitutional Amendment. The problem here is that while Ahmadis consider themselves to be Muslims, the State does not recognize them to be so. Separate electorate would certainly make their position worse. Under the current joint electorate system they have to face the worst discrimination as none of the major parties openly want to associate with them for fear of political backlash from the general public. As per Article 51(2) of the constitution, the eligibility criterion for a voter is that s/he should be a Pakistani citizen of not less than 18 years of age, irrespective of his or her religious affiliations under the joint electorate. Yet separate electorate lists were prepared for Ahmadis and

they had to disassociate the title of Prophet Muhammad (PBUH), commonly prefaced with names in Pakistan, to appear on the voter lists. The community boycotted the 2013 elections as a protest against such discrimination. The community continues to be persecuted and discriminated on the basis of its religious beliefs. The Ahmadis virtually remain unrepresented in parliament.

#### **4. RECOMMENDATIONS**

Laws should be passed to promote greater and meaningful participation of minorities in the electoral processes of the country. The following strategies are recommended to increase the ability of religious minorities to exercise their electoral rights:

1. Minorities should be given dual voting rights where they can vote for their own representative as well as a member running on the general seat in their constituency.
2. Under the current proportional representation system the whole of country is treated as a constituency for minorities. In addition, party bosses virtually select non-Muslim candidates. This needs to be addressed in order to allow the religious minorities to elect their true representatives.
3. Legislation should be enacted, making it mandatory for political parties to award a certain percentage of their tickets on the general seats during elections to non-Muslims.
4. The following issues in the 1973 constitution need to be addressed:
  - (a) Constitutional provisions make it mandatory that only a Muslim can be the president and the prime minister of the country. This prerequisite needs to be reconsidered.
  - (b) Members of the National and provincial assemblies and Senate, federal/provincial ministers, ministers of state, speakers and deputy speakers of National and provincial assemblies and chief ministers can constitutionally be non-Muslims but they have to take oath given in the Third Schedule of the constitution that includes a line, “That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan”. This provision should be revised so that religious minorities do not have to take an oath, which contradicts their religious beliefs.
5. The number of reserved seats for religious minorities should be raised in the same proportion as the increase made in the number of National Assembly seats in 2002.



When the number of general seats in the National Assembly was 207, the seats reserved for religious minorities were 10. Even when the number of general seats rose to 272 in 2002, the seats reserved for minorities remained 10. There should have been a proportional increase in the reserved seats for minorities. A proportionate increase should also be made in the provincial assemblies and effective representation of religious minorities ensured in the local bodies as well.

## **5. LAWS**

- 1973 Constitution of Pakistan – (Article 51)
- National Assembly and Provincial Assemblies Allocation of Reserved Seats for Women and Non-Muslims (Procedure) Rules, 2002
- Representation of the People Act, 1976 – (Section 47A)

## Glory of Islam

### 1. Introduction

The phrase “glory of Islam” has been referred to in Article 19 of the 1973 Constitution of Pakistan and in Section 6 of the Motion Pictures Ordinance, 1979. The text of these provisions helps understand the context:

#### **Article 19 of the Constitution: Freedom of speech, etc.**

*Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the Press, subject to any reasonable restrictions imposed by law in the interest of the **glory of Islam** or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, [commission of] or incitement to an offence.*

#### **The Motion Pictures Ordinance, 1979**

##### **Section 6: Principles of guidance in certifying films-**

*(1) A film shall not be certified for public exhibition; if, in the opinion of the Board, the film or any part thereof is prejudicial to the **glory of Islam** or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or amounts to the commission of, or incitement to, an offence.*

*(2) Subject to the provisions of sub-section (1), for the guidance of the Board in the exercise of its powers under this Ordinance, the Federal Government may issue a Censorship Code and such directions as it may think fit.*

### 2. Case laws making reference to ‘glory of Islam’

- **Messrs Baho Film Corporation v. Islamic Republic of Pakistan** (PLD 1981 Lahore 295)<sup>63</sup>

The main question that arose was whether the notification decertifying the film *Maula Jat* was maintainable under the provisions of the Censorship of Films Act (CFA), 1963 and the rules framed under the Motion Pictures Ordinance, 1979.

The federal government has powers to decertify a film “if it is of opinion that it is necessary to do so in the interest of the glory of Islam or the integrity, security or defence

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<sup>63</sup> Messrs Baho Film Corporation v. Islamic Republic of Pakistan, PLD 1981 Lahore 295.

of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or prevent the commission of, or incitement to, an offence...”<sup>64</sup>

The court observed that the conditions of CFA 1963 for decertification of films were that the action had to be in the interest of law and order, or in the interest of the local film industry, or in any other national interest, as provided in the provision to Section 7 CFA.

It was held that the federal government’s decertifying of the movie *Maula Jat* was illegal and without lawful authority.

- **Aligarh Muslim University Old Boys Cooperative Housing Society Limited v. Muhammad Yousaf Qureshi and another** (1997 CLC 918 Karachi)<sup>65</sup>

The plaintiff filed a suit for damages against the defendants for making defamatory publications in the weekly ‘Roshan Pakistan’. Article 19 of the constitution was referred to and the Karachi High Court held that the publications did not violate the restrictions imposed by the injunction order.

“As to what constitutes unwarranted and undue comments would depend on the facts of each case and every case must be viewed from a different angle and adjudged on its own facts and circumstances. No hard and fast rule can be laid down to determine such issues of fact.”<sup>66</sup>

“Article 19 guarantees the freedom of the press. Liberty of the Press means complete freedom to write and publish without censorship or restriction, which may be absolutely necessary for the preservation of the just and Islamic society. A few restrictions on the freedom of the press in the light of conditions prevailing in a country considered absolutely necessary may be justified by circumstances but no general and unreasonable restrictions can be imposed on the freedom of the Press except in times of grave emergencies, such as war, civil commotion on a large scale and in order to protect the security and integrity of the State.”<sup>67</sup>

- **Syed Masroor Ahsan v. Adreshir Cowasjee and others** (PLD 1998 SC 823)<sup>68</sup>

“A citizen demanding freedom under Article 19 is necessarily obliged to ensure and protect the glory of Islam.”

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<sup>64</sup>The Motion Pictures Ordinance, 1979 Section 9 (2) (a).

<sup>65</sup> *Aligarh Muslim University Old Boys Cooperative Housing Society Limited v. Muhammad Yousaf Qureshi and Another*, 1997 CLC 918 Karachi.

<sup>66</sup>Id. at 922.

<sup>67</sup>Id. at 923.

<sup>68</sup> *Syed Masroor Ahsan v. Adreshir Cowasjee and Others*, PLD 1998 SC 823.

“While invoking concepts of freedom one cannot by any means ignore Islamic Polity, social order and unwritten moral restrictions which are embodied in the national character.”

“A citizen has to be mindful about paramount religious, cultural or social textures and basic features by avoiding perversity of thought suggestive of violence, aggressiveness, expressions tending to promote anarchy, writing affect [sic] solidarity of the country, provoking towards contravention of existing laws or prejudicing the glory of Islam in the garb of freedom or liberty whether for speech or press.”

- **Sheikh Muhammad Rashid v. Majid Nizami, Editor-in Chief, the Nation and Nawa-e-Waqt, Lahore, and another**<sup>69</sup>

A newspaper published statements made by two political opponents and the plaintiff sued for defamation. The Supreme Court held that the newspaper did not act with malice in publishing the statement and the plea was dismissed. It observed:

“The Article [19 of the Constitution] provides the freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore the press is not free to publish anything they desired. The press is bound to take full care and caution before publishing any material in press and to keep themselves within the bounds and ambit of the provisions of the Article.”

### **3. RECOMMENDATIONS**

1. The expression “glory of Islam” can be interpreted widely or in a narrow manner. Court rulings suggest that there is no clear definition of the expression. Each case would depend on the subjective outlook of a judge, the standing of the parties to the dispute and the political atmosphere during hearings. The words “glory of Islam” restrict freedom of speech and press. These should be removed as they are likely to be misused and indirectly restrict free thought and speech. They also stifle debate on religion.
2. A law should be enacted to criminalise incitement to violence on the basis of religion. It should be worded in line with Article 20 of International Covenant on Civil and Political Rights (ICCPR) to read as follows:

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<sup>69</sup> Sheikh Muhammad Rashid v. Majid Nizami, Editor-in Chief, the Nation and Nawa-e-Waqt, Lahore and Another, PLD 2002 Supreme Court 514.

*“Any advocacy of sectarian or religious hatred that constitutes incitement to violence shall be punished with rigorous imprisonment of up to 10 years or fine up to Rs. 2,500,000 or both.”*

#### **4. LAWS**

- 1973 Constitution of Pakistan - (Article 19)
- Motion Pictures Ordinance, 1979 - (Section 6)

# The Hudood Laws

## 1. Introduction

The Hudood Ordinances were promulgated in 1979 and enforced in 1980. They comprise five criminal laws, collectively known as the Hudood laws:

- i. **The Offences against Property Ordinance** deals with the crime of theft and armed robbery.
- ii. **The Offence of Zina Ordinance** relates to the crime of rape, abduction, adultery and fornication. The word “zina” covers adultery as well as fornication.<sup>70</sup>
- iii. **The Offence of Qazf Ordinance** relates to a false accusation of zina.
- iv. **The Prohibition Order** prohibits use of alcohol and narcotics.
- v. **Execution of the Punishment of Whipping Ordinance** prescribes the mode of whipping for those convicted for hadd offences.

Rape, adultery, theft, armed robbery and drinking alcohol were offences in Pakistan even before the promulgation of Hudood laws. Two new crimes were introduced in the Hudood Ordinances: One was “qazf.” The other was “fornication” which was brought within the ambit of zina. Hudood laws apply to Muslim and non-Muslim Pakistanis without regard for their religion.

Ostensibly, the Hudood Ordinances were promulgated to bring the criminal legal system of Pakistan in conformity with the injunctions of Islam. Hence, the forms of punishments recognized by Muslim jurists are introduced in the Ordinances. Two levels of punishments and, correspondingly, two separate sets of rules of evidence are prescribed. The first level or category of punishment is called “*Hadd*” which literally means the “limit” and the other “*Tazir*” which means “to punish.”

Hadd punishments are specifically provided for in the Holy Quran. They are definitively fixed leaving no room for the judge to take account of mitigating or extenuating

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<sup>70</sup>Zina: A man and woman are said to commit ‘zina’ if they wilfully have sexual intercourse without being validly married to each other. Explanation – penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.

circumstances of the crime. Hadd punishments can only be awarded if stringent rules for evidence are fulfilled.

Hadd punishment for theft is amputation of a hand. For armed robbery it is amputation of a foot, or thirty lashes or death penalty according to specific circumstances enumerated in the law. Hadd punishment for rape or zina committed by an adult married Muslim is stoning to death; for an adult non-Muslim and an adult single (never married) Muslim is 100 lashes. Hadd for committing qazf and for drinking alcohol (for Muslims only) is eighty stripes.

Tazir punishment is awarded if requirements of evidence for applying hadd are not met. Unlike hadd, tazir punishments are not specifically prescribed in the Quran but are left to the discretion of the ruling authority or the legislature. The nature of the punishment or quantum is not fixed under Islamic law. For instance, lack of evidence for hadd does not exonerate the accused of the criminal liability. Instead the accused is still liable for tazir punishment if guilt is established under ordinary rules of evidence.

The legal requirement prescribed for punishments and evidence is discriminatory under hadd. For example, the testimony of four truthful Muslim males is essential to award hadd punishment for rape or zina. The nature of punishment is different for Muslims and non-Muslims. In many cases, Muslims are awarded harsher punishments for the same crime. However, hadd punishments have so far never been executed. Up to the end of 1988, the trial courts had awarded hadd in 26 cases. The Federal Shariat Court (FSC) upheld three convictions. One was eventually overturned on appeal.<sup>71</sup> The second was remanded for retrial after the accused retracted his confession.<sup>72</sup> The third conviction was not executed as the accused escaped from prison and fled abroad. There are several preconditions attached to the application of hadd punishments, which make it extremely difficult to hold a conviction under it. Nevertheless, the extreme nature of this form of punishment and the brazen discrimination woven into the procedural and substantive law in applying hadd punishments is humiliating to religious minorities and women.

Offences of Hudood are tried by the normal criminal courts at the subordinate level. Presiding judges are Muslims, except in cases where the accused is a non-Muslim, in which case, a non-Muslim judge can preside in the subordinate (trial) court.<sup>73</sup> The

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<sup>71</sup>Ghulam Ali v. The State, NLR 1987 SD 8 SC.

<sup>72</sup>The State v. Fazali Rehman, Cr. Appeal No.26/I of 1980.

<sup>73</sup>Article 30 Prohibition (Enforcement of Hadd) Order, 1979.

appellate court is the FSC that was established in 1980. The judges of the FSC are all Muslims. Three out of a total of eight judges are “ulema” with no formal training in law. Their tenure of service is three years and may be extended for another three years.<sup>74</sup> An appeal from the FSC lies in the Shariat Appellate Bench of the Supreme Court.<sup>75</sup>

A non-Muslim lawyer cannot appear in the FSC but there is no such restriction in the trial or at the Shariat Appellate Bench of the Supreme Court.

## **2. Federal Shariat Court**

The Federal Shariat Court (FSC) has exclusive jurisdiction to hear appeals against all convictions passed under the Hudood Ordinances. All hadd sentences passed by the subordinate courts have to be confirmed by the FSC. The Shariat Appellate Bench of the Supreme Court hears appeals against judgments delivered by the FSC. Two out of a total of five judges in the FSC are ulema. Bail applications are entertained by the FSC and the high courts. In practice, 90 per cent bail applications of Hudood offences are moved in the high courts.

The FSC has an additional jurisdiction to declare any law repugnant to Islam. General Zia had made an exception for the 1973 Constitution, Muslim personal law, fiscal law or procedures of any court<sup>76</sup> for a period of 10 years. Following the expiry of the period the FSC started hearing challenges to tax laws. Once the FSC declares a law repugnant to Islam, the government is granted a specific period of time to amend the law. At the same time, the provisions held repugnant to Islam cease to have effect on the declaration of the court. Hadd and tazir punishments have both been challenged separately on the basis of being repugnant to Islam. Tazir was challenged on the ground that Islam recognizes hadd as the only form of punishment.<sup>77</sup> The FSC did not examine this question on merits and dismissed the petition on technical grounds.

Under the 1973 Constitution of Pakistan the FSC has been granted jurisdiction to legislate. The theory of separation of powers has mostly disappeared with the introduction of the FSC. The jurisdiction of the FSC was never reviewed or amended by

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<sup>74</sup>Ulema – Islamic scholars.

<sup>75</sup> The Constitution of Pakistan 1973, Chapter 3A: Federal Shariat Court, Article 203B(c).

<sup>76</sup>Nosher Rustam Sidhwa v. Federation of Pakistan, PLD 1981 FSC 245.

<sup>77</sup>Iqbal Shah v. The State, PLD 1981 FSC 284.



subsequent parliaments. However, some amendments were made in the Hudood Ordinances.

### **3. The Protection of Women (Criminal Laws Amendment) Act, 2006**

In December 2006, the National Assembly passed the Protection of Women (Criminal Laws Amendment) Act, 2006. It did not repeal the Zina Ordinance but it did address some of the injustices caused by the Ordinance. The offence of rape has been removed from the Zina Ordinance and reinserted in Section 375 of Pakistan Penal Code (PPC), 1860. Adultery liable to a hadd punishment is the only offence retained in the Zina Ordinance. An addition was made making a false accusation of zina punishable, to act as a deterrent against filing false or frivolous complaints of zina.

The definition of “confessions” has been redefined. A victim of rape can no longer be charged of zina if she cannot prove her allegation of rape. Before the amendment was passed, a woman could be convicted of zina if the courts suspected that she had consented to having sexual intercourse. The procedure for filing a complaint of zina or qazf has been amended. In order to lodge a complaint of zina or qazf, an application has to be made to the sessions court as opposed to a First Investigation Report (FIR) to the police. The statements of the complainant and the eye-witnesses are recorded in the presence of a judge, who has the discretion to summon the accused.

In December 2010, the FSC declared Sections 11, 25, 28 and 29 of the Protection of Women (Criminal Laws Amendment) Act, 2006 to be in violation of Article 203-DD of the constitution,<sup>78</sup> and repugnant to Islam.<sup>79</sup> The matter is now in appeal before the Shariat Appellate Bench of the Supreme Court.

## **4. Hudood laws in Pakistan**

### **4. (a) - The Preamble of the Ordinances:**

*Whereas it is necessary to modify the existing law relating to...so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;*

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<sup>78</sup> Constitution of Pakistan 1973, Article 203DD: Revisional and other jurisdiction of the Court.

<sup>79</sup>Abdur Razzaq Aamir v. The State, PLD 2010 FSC 1.

The Preamble of the Ordinances clearly specifies that the existing laws would be modified to bring it in conformity with the injunctions of Islam as set out in the Holy Quran and Sunnah. The provisions of the Ordinances have been challenged in the FSC on the grounds that these were repugnant to Islam. For example, the punishment of stoning to death was challenged and the FSC declared it to be un-Islamic.

#### **4. (b) - Offences against Property (Enforcement of Hudood) Ordinance, 1979**

##### **Section 7: Proof of theft liable to hadd-**

*The proof of theft liable to hadd shall be in one of the following forms, namely-*

*(a) the accused pleads guilty of the commission of theft liable to **hadd**; and*

*(b) at least two Muslim adult male witnesses, other than the victim of the theft, about whom the Court is satisfied, having regard to the requirements of **tazkiya al-shuhood**, that they are truthful persons and abstain from major sins (**kabair**), give evidence as eye-witnesses of the occurrence:*

*Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslim.*

To prove theft liable to hadd, evidence of two Muslim adult male witnesses, who are pure in Islamic concept, is required. A non-Muslim's evidence will not be accepted for hadd punishment where the accused is a Muslim. In other words, if a Muslim robs a non-Muslim household, the testimonies of non-Muslim victims will not be considered for awarding hadd punishment. However, a non-Muslim may testify in case the accused is a non-Muslim.

Tazkiya- al-shuhood is the mode of inquiry adopted by the courts to satisfy the credibility of a witness in hadd cases. The courts seem to have a wide discretion on how to apply this requirement. In some cases, a person is selected by a court to testify about the truthfulness of the witness. Case law has suggested that being an adult male Muslim,<sup>80</sup> or a male believer,<sup>81</sup> satisfies one of the many requirements of tazkiya-al-shuhood. This does not include non-Muslims. It presupposes that male Muslims are more able to be truthful in verifying ones character and thus is clearly discriminatory.

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<sup>80</sup>Daniel Boyd (Saifullah) v. The State, 1992 SCMR 196.

<sup>81</sup> Amjad Pervez v. The State, SD 2004 FSC 323.

The discrimination on the basis of sex can be discerned from the fact that women testimonies are not accepted in hadd crimes.

#### **Section 16: Proof of haraabah-**

*The provisions of Section 7 shall apply, **mutatis mutandis**, for the proof of haraabah.*

The proof of haraabah (robbery) under Section 16 has the same requirements as proving theft liable to hadd (Section 7) and therefore the same concerns about discrimination apply.<sup>82</sup>

#### **Section 25: Presiding Officer of Court to be a Muslim-**

*The Presiding Officer of the Court by which a case is tried, or an appeal is heard under this Ordinance shall be a Muslim:*

*Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.*

This section is included throughout the Ordinances and is clearly discriminatory towards minorities as it denies their fundamental rights guaranteed under Article 27 of the constitution.

#### **4. (c) - Offence of Zina (Enforcement of Hudood) Ordinance, 1979**

##### **Section 2: Definitions-**

*In this Ordinance, unless there is anything repugnant in the subject of context-*

*(a) "adult" means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty.*

An adult is defined in age as well as in terms of physical development. For example an adult means a person who has attained the age of eighteen years or puberty.<sup>83</sup> Non-Muslims may not believe in the concept of puberty as assessing adulthood especially in terms of being criminally liable for harsher punishments.

##### **Section 8: Proof of zina liable to hadd-**

*Proof of zina liable to hadd shall be in one of the following forms, namely-*

*(b) at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirements of tazkiyah al-shuhood, that*

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<sup>82</sup>Maqsd Ahmad v. The State, 2012 YLR FSC 1954.

<sup>83</sup>Hajra Khatoon v. Station House Officer, P.S Fateh Jang, PLD 2005 Lahore 316.

*they are truthful persons and abstain from major sins, give evidence as eye-witnesses of the act of penetration necessary to the offence.*

Women and non-Muslims' testimonies are still denied in hadd crimes in the Zina Ordinance.<sup>84</sup> This creates discrimination on the basis of sex and religion.

#### **Section 21: Presiding Officer of Court to be Muslim-**

This section discriminates against minorities as it denies their fundamental rights guaranteed under Article 27 of the constitution.<sup>85</sup>

#### **4. (d) - Offence of Qazf (Enforcement of Hadd) Ordinance, 1979**

##### **Section 5: Qazf liable to hadd-**

*Whoever, being an adult, intentionally and without ambiguity commits qazf of zina liable to hadd against a particular person who is a muhsan and capable of performing sexual intercourse is, subject to the provisions of this Ordinance, said to commit qazf liable to hadd.*

*Explanation 1 – in this section, “**muhsan**” means a sane and adult Muslim who either has had no sexual intercourse or has had such intercourse only with his or her lawfully wedded spouse.*

*Explanation 2 – If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognise such person to be a legitimate child, he shall be deemed to have committed **qazf liable to hadd** in respect of the mother of that person.*

Qazf is a form of libel. It is confined to false accusation of having committed zina. Hadd punishment can only be awarded if the victim is Muslim.<sup>86</sup> As such there is no punishment of qazf if false accusation of zina is made against a non-Muslim victim.

##### **Section 6: Proof of qazf liable to hadd-**

*Proof of **qazf** liable to **hadd** shall be in one of the following forms namely-*

*(a) the accused makes before Court of competent jurisdiction a confession of the commission of the offence;*

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<sup>84</sup>Shehnaz alias Asma alias Rani v. The State, 2010 PCrLJ FSC 231.

<sup>85</sup>Constitution of Pakistan 1973, Article 27: Safeguard against discrimination in services.

<sup>86</sup>Shash Begum v. Bashirullah, 2013 PCrLJ FSC 1737.

*(b) the accused commits **qazf** in the presence of the Court; and*

*(c) at least two Muslim adult male witnesses, other than the victim of the **qazf**, about whom the Court is satisfied, having regard to the requirements of **tazkiyah al-shuhood**, that they are truthful persons and abstain from major sins (**kabair**), give direct evidence of the commission of **qazf**:*

*Provided that, if the accused is a non-Muslim, the witnesses may be non-Muslims.*

This section of the law also discriminates against religious minorities and women.

#### **Section 14: Lian-**

*When a husband accuses before a Court his wife who is **muhsan**...of the zina and the wife does not accept the accusation as true, the following procedure of lian shall apply, namely-*

*(a) the husband shall say upon oath before the Court: “I swear by Allah the Almighty and say I am surely truthful in my accusation of **zina** against my wife (name of wife) and, after he has said so four times, he shall say: “Allah’s curse be upon me if I am a liar in my accusation of **zina** against my wife (name of wife)”;* and

*(b) the wife shall, in reply to the husband’s statement... say upon oath before the Court: “I swear by Allah the Almighty that my husband is surely a liar in his accusation of **zina** against me”;* and after she has said so four times, she shall say: “Allah’s wrath be upon me if he is truthful in his accusation of **zina** against me.”

*(2) When the procedure specified in sub-section (1) has been completed, the Court shall pass an order dissolving the marriage between the husband and wife, which shall operate as a decree for dissolution of marriage and no appeal shall lie against it.*

This is an alternative to filing qazf proceedings. If a husband alleges adultery and the wife denies, qazf proceedings will not follow. Instead, the marriage is dissolved. This law protects husbands from being punished under qazf and it does not apply to non-Muslims.

#### **Section 18: Presiding Officer of Court to be a Muslim-**

This section discriminates against minorities as it denies their fundamental rights guaranteed under Article 27 of the constitution.

#### **4. (e) - Prohibition (Enforcement of Hadd) Order, 1979**

##### **Section 2: Definitions-**

*(f) hadd means punishments ordained by the Holy Quran or Sunnah;*

This section does not take into consideration that non-Muslims may not believe in those faith based values, procedures or methods of punishment and is thus discriminatory.

##### **Section 4: Owning or possessing intoxicant-**

*Whoever owns possesses or keeps in his custody any intoxicant shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, and shall also be liable to fine:*

*Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to a non-Muslim citizen of Pakistan who keeps in his custody at or about the time of a ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as a part of such ceremony.*

Case law suggests that despite the law permitting non-Muslims to drink alcohol, the courts have introduced an additional condition that non-Muslims must prove that their religion sanctions drinking of liquor.<sup>87</sup> Attempts have been made by the government to prevent or revoke licenses given to non-Muslims on the basis that they were “undesirable.”<sup>88</sup> Non-Muslims with authorised licenses are frequently harassed by the police under this law.<sup>89</sup>

##### **Section 8: Drinking liable to hadd-**

*Whoever being an adult Muslim takes intoxicating liquor by mouth is guilty of drinking liable to hadd and shall be punished with whipping numbering eighty stripes.*

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<sup>87</sup>D.P Edulji Co. v. Secretary, Excise & Taxation and Others, PLD 1982 Lahore 817.

<sup>88</sup>J.J.K TAJJAK v. Government of Balochistan and Another, PLD 1993 SC 445.

<sup>89</sup>Taluka Raam v. The State, 2013 YLR 1612 Lahore.

Non-Muslims are exempt from punishments of hadd and are instead liable to tazir, wherein the judge has the discretion to give a punishment of imprisonment for up to three years or flogging not exceeding thirty lashes, or both. Non-Muslim Pakistanis are allowed to drink alcohol only in connection with their religious ceremonies. Non-Muslim foreigners can consume alcohol at all times but only in private.

### **Section 9: Proof of drinking liable to hadd-**

*The proof of drinking liable to hadd shall be in one of the following forms, namely-*

*(a) the accused makes before a Court of competent jurisdiction a confession of commission of drinking liable to hadd; and*

*(b) at least two Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of tazkiyah al-shuhood, that they are truthful persons and abstain from major sins (kabair), give evidence of the accused having committed the offence of drinking liable to hadd.*

In this section, the testimonies of non-Muslims are not considered. The requirements of tazkiyah-al-shuhood that the witnesses are truthful persons who abstain from major sins, apply to Muslims only. This insinuates that non-Muslims are incapable of fulfilling the said prerequisites. The section is, therefore, clearly discriminatory towards minorities.

### **Section 11: Whoever-**

*(a) Drinking liable to tazir being a Muslim, is guilty of drinking which is not liable to hadd under Article 8 or for which proof in either of the forms mentioned in Article 9 is not available and the Court is satisfied that the offence stands proved by the evidence on the record;*

*(b) being a non-Muslim citizen of Pakistan is guilty of drinking, except as a part of a ceremony prescribed by his religion; or*

*(c) being a non-Muslim, who is not a citizen of Pakistan, is guilty of drinking at a public place; shall be liable to tazir and shall be punished with imprisonment of either description for a term which may extend to three years or with whipping not exceeding thirty stripes, or with both.*

If a license is obtained, non-Muslim nationals are exempt from punishment if they drink liquor as part of a ceremony prescribed by their religion. The term ‘Non-Muslims’ has been interpreted as “people of the Book” and fails to take into consideration other religions and non-believers and thus is clearly discriminatory.<sup>90</sup>

### **Section 30: Presiding Officer of Court to be a Muslim-**

This section discriminates against minorities as it denies their fundamental rights guaranteed under Article 27 of the constitution.

## **5. Recommendations**

1. The punishments under hadd should be in conformity with international human rights law. The Hudood law legitimises torture and prescribes punishments, which are discriminatory in their application and procedure.
2. The criteria for witnesses in the Hudood Ordinances discriminates on the basis of gender and religion, which should be amended and it should be based on the competency of the witnesses regardless of their gender or religion.
3. Section 4 Prohibition (Enforcement of Hadd) Order, 1979 which reads, “*Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to non-Muslim citizen of Pakistan who keeps in his custody at or about the time of ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as part of such ceremony*” should be amended to read, “*Provided that nothing in this Article shall apply to non-Muslims.*”
4. It is recommended that the sections relating to the Presiding Officer of the Court should also be amended. The words read that, “*the Presiding Officer of the Court by which a case is tried, or an appeal is heard under this Ordinance shall be a Muslim. Provided that the accused is a non-Muslim, the Presiding Officer may be a non Muslim.*” It should be amended to read, “*the Presiding Officer of the Court by which a case is tried, or on appeal is heard under this Ordinance shall be a qualified judge.*”

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<sup>90</sup>Nosher Rustam Sidhwa v. Federation of Pakistan, PLD 1981 FSC 245.



There shall be no discrimination based on race, religion, caste, sex, residence or place of birth.

## **6. Laws**

- Offences against Property (Enforcement of Hudood) Ordinances, 1979
  - Sections: 7, 16, 25
- Offence of Zina (Enforcement of Hudood) Ordinance, 1979
  - Sections: 2, 8, 21
- Offence of Qazf (Enforcement of Hadd) Ordinance, 1979
  - Sections: 5, 6, 14, 18
- Prohibition (Enforcement of Hadd) Order, 1979
  - Sections: 2, 4, 8, 9, 11, 30
- The Protection of Women (Criminal Laws Amendment) Act, 2006
  - Sections: 11, 25, 28, 29
- Pakistan Penal Code ,1860
  - Section: 375

## OFFENCES RELATING TO RELIGION

### 1. Introduction

The laws relating to the offences with regard to religion were introduced in the Indian Penal Code by the British Government primarily to defuse communal tension in a multi-religious society which prevailed in the subcontinent. The law was renamed as Pakistan Penal Code (PPC) after 1947. Subsequent amendments to the PPC chapter titled “Offences relating to Religion” were made during General Zia-ul-Haq’s regime. These were not religious neutral and were directed at protecting the most extreme form of Islamic interpretations. The thrust moved from protection to persecution of individuals. Some jurists argue that criticism of Islam is prohibited by the 1973 Constitution of Pakistan (hereinafter called the constitution). Article 2 states that “*Islam shall be the State religion of Pakistan.*” Article 31 provides for an “*Islamic way of life.*” Article 19 places a restriction on free speech if it is “prejudicial to the glory of Islam.” A challenge to any of the provisions on the offences against religion in the courts of Pakistan in hopes of having them struck down as being in violation of freedom of expression is difficult. The Supreme Court of Pakistan has already placed a stamp of legitimacy on the amendments carried out in the PPC punishing Ahmadis who are suspected of portraying themselves as Muslims or if they exhibit or use Islamic symbols.

Zia used Islam as a legitimising device for his illegitimate regime. With regard to offences relating to religion, the pre Zia-legislation’s thrust was on protecting individuals and religious communities from being persecuted. The law discouraged exploitation of religion or instigation that might result in violence. The Zia changes in the law provided a legal justification for religious persecution. Prior to these changes there was a pre-requisite of intent before a person could be indicted for an offence against religion but this requirement of *mens rea* was dispensed with under the Zia era amendments. The textual ambiguity in the law has led to heinous injustices. Harsh sentences and a charged atmosphere at every level of the trial have terrified religious minorities and progressive Muslims. More than 60% of the complaints are filed by the religious scholars, leaders of mosques or members of religious parties.

The law of blasphemy is also being used as an instrument for revenge e.g. in personal vendettas, property disputes, political rivalry, marital disputes and religious differences.

Cases have highlighted the evidentiary lacuna where unreliable witnesses are being used to substantiate charges. The incompetence of the courts, especially at the trial level is evident as shown in the case of **Muhammad Yousaf v. The State**,<sup>91</sup> where the judge held:

“the learned trial court put a query to the appellants after the closure of the proceeds...the Criminal Procedure Code, nowhere provides for such a course...the trial court in such an eventuality was under obligation to stay its hands off in the matter.”

The bail for someone accused of blasphemy who is proven to be mentally challenged and of an advanced age can only be secured at the level of the Supreme Court; the chances of getting a fair trial are limited.

Other state bodies such as the police are fearful, prejudiced and often incompetent. Cases are not properly investigated and correct procedures provided in the Criminal Procedure Code, 1898 (CrPC) are not followed.

The police are generally highly prejudiced in cases involving blasphemy. There have been incidents where the blasphemy accused have been killed by the police or the prison guards and killers are glorified by the police. There are reports where the police have kissed the hands of the killer and allowed “fans” to garland the accused killer. Punjab Governor Salman Taseer was killed by his own official police guard for criticising the laws relating to religion and their misuse.

There is no precise record showing how many blasphemy cases have been registered in the police stations or have been tried by the courts of first instance. Blasphemy cases are usually reported either by the media or human rights groups or when the appeals against convictions by the trial courts are decided by the high courts or the Supreme Court. However, cases in the high courts and the Supreme Court are not always reported and it is thus difficult to ascertain the exact number of blasphemy cases.

The examination of the cases and the judgments so far offers insight into the mindset of those who level serious accusations under the PPC chapter on offences relating to religion, accusations that are punishable by death. Such accusations are accompanied by attempts to terrorise and kill the accused, the counsel representing them, the judges and anyone who attempts to publicly support rights of the accused.

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<sup>91</sup> Muhammad Yousaf v. The State, MLD 1339 (2006).

## **2. Relevant provisions of Pakistan Penal Code regarding ‘offences relating to religion’**

### **2 (a). Section 295**

*Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention 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 be extended to two years, or with fine, or with both.*

This provision of the PPC is one of the four sections concerned with offences relating to religion which were contained in the Indian Penal Code 1860. The laws on offences relating to religion had been in place since 1860, with new offences being added in 1927 and then during Zia’s Islamisation drive from 1984 to 1986. Section 295 was significant as it was applicable to all religions.

Between 2000 and 2014 there have been no reported cases which involved Section 295 on its own and it has fallen into disuse. This is in consequence of the amendments made in PPC which now expressly protects the religion of Islam. It is under sections 295-B and 295-C of the PPC that the majority of blasphemy cases are registered. The majority of these complaints are filed by religious scholars, leaders of mosques or members of religious parties.

The thrust of Section 295 is to protect all persons, regardless of belief, from abuse, rather than to persecute anyone because of his belief.

### **Section 295 (A)**

*Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may be extended to ten years, or with fine, or both.*

Section 295-A was introduced by the British Government in 1927, following an outbreak of violence. Raj Pal, a Hindu publisher, had been acquitted in a case of blasphemy and subsequently killed. The object of the law declared that the “act is the outcome of the present day Hindu-Muslim tension.”

This section provides that the accused must have malicious intentions in disturbing religious harmony for him to be found guilty. In addition, there is a procedural

safeguard as per Section 196 Criminal Procedure Code, 1898 (CrPC) which allows a court to consider an offence under Section 295-A, “upon a complaint made by order of, or under authority from the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two governments.”

This safeguard has been used to quash proceedings brought by private complainants per **Abdul Rashid**,<sup>92</sup> **Fayyaz Ahmad**,<sup>93</sup> and **Pirzada Riffat Mehmood**.<sup>94</sup>

Despite this, there are cases where Section 295-A is being provoked through private complainants. In the case of **Abdul Razzaq**,<sup>95</sup> the complainant alleged that the accused had converted from Islam to the Ahmadiyya community and had spoken words against Islam. The Lahore High Court stated that the case was wrongly filed per Section 196, CrPC. However, the court did not quash the proceedings but allowed bail holding that:

“it appears that there are sufficient grounds for further inquiry into the guilt of the petitioner, so his bail is allowed.”

Similarly, in case of **Sardaran Bibi**,<sup>96</sup> instead of quashing the criminal proceedings of the private complaint, the Lahore High Court held that:

“there are sufficient grounds and reasons to believe the case of the petitioner requires further inquiry into the guilt.”

The accused was released on bail.

Case law suggests that the procedural safeguard per Section 196 CrPC is being applied inconsistently by the high courts. It seems that even where the evidence is insufficient and very weak, the courts are referring the cases back to the trial courts rather than quashing the criminal proceedings.

It is worth noting the case of **Punjab Religious Book Society v. The State**,<sup>97</sup> which gave a respectable judgment on blasphemy:

The Government of Punjab had ordered under Section 99 of the CrPC the forfeiture of a book on the grounds that it: “contain[ed] matter which is calculated to outrage the religious feelings of the Muslims of Pakistan and publication of which is punishable under Section 295-A Pakistan Penal Code.” The Punjab Religious Book Association filed for the order to be set aside. The theme of the book, which was the

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<sup>92</sup>Abdul Rashid v. The State, YLR 2000 Lahore 1306.

<sup>93</sup>Fayyaz Ahmad v. The State, YLR 2003 Lahore 3137.

<sup>94</sup>Pirzada Riffat Mehmood v. The State, YLR 2000 Lahore 343.

<sup>95</sup>Abdul Razzaq v. The State, PLD 2005 Lahore 631.

<sup>96</sup>Sardaran Bibi v. The State, PCrLJ 2008 Lahore 342.

<sup>97</sup>Punjab Religious Book Society Lahore v. The State, PLD 1960 Lahore 629.

translated work of a German missionary, was a comparison between Islam and Christianity. In the book, the author did not deny that the purpose of his work was to show the superiority of Christianity. The question to be decided by the Lahore High Court was whether or not the work was calculated to outrage the religious feelings of the Muslims of Pakistan.

The Court took notice of the fact that the forfeiture contained the words “*calculated to outrage the religious feelings of the Muslims of Pakistan*” which were different from the requirements of Section 295-A which requires the intention to be “*deliberate and malicious.*”

The Court observed that the intention of a person should be calculated on the basis of the actions of the person and in the context of blasphemy. The laws of Pakistan did not forbid discussion of religious issues and any attempt to place a gag on such discussions would be to deny people the opportunity of making the best possible decision with regard to their choice of faith.

However, when the remarks of a person with respect to religion are extremely offensive, then the Court held it would presume the intention of the person speaking those words to “*deliberately and maliciously*” insult the followers of that religion. Such a presumption would arise when the level of religious discussion was reduced to abuse.

While deciding such matters, the Court held that they would act as a neutral observer:

“that is to say, a person who is neither connected with the religion of the person who is alleged to have outraged the religious feeling of someone nor with that person or persons whose religious feelings are stated to have been outraged. The court has further to consider the matter from the point of view of a person who is not hypersensitive but is a person with normal susceptibilities.”

The contents of the book were examined and the court specified the pages which were objectionable (it did not quote exactly what was objectionable) and declared the order of forfeiture to be set aside. The order of expunging certain portions from the book was an outcome of a compromise between the contending parties.

### **Section 295 (B)**

*Whoever wilfully defiles damages or desecrates a copy of the Holy Quran or an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.*

This law only provides protection to Muslims and does not allow other religious groups to benefit from it and is therefore, discriminatory.

Appeals of convictions under Section 295-B at the trial courts have so far resulted in acquittals, as reported in law reports. There is evidence that the law is being used to victimise people including minorities and women and that more could be done by judges to quash a case rather than granting bail to the accused.

Case law suggests that this provision has been abused for personal revenge or to settle disputes. Minimal safeguards to uphold the rule of law are not even followed, nor is there sufficient evidence for trying or hearing cases involving accusations under this law. The cases below will highlight the concerns of the blasphemy laws:

### **The case of Rimsha Masih<sup>98</sup>**

A 13-year old girl was accused of carrying an envelope containing verses of the Quran. The complainant alleged that he inquired from the child what was in the envelope; he then proceeded to open it to find burnt papers, which contained verses of the Quran. The Islamabad High Court held that:

“a prudent man in our society would never bother to intercept a girl in such like situation, therefore it manifests that the complainant had some ulterior motive to manoeuvre the expulsion of the Christian community from the vicinity.”

The FIR was quashed and the judge’s parting comments are worth noting:

“Being followers of Islam we in all the affairs of life seek guidance from the Holy Quran and in the said Holy Book on a number of places, Muslims/followers of Islam are warned to be careful and extraordinary careful while levelling such like allegations against any one and such directions are not applicable in respect of other Muslims alone, rather the same are applicable in respect of non-Muslim communities too. So every Muslim should be extraordinary careful while levelling such like allegations even against a non-Muslim”. (Iqbal Hameedur Rahman, C.J).

### **The case of Zaibun Nisa<sup>99</sup>**

In 2010, Zaibun Nisa, an elderly woman, was accused of desecrating a copy of the Holy Quran as per Section 295-B. She remained in jail for nine years and then spent

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<sup>98</sup> Rimsha Masih v. Station House Officer, PLD 2013 Islamabad 1.

<sup>99</sup> “The sorry case of Zaibunnisa”, Editorial The Express Tribune (July 25, 2010), available at: <http://tribune.com.pk/story/30980/the-sorry-case-of-zaibunnisa/>.

another five years at the Punjab Institute of Mental Health after the court was told she suffered from chronic schizophrenia.

In the Lahore High Court, it was stated that the complaint was made against ‘unknown defenders.’ It was alleged in the media that the police official had admitted that the accused was arrested to ‘defuse the tension’ and following this she was forgotten about. Her family stated that the accused was dependent on her nephews and that they had arranged for her arrest. There are mixed stories on what actually happened but Zaibun Nisa’s sister claims that she was told that her sister had died and the police believed she did not have any relatives. Her case was taken up in 2009, after a lawyer filed a petition and upon examination she was certified as mentally ill and released. There was no evidence that linked her to the crime.

### **The case of Shahbaz Masih<sup>100</sup>**

In this case, the accused, a Christian who suffered from bipolar disorder was alleged to have destroyed a page in the Holy Quran. At the trial court, he was sentenced to imprisonment for life. On appeal to the Lahore High Court, after spending three years in prison, the accused was acquitted on the basis of his mental condition.

### **The case of Hussain Masih<sup>101</sup>**

The criminal proceedings were brought against the complainant’s Christian neighbours, who were accused of writing derogatory statements and burning pieces of the Holy Quran. The Advocate General held that although the offence was heinous, he was unable to support the prosecutions’ case, as there was no evidence. The FIR was quashed. The Court being aware of the violent consequences of quashing a blasphemy case held that the Order would not be:

“published in any newspaper and secondly as requested by the learned Additional Advocate General, the objectionable material on record of this case either be thrown in the river or be buried.”

### **The Kot Radha Kishan case<sup>102</sup>**

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<sup>100</sup> Shahbaz Masih v. The State, MLD 2007 Lahore 1040.

<sup>101</sup> Hussain Masih v. Senior Superintendent of Police, Gurjranwala, P.Cr.L.J 2001 Lahore 1003

<sup>102</sup> Kot Radha Kishan lynching:” Policemen tell court they witnessed burning of couple” The Express Tribune (November 29, 2014)available at: <http://tribune.com.pk/story/799042/kot-radha-kishan-lynching-policemen-tell-court-they-witnessed-burning-of-couple/>.



An enraged mob on November 4, 2014, attacked a Christian couple Shama Bibi and Shahzad Masih. They were burnt alive in Chak 59, at Yusuf Gujar's brick kiln near Kasur. Shama was four months pregnant, and left behind three children. The couple was accused of desecrating the Holy Quran.

District Police Officer (DPO) Jawad Qamar said according to initial reports Shahzad's father a local religious healer had died. A week later, Shama, his daughter-in-law, went to his room to dispose his belongings. During the process she threw out some articles, including some papers. The garbage collector collected the trash the next day and told the local cleric that he had collected the pages of the Holy Quran in front of Shahzad's house from the trash.

The local cleric made a sensational announcement over the public address system installed in the mosque. The word spread like wild fire that created panic. Religious emotions were whipped up. A crowd of around 1500 villagers gathered at the kiln factory, apprehended the couple along with the family. They were brutally beaten and tortured by an aggressive and violent mob. Later Shama and Shahzad were thrown in an open lit furnace. The couple was burnt alive in front of their six year old son. Sub Inspector (SI) Mohammad Ali and four other policemen watched the brutality as they too were beaten by the enraged crowd. Later reinforcement of police was called and arrests made.

A case FIR No 475, dated November 11, 2014 was registered at Police Station Kot Radha Kashan area of Kasur district. Investigation is still in progress.<sup>103</sup>

### **Section 295 (C)**

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

Article 25 of the constitution states that all citizens are equal before the law. This section disregards minorities by protecting only Muslims and their Islamic faith.

This section carries a mandatory death sentence if someone defiles the name of the Prophet Muhammad (PBUH). There have not been any executions of anyone sentenced

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<sup>103</sup>“Kot Radha Kishan lynching: Policemen tell court they witnessed burning of couple” The Express Tribune (November 29, 2014)available at: <http://tribune.com.pk/story/799042/kot-radha-kishan-lynching-policemen-tell-court-they-witnessed-burning-of-couple/>.

to death. However, dozens accused of blasphemy have been murdered during the trial or even before the trial began.

Under this section, the CrPC states that no police below the rank of a Superintendent of Police (SP) can investigate an allegation under Section 295-C.

This law does not look at the intention and eventually it is a case of two versions denial and the evidence of the witnesses who heard or saw the defiling of the sacred name of the Holy Prophet (PBUH).

Case law suggests that this section is being used as a tool to aggravate religious tensions and to persecute minorities as well as Muslims. The broad definition of blasphemy in the law is being misused for clear personal motives and often there is insufficient evidence to convict the accused. Those accused and then acquitted are unable to return to their neighbourhoods due to the lack of law and order. Often the judiciary and the police, in fear for their own lives and to prevent outbreaks of violence submit to zealous religious extremists.

#### **The case of Shafqat Emmanuel and Shagufta Kausar<sup>104</sup>**

A Christian couple was sentenced to death for blasphemy after allegedly sending a text message to an imam (Muslim prayer leader) insulting the Prophet Muhammad (PBUH).

It was alleged that the couple was illiterate and that the SIM card from where the messages were sent was not registered in the name of the couple.

#### **The case of Sawan Masih<sup>105</sup>**

A Christian was sentenced to death after being found guilty of insulting the Prophet Muhammad (PBUH). Due to security risks, the trial took place in prison. Sawan denies the charges and insists the allegations were made up against him by those who wanted him to leave the colony.

It was alleged that Sawan had stated, *“My Jesus Christ is true, he will come, he is the son of God, Muslim’s prophet (alleged blasphemous comment) and my Jesus Christ is true, he will save me.”*

The accusation towards Sawan Masih, which was based on a verbal statement given by a Muslim led to 3,000 or so Muslims rioting and torching around 100 Christian homes in

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<sup>104</sup> “Christians in Pakistan sentenced to death over a text” by Faizan Fiaz, The Telegraph (April 7, 2010). available at: <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/10751110/Christians-in-Pakistan-sentenced-to-death-over-a-text.html>.

<sup>105</sup> “Sawan Masih: Pakistani Christian gets death penalty for blasphemy” BBC News (March 28, 2014) available at: <http://www.bbc.com/news/world-asia-26781731>.

Joseph colony, Lahore. Those accused of being involved in the attack on the Christian colony have all been granted bail, while Sawan remains in prison.

### **The case of Pawan Kumar**<sup>106</sup>

A Hindu doctor was accused of making blasphemous comments to a representative of a pharmaceutical company. There was no evidence submitted apart from the complainant's FIR, which was lodged two weeks after the alleged offence.

The applicant was refused bail at the trial court but the Sindh High Court heard the appeal and held that the "*present case had been lodged by the complainant at the behest of his professional rivals in order to humiliate and to cause injury to his reputation in the eye of the public at large*". He was granted bail. The sheer injustice was highlighted by Justice Maqbool Ahmed Awan:

"I am of the considered view that the case against the applicant has no legs to stand for the reasons, firstly the Investigating Officer after conducting the inquiry has found the appellant innocent and that the complainant has failed to bring on record sufficient tangible evidence to connect the applicant to the commission of the offence the Investigating Officer has further opined that the complainant has not advanced the plausible explanation for the delay in lodging of the F.I.R and it is yet to be seen whether the applicant has any intention to commit the offence, all these points require evidence."

Despite these comments, the FIR was not quashed.

### **The case of Aasia Bibi**<sup>107</sup>

Aasia Bibi, a Christian was sentenced to death by a District and Sessions Court in 2010 and fined Rs. 300,000. She stood accused having defamed the Prophet Muhammad (pbuh) in front of Muslim neighbours. The women were already involved in a dispute over sharing of drinking water. It is reported that a local Muslim leader made a public announcement using the loudspeakers of the mosque that Aasia had committed blasphemy. She was beaten by the other civilians in the village.

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<sup>106</sup> Pawan Kumar v. The State, MLD 2010 Sindh High Court.253.

<sup>107</sup> The State v. Mst Aasia Bibi wife of Ashiq, Caste Christian, Resident of Ittanwali Chak no.3.PS Sadar Nankana Sahib.Case FIR No.326/2009.

Charges under Section 295-B and C were filed against her. Upon being arrested, Aasia claimed that she did not meet with any lawyer while in jail and was not accompanied on the day of her verdict. The judge ruled out any possibility of false implication and saw no mitigating circumstances and thus sentenced her to death by hanging and a fine of Rs. 300,000.

The case relied upon Muslim witnesses for the prosecution and the investigation was carried out by a low ranking Assistant Sub-Inspector of Police (ASI) rather than a Superintendent of Police (SP) as required. Her sentence has been upheld by the High Court and judges noted that her legal counsel did not conduct the trial professionally as proper cross examination of the witnesses was not carried out.

Aasia is currently in isolation in jail, facing threats against her life and her family. She is waiting for her appeal to be heard in the Supreme Court.

It was the Aasia's case that prompted the Governor of Punjab Salman Taseer to visit her in jail and sympathise with her. He insisted she was framed. His act was considered blasphemous itself and was later killed. A few months later the Minister of Minorities, Shahbaz Bhatti was also killed for the same reason.

### **The case of Rashid and Sajid Emmanuel<sup>108</sup>**

The accused were Christian brothers. Rashid was arrested by at least 10 uniformed policemen and was accused of publishing a four page handwritten pamphlet that criticised Islam and the Prophet Muhammad (PBUH).

The complainant had alleged to have seen the brothers handing out the pamphlets and on this basis the FIR was registered by the police. The correct procedure was not followed as the Sub Inspector and an Assistant Superintendent of Police (ASP) had been assigned to the case. There are reports that the Station House Officer (SHO) explained that the rule had been relaxed as there was pressure from religious groups.

The brothers reported threats from co-detainees while in detention. Demonstrators asking for their death were also threatening the accused, their families as well as other Christians in the area.

Despite calls for protection for the brothers, Rashid and Sajid Emmanuel were shot dead by unknown gunmen at a Faisalabad court whilst wearing handcuffs in police custody.

### **The case of Naushad Valyani<sup>109</sup>**

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<sup>108</sup>“Pakistan city tense after blaspheming Christians shot” BBC News (July 29, 2010) available at: <http://www.bbc.com/news/world-south-asia-10696762>.

Naushad Valyani, an Ismaili Muslim (minority religious sect of Shia) was accused of committing blasphemy. The doctor stated that he placed the business card of a medical representative of Pfizer Pharmaceuticals (the complainant) in a box next to his desk . The complainant left the office shouting that the doctor committed blasphemy. It was alleged that the doctor had thrown a business card in the bin, which had the complainant's name on it, 'Muhammad' being his first name.

It was believed that there were personal differences between the accused and the complainant. There was no Senior Superintendent assigned to investigate the matter. Despite this, no evidence was found during the investigation and the doctor was released.

### **The case of the Layahh Ahmadi<sup>110</sup>**

In 2009, four teenage Ahmadi boys and an adult were arrested for allegedly writing the name of the Holy Prophet Muhammad (PBUH) on the walls of a toilet in a mosque.

The FIR stated:

“We (the complainant and other villagers) suspect since these Ahmadis are the only non-Muslims coming to the mosque, therefore they must have committed the offence.”

The case was not investigated by the Superintendent of Police (SP) and there was no evidence linking the accused to the writing. Following a fact finding taken up by Human Rights Commission of Pakistan (HRCPP), it was made aware that there had not been an SP for more than two years thus an investigation prior to the registration of the case could not have been conducted. The Station Head Officer (SHO) visited the village to examine the scene and found no eyewitnesses or any evidence but he saw reason in the stance of the complainant and the local residents that no Muslim could write the name of the Prophet Muhammad (pbuh) on a toilet wall. When asked if an Ahmadi could do such a thing, he refused to answer.

The Ahmadis living in the village were under threat throughout this case; there were threats to close down the city and to attack the houses of Ahmadis. The accused were

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<sup>109</sup>“Doctor arrested on blasphemy charges” AFP The Express Tribune (December 13, 2010) available at: <http://tribune.com.pk/story/89180/doctor-arrested-on-blasphemy-charges/>.

<sup>110</sup>“Police arrest another Ahmadi in Layyah blasphemy case” Daily Times (January 31, 2009) available at: <http://archives.dailytimes.com.pk/national/31-Jan-2009/police-arrest-another-ahmadi-in-layyah-blasphemy-case>.

transferred to another city and a Senior Superintendent of Police (SSP) was assigned to investigate the matter. Eventually, the accused were acquitted after much suffering.<sup>111</sup>

### **The case of Ranjha Masih**<sup>112</sup>

Ranjha Masih was arrested in 1998 accused of profaning and throwing stones at a signboard inscribed with Islamic scriptures. He was sentenced to life imprisonment. After eight years in prison, the Lahore High Court overturned the conviction and held that:

“for the last about eight and a half years, he is rotting and languishing behind bars in a case which has been found to me replete with serious doubts and infirmities...”

### **The case of Saleem Masih**<sup>113</sup>

This is another case where a private dispute led to the accused, a Christian, being sentenced to life imprisonment for blasphemy by the trial court. The evidence was very poor and it was held that:

“under the peculiar circumstances of the case it can be assumed that the case could be the result of personal vendetta.”

Thus the conviction was quashed on appeal.

### **The case of Ayub Masih**<sup>114</sup>

A Christian was alleged to have made blasphemous remarks about the Holy Prophet Muhammad (PBUH) and advised the complainant to read Salman Rushdie’s book. The accused believed that this was a personal vendetta to prevent land from being allocated to him by the government.

His sentence revived sentiments against the law amongst Christian leaders and human rights activists. Bishop John Joseph, who was known internationally for his humanitarian work in the Faisalabad Diocese, committed suicide in protest of the death sentence awarded to Ayub. He left a note for the newspapers, with a farewell message in which he asked all religious communities to join together to repeal these laws.

After spending six years in prison the Supreme Court quashed the conviction of Ayub Masih and acquitted the accused due to the lack of evidence.

### **The case of Salamat Masih, Manzoor Masih and Rahmat Masih**<sup>115</sup>

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<sup>111</sup>“Police arrest another Ahmadi in Layyah blasphemy case” Daily Times (January 31, 2009) available at: <http://archives.dailytimes.com.pk/national/31-Jan-2009/police-arrest-another-ahmadi-in-layyah-blasphemy-case>.

<sup>112</sup> Ranjha Masih v. The State, YLR 336 (2007).

<sup>113</sup> Saleem Masih v. The State, YLR 2003 Lahore. 2422.

<sup>114</sup> Ayub Masih v. The State, PLD 2002 SC 1048.

<sup>115</sup> Salamat Masih and Rahmat Masih v. The State, P.Cr.L.J 811(1995).

Three Pakistani Christians were accused of blasphemy, one of them a 14-year old boy named Salamat Masih. The complainant accused Salamat of writing objectionable words on the wall of a mosque, which were allegedly removed by the complainant and other worshippers in the mosque. According to the complainant, two Christian men, Manzoor Masih and Rehmat Masih were standing near Salamat, and were thus presumed to have been instigating him to write those words – words which were never described throughout the trial. The three were accused on suspicion of having committed blasphemy. During the trial, Manzoor Masih was murdered just outside the Lahore High Court after a hearing was adjourned.

Despite insufficient evidence put forth by the prosecution, the trial ended in the conviction of the two surviving accused and they were awarded the death penalty. On appeal, the accused were acquitted despite riotous protests by the extremist religious lobby in the court premises. Subsequently one of the judges on the bench was murdered and attempts were made on the life of the defence lawyer.

#### **The case of Habibullah<sup>116</sup>**

In this case, Habibullah the accused, had been blamed for allegedly committing blasphemy under Section 295-C by uttering derogatory remarks against the Prophet Muhammad (PBUH). His bail was cancelled by the High Court but later approved by the Supreme Court considering the facts that the charge had been levelled by a subordinate colleague as there was an inquiry pending against him to be investigated by Habibullah. After suffering several months in prison, Habibullah was released on appeal.

#### **The case of Barat Ali<sup>117</sup>**

Barat Ali and Ghazi Marjan, the accused, were convicted by the Additional Sessions Judge under Section 295-C and sentenced to death, for allegedly having the photograph of the Prophet Muhammad (PBUH). There were material contradictions in the statements of eye-witnesses in respect of recovery of the alleged photograph. The prosecution could not prove the case beyond reasonable doubt therefore the sentence was set aside and the accused were therefore acquitted.

#### **The case of Ghulam Akbar<sup>118</sup>**

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<sup>116</sup> Habibullah v. The State, 1997 SD 442 ‘From Protection to Exploitation (The laws against Blasphemy in Pakistan (AGHS Legal Aid Cell) at 71.

<sup>117</sup> Barat Ali v. The State, 1997 MLD 1228 ‘From Protection to Exploitation (The laws against Blasphemy in Pakistan’, AGHS Legal Aid Cell, at 83.

<sup>118</sup> Ghulam Akbar v. The State, 2000 YLR 1273 ‘From Protection to Exploitation (The laws against Blasphemy in Pakistan’, AGHS Legal Aid Cell, at 92.

Ghulam Akbar, a Muslim, was convicted by the Additional Sessions Judge of an offence under Section 295-C and sentenced to death upon allegations of using derogatory remarks against the Prophet Muhammad (PBUH) while sitting in a hotel. In an appeal the court acquitted the accused based on the facts that no Muslim could use derogatory remarks against the Prophet Muhammad (PBUH). The delay of 21 days in lodging the FIR and the absence of any credible witness made the case highly doubtful

## **2 (b). Section 298**

*Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.*

There are only a few reported cases of minorities being accused or arrested under this section. HRCP in the “State of Human Rights in 2013” highlighted the case of Ilyas and Robert Barber, two Christians charged under this section after being accused of hitting the names of the first Caliphs of Islam with stones and sticks in a mosque during countrywide protest against a deadly church attack in Peshawar. The accused were arrested and released on bail.

### **The case of Naheed Khan<sup>119</sup>**

Allegation against the petitioners who were Ahmadis was that they distributed pamphlets containing hate language thereby wounding the religious feelings, among the inhabitants of the area with intent to create enmity between the Deobandi and Barelvi Sects. The learned Allaqa Magistrate framed the charge against all the petitioners under Section 298 PPC.

They were arrested without having sought the prior permission from the competent authority therefore, there was a violation of mandatory provisions. All the facts persuaded the court to believe that sufficient grounds exist to enlarge the petitioners on post-arrest bail. Resultantly, the instant petition was accepted. And the petitioners were admitted to bail after arrest.

### **The case of Chand Barkat<sup>120</sup>**

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<sup>119</sup> P.Cr.L.J 2012 Lahore High Court 396.

<sup>120</sup> The State v. Chand Barkat From Protection to Exploitation (The laws against Blasphemy in Pakistan (AGHS Legal Aid Cell) at 165.



Chand Barkat was charged under Section 298 of the P.P.C for allegedly insulting the Holy Prophet Muhammad (pbuh) and further abusing the Prophet Muhammad's (pbuh) mother at Mangal Bazaar, DHA, which was heard by witnesses. The complainant, the prosecution witnesses and the accused ran stalls adjacent to each other at Mangal Bazaar. There were noticeable contradictions in the testimonies of the accused and the prosecution could not even prove the actual time of arrest of the accused. It was also revealed that the accused had been arrested before the FIR was lodged. Finally, the accused was acquitted.

### **Section 298 (A)**

*Whoever, by words, either spoken or written or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly defiles the sacred name of any wife (UmmulMumineen) or members of the family of the Holy Prophet (pbuh) or any of the righteous Caliphs or companions of the Holy Prophet (pbuh) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

There is no reported case that involves this standalone section. However, there are numerous cases decided under the combined sections of PPC including Section 298-A.<sup>121</sup>

### **Section 298 (B)**

*(1) Any person of the Qadiani 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 address, any person, other than a Caliph or companion of the Holy Prophet Muhammad (pbuh) as "Ameer-ul-Mumineen"*

*"Khalifatul-Mumineen" "Khalifatul-Muslimeem" Sahaabi" or "Razi Allah Anho";*

*(b) refers to or address, any person, other than a wife of the Holy Prophet Muhammad (pbuh) as "Ummul-Mumineen"*

*(c) refers to, or address, any person other than a member of the family "Ahle-bait" of the Holy Prophet Muhammad (pbuh) as "Ahle-bait" or*

*(d) refers to or names or calls his place of worship a Masjid shall be punished with imprisonment of either description for a term which may extend to three years and shall be liable to a fine.*

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<sup>121</sup>Pakistan Law Site.

*(2) Any person of the Qadiani group or Lahori group (who calls 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 be liable to a fine.*

This section is deliberately discriminatory to prevent Ahmadis from practicing their own belief. The law violates Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and gives license to persecute Ahmadis. The second amendment to the Constitution declared Ahmadis as non-Muslims. Several civil suits were filed to take over Ahmadi mosques and to seek injunctions against Ahmadis. Finally, in November 1977 the Lahore High Court passed a judgment dismissing orders of the subordinate courts granting injunctions against Ahmadis. In the **Abdur Rehman Mubashir’s case**,<sup>122</sup> the Court ruled:

“It may be noticed that although the Muslims of the Sub-Continent and their Ulemas have been declaring the Qadianis as infidels since at least the eighties of the last Century i.e. for over 9 years and there has been litigation between them about the use of mosques and there have been at least two country-wide agitations in Pakistan on the demand of the Muslims for declaring the Qadianis as a non-Muslim minority but the demand made in the plaint has been made for the first time sometimes last year. On behalf of the respondents an attempt was made to explain the delay in raising these pleas on the ground that this question arose after the Constitution declared the Qadianis as non-Muslims. This explanation cannot be accepted for the reasons firstly that the Constitution has not conferred any particular right on the Muslims.”

The outcome of Rehman Mubashir’s case prompted the hard liners to press for a law and Zia-ul-Haq gladly obliged.

There are numerous prosecutions under this section but relatively fewer reported cases. The **Ata Ullah v State**<sup>123</sup> highlights the discrimination that Ahmadis face in

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<sup>122</sup> Abdur Rehman Mubashir v. Amir Ali Shah, PLD 1978 Lahore 113 at 190.

<sup>123</sup> Ata Ulla v. The State, PLD 2000 Lahore.364.

Pakistan. In this case, an Ahmadi was arrested for committing an offence under Section 298-B. It was alleged that the accused constructed a place of worship that could be mistaken for a mosque. Despite the accused offering to remove anything that could be associated with Islam e.g. minarets, he was refused bail. The Lahore High Court appointed two amicus curiae- Mr Bilal Ahmad Qazi and Mr Muhammad Haq Nawaz Qamar, who held that:

“the persistent behaviour of the Qadianis shows that they do not adhere to the law of the land and deliberately violate the Constitution claiming to be real Muslims.”

### **Section 298 (C)**

*Any person of the Qadiani group or the Lahori group (who call themselves “Ahmadis” or by any other name) who directly or indirectly poses himself a Muslim or calls, or refers to his faith as Islam, or preaches or propagates his faith, or invites other to accept his faith, by words, either spoken or written or by visible representation or in any manner whatsoever outrages 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 a fine.*

This section was enacted in the PPC in 1984, subsequent to a constitutional amendment in 1974 declaring Ahmadis to be non-Muslims. This section criminalises Ahmadis if they refer to themselves as Muslims and it has been used as a weapon against them. Although there have been reports of cases under this section, there are not many reported cases in the law reports. The law is discriminatory and persecutes Ahmadis.

### **The Ghaffar Ahmad v. State case<sup>124</sup>**

In this case, three Ahmadis stood accused under Section 298-C, they were granted bail as the FIR was based on an alleged confessional statement made 13 years ago before the FIR was lodged

### **The case of Khurshid Ahmad<sup>125</sup>**

In this case, certain orders were passed by the Provincial Home Secretary and the District Magistrate Jhang banning the centenary celebrations by the Ahmadis which were challenged by Mirza Khurshid Ahmad and Hakim Khurshid Ahmad, petitioners and office bearers of the central and local organisations of the said community. The petition was dismissed by the court stating that for reasons of public policy, public good and

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<sup>124</sup> Ghaffar Ahmad v. The State, MLD 1081(2001).

<sup>125</sup> Khurshid Ahmad v. Government of Punjab, PLD 1992 Lahore High Court.1.

interests of the ordinary people of the country, justifiable basis exist for banning religious celebrations of Ahmadis

### **The case of Khan Muhammad<sup>126</sup>**

The petitioner, Khan Muhammad was arrested under Section 298-C of PPC, by police station Dera Ghazi Khan for having had written Kalma Tayyaba and verses of the Holy Quran inside the place of worship of the Ahmadis. It was alleged that the petitioner by doing so, had committed an offence under the mischief of Section 298-C of the PPC. He was refused bail by the trial court. Later, the applicant was released on bail as according to the judge, the petitioner did not appear to have offended the provision of Section 298-C PPC, his petition was thereafter allowed.

### **3. Recommendations**

1. Unless repealed, criminalisation of offences related to religion contained in chapter XV of PPC should carry ingredients of malicious intent (*mens rea*) and they should be made non-cognizable and compoundable.
2. All trials under this chapter should be conducted at the level of the High Courts.
3. Those making false accusation under this chapter should be punished and a section in the law be added to that effect.
4. In trials carried out under Section 295-C PPC, standards of Tazkiya-al -shuhood should be applied to witnesses.
5. Eventually all sections of law under the chapter of PPC titled 'Offences relating to Religion 'that are discriminatory or undermine fundamental rights or principles of due process and fair trial should be repealed.

### **4. Laws**

- Pakistan Penal Code, 1860
- Sections: 295, 295-A,295-B ,295-C ,298, 298-A , 298-B ,298-C

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<sup>126</sup> Khan Muhammad v. The State, NLR 1987 Criminal 771(1) Barkat From Protection to Exploitation (The laws against Blasphemy in Pakistan (AGHS Legal Aid Cell) at165.

# **Citizenship and naturalization**

## **1. Introduction**

The Naturalization Act was framed in 1926 before the Indian subcontinent's partition into India and Pakistan. The Act was later extended to Pakistan. The Citizenship Act, was enacted in 1951 and Section 9 of the Act applied the Naturalization Act, 1926, in Pakistan.

## **2. Legal framework**

### **2. (a) The Citizenship Act, 1951**

This law defines a citizen as an individual who meets any of the following criterion:

- Was a citizen on the date of the commencement of this Act;
- Whose parents resided in the territory at the time of partition;
- Being in service in 1937 and was domiciled in this area as provided by Succession Act, 1925 (part II);
- Was naturalized as a British subject in Pakistan having renounced by depositing declaration;
- Migrated to Pakistan before the partition;
- Is a citizen by birth;
- Whose citizenship is by descent or whose parent(s) were born in Pakistan; and
- Acquired citizenship by migration, the cutoff date for which is January 1, 1952.

Section 8 of the Act deals with citizens living abroad and Section 10 with women marrying British subjects.

### **2. (b)-National Database Rules and Regulations**

The National Registration Act, 1973 was enacted in order to register the citizens of Pakistan, and the rules under the law were framed in 1975. National Database &

Registration Authority Ordinance, 2000 repealed the earlier law and the rules for that law were framed in 2002.

## **National Database and Registration Authority (Pakistan Origin Card) Rules, 2002**

### **Rule 4: Eligible foreigner of Pakistan origin**

*(1) A person shall be an eligible foreigner of Pakistan origin if-*

*(a) he is a foreigner; and*

*(b) he had been a citizen of Pakistan at any time in his life;*

*Provided that he-*

*(v) is not, and never was, a citizen or national of an independent state or country, excluding Pakistan, comprising of any of the territories included in India on the thirty-first day of March, 1937;*

*(vi) is not, and never was, a citizen or national of a state or country not recognized by Pakistan; and*

*(vii) is not a citizen or national of an enemy country*

### **Rule 5: Eligible family member.**

*(1) An eligible family member means and includes, in respect of an eligible foreigner of Pakistan origin, any of the spouse; real parents or grandparents; of real children or grandchildren, of the eligible foreigner of Pakistan origin:*

*Provided that such a family member is;*

*(i) not a citizen or national of India*

*(ii) not a citizen or national of a state or country not recognized by Pakistan; and*

*(iii) not a citizen of any enemy country*

Since documentary evidence is required for registration as a citizen, difficulties have been faced by married women from religious minority communities who apply for national identity cards. This has particularly been the case with Hindu women, as they do not have marriage certificates that get official recognition.

Since no official registration system is present for marriage of members of the Hindu community, and it is not practicable to appoint registrars in all districts and tehsil, one solution could be making the certificate issued by the local *panchayats* admissible under the National Database Rules, 2007, by adding to Rule 7 in the following manner:

Rule 7 (5):

*That certificate issued by a Hindu Panchayat shall be a valid document for the purposes of issuance of certificate /national identity card.*

### **3. Case law**

- Distinction between domicile and Permanent Resident Certificate (PRC): Mehmood-ul-Hassan Khan v. Dow University of Health Sciences through Vice Chancellor, PLD 2008 Karachi 49;
- Domicile certificate: Zahir Shah and 11 Others v. Agency Education Officer, Mohmand Agency Ghallanai and 3 Others, 2007 PLC (CS) 856;
- Dual nationality: Umar Ahmad Ghumman v. Government of Pakistan and Others, 2002 PLD Lahore 521;
- Domicile: Mst. Kishwar Rehman v. Government of Balochistan through Secretary Health Department, Civil Secretariat, Quetta and 4 Others, PLD 2001 Quetta 78;
- Domicile: Shamsur Rehman v. Muhammad Rauf and Others 1985 Per. L.J 2842;
- Domicile: Chaudhry Noor Muhammad v. Province of West Pakistan and Another PLD 1971 Lahore 367; and
- Adoption: Miss Nancy Ruth Baney v. District Judge, Islamabad and Another, PLD 2011 Islamabad 6.

### **4. Recommendations**

1. Through an amendment to Rule 7 of National Database Rules, 2007, the marriage certificate issued by the Hindu *Panchayat* should be recognized as a valid document for the purposes of issuance of certificate /national identity card under the rules. Unless the government makes alternate provisions for registration.
2. All the religious freedoms provided under Article 18 of the International Covenant on Civil and Political Rights should be made available to everyone present in the state

- territory. This should include the guarantee to not be forced to disclose one's religion and the ability to change one's religion in official record.
3. The law must provide for correction of official record/identity documents without any penalty in case the religion of a member of any religious minority community is incorrectly entered as a Muslim in official record.
  4. The requirement for all Muslims applying for national identity cards/passports signing a declaration stating that Ahmadis are non-Muslims needs to be done away with as it amounts to an invitation by the state for the citizens to humiliate Ahmadis.

## 5. Laws

- Naturalization Act, 1926
- Pakistan Citizenship Act, 1951
  - Sections 8, 9, 10, 14
- Pakistan Citizenship Rules, 1952
- National Registration Act, 1973
- National Registration Rules, 1975
- National Database & Registration Authority Order, 2000
- National Database & Registration Authority (Pakistan Origin Card) Rules, 2002
  - Rules 4 and 5
- National Database & Registration Authority (National Identity Card) Rules, 2002
- National Database & Registration Authority (Application National Identity Card) Regulation, 2002
- 1973 Constitution of Pakistan
  - Article 2-A



## Evacuee trust property law

### 1. Introduction

Evacuee trust property has been defined in the Evacuee Trust Properties (Management and Disposal) Act, 1975 under Section 2 (d) as follows:

*Evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act.*

### 2. The status of evacuee trust properties in Pakistan

After the partition of India in 1947, religious trust properties in the new state of Pakistan were acquired by the central government under Section 3 of the Acquisition under Displaced Persons (Compensation and Rehabilitation) Act, (XXVIII of 1958). The law was enacted to acquire evacuee trust properties for any purpose. The government was given unfettered powers in this regard. Section 3 of the Act, states:

*The right, title and interest, of any evacuee in the evacuee property specified in the notification, shall, with effect from the date of such publication, be extinguished, and the evacuee property shall vest wholly and absolutely in the Central Government or, as the case may be, the Provincial Government free from all encumbrances...*

All *madrassas, shamshan ghats, dharam shallas* and *gurdwaras* appeared to have been declared evacuee properties. This law was repealed by the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975.

#### 2 (a). The Evacuee Trust Properties (Management and Disposal) Act, 1975

Section 3 provides for the constitution of a Board headed by a Chairman and members to be appointed by the government. The Chairman is vested with extensive powers to declare any property, including religious property, an evacuee trust property.

Certain functions of the Board under the Act which grant the Board the power over the properties of religious trusts are reproduced below:

#### Section 4: Functions of the board-

*(2) In particular and without prejudice to the generality of the foregoing power, the functions of the Board shall be:*

*(d) with the prior approval of the Federal Government, to sell, dispose of, transfer or make an endowment or otherwise manage evacuee trust property consistent with the objects of this Act or a scheme or for any other object which is considered to be a public purpose by the Federal Government;*

*(e) to mortgage or lease any evacuee trust property in accordance with the instructions of the Federal Government;*

*(g) with the prior approval of the Federal Government, to extinguish a trust or to wind up an institution the original object of which has wholly or partly ceased to exist;*

## **2 (b). Pakistan (Administration of Evacuee Property) Act, 1957**

The Act has defined the word “Evacuee” in Section 2 in a restrictive manner:

*“Evacuee” means any person:*

*(a) Who, on account of the setting of the dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, on or after the 1<sup>st</sup> day of March, 1947, leaves or has left any place in the territories now comprising Pakistan for any place outside those territories; or*

*(b) Who acquires or has acquired on or after the aforesaid date, by way of allotment or lease or by means of unlawful occupation or other illegal means, any right to, interest in or benefit from any property which is treated as evacuee property under any law for the time being in force in India or in any area occupied by India.*

The above provisions of law highlight that:

(i) This definition does not relate to religious properties.

(ii) So long as a single minority person from the relevant community is residing, s/he being a citizen under the 1973 Constitution of Pakistan cannot be denied the right to retain religious properties. The declaration of

such properties as “Evacuee” and all actions on this behalf are illegal. Religious and attached properties cannot be made subject matters of the above laws rather the Act of 1975 itself is repugnant to fundamental rights as guaranteed in the Constitution.

Known as the Nehru-Liaquat Pact, an agreement was made between India and Pakistan on April 8, 1950. In accordance with this, both countries had agreed to provide protection to religious properties in their respective territorial jurisdiction.

Further, all communities of the country are holding properties (religious and trust) under their control whilst only religious properties of Hindus and Sikhs have been declared as “Evacuee” and are being managed by the Evacuee Trust Property Board. This discriminatory policy is in violation of Article 4 and 25 of the constitution.<sup>127</sup>

### **3. Case law**

- Anees Ahmad v. Secretary Ministry of Minorities and Religious Affairs, Govt. of Pakistan and Another, 2010 SCMR 1078;
- Evacuee Trust Property Board through Deputy Assistant Administration Evacuee Trust Property v. Ali Bahadur, PLD 2011 SC 126;
- Auqaf Department through Chief Ad. Auqaf Punjab Lahore v. Secretary Ministry of R., Zakat, Ushr and Minorities Affairs, Govt. of Pakistan Islamabad and 3 Others, 2009 SCMR 210 (4); and
- Fayyazuddin Khan v. Federal Court of Pakistan through Secretary to the Govt. of Pakistan, Minorities Affairs Division and Others, 2009 SCMR 362.

### **4. Recommendations**

1. In view of the aforementioned it is proposed that the law as a whole be repealed and evacuee properties handed over to the recognized religious or community-based institutions /organizations of the relevant religious minorities.

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<sup>127</sup>Constitution of Pakistan 1973, Article 4 covers right of individuals to be dealt with in accordance with law. Article 25 enshrines equality of citizens.

2. Until that is not done, religious minorities should be represented on the Evacuee Trust Property Board and the chairman should be from such minorities.

## **5. Laws**

- Evacuee Trust Properties (Management and Disposal) Act, 1975
  - Sections 2, 3, 4
- Pakistan (Administration of Evacuee Property) Act, 1975
  - Section 2
- Acquisition under Displaced Persons (Compensation and Rehabilitation) Act, (XXVIII of 1958)
  - Section 3
- Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975

## **Zakat & Ushr Ordinance, 1980**

### **1. Introduction**

The laws regarding Zakat and Ushr were consolidated in the Zakat and Ushr Ordinance, 1980 (Ordinance No. XVIII of 1980). This Ordinance marks a significant step in the history of Pakistan, as well as in the manner in which the state conceptualized and dealt with religious minorities.

### **2. The preamble of the Zakat and Ushr Ordinance, 1980**

Referring to Pakistan as an Islamic state, the preamble of the ordinance talks about the responsibility of the government to make “provisions relating to the assessment, collection and disbursement of Zakat and Ushr”. This responsibility does not stem from an overt desire to dispense more equal income or to establish a welfare state, but rather for the state to fulfill the purpose of an Islamic state as interpreted by those in power and part of the state machinery. This law does not account for the needs of non-Muslim citizens of the state even though they too might be in need of income or financial assistance in circumstances which, apart from the question of faith, may not be too dissimilar from those of Muslims eligible to receive support under the system envisaged by the 1980 ordinance.

The preamble also mentions that the government is under an obligation to allow Muslims to fulfill their individual and collective duties. This expansion of the state on individual duties and the private sphere has vital implications for religious minorities within Pakistan and marks a significant shift in which the personal freedoms guaranteed under the 1973 Constitution of Pakistan were undercut by the “Islamisation” program. While the ordinance was later amended to account for different interpretations of *Shariah* and Islamic law, it is posited that the laws regarding Zakat and Ushr are part of a larger trend towards Muslim-centric legislation that either ignores religious minorities or excludes them.

### **3. Applicability of the 1980 ordinance**

While Section 1(2) of the ordinance states that it is only applicable to “Muslim citizens of Pakistan”, the law still has within its purview minority Muslim sects. This lack of distinction was later inserted into the ordinance after pressure from the Shia community. Shia protestors laid siege to the capital, Islamabad, on July 4<sup>5</sup>, 1980 to protest the compulsory imposition of Zakat and Ushr by then President Zia-ul-Haq. In response to these protests, the law was amended and followers of the Fiqh-e-Jafariya (Shia sect) were declared exempt from the payment of Zakat.

The notion of Zakat as a “compulsory duty” attracts protests from Muslim minority sects. However, Section 1(3) allows for exemptions on the basis of reasonable classification according to the recognized *Fiqhs*. It is settled law that the followers of the five recognized *Fiqhs* of Islam (Hanafi, Shafi, Maliki, Hambali and Jafariya) can claim exemption from deduction of Zakat. It was decided by the Supreme Court in the **Federation of Pakistan v. Ms. Farzana Asar** case,<sup>128</sup> “Declaration filed by a person professing to follow Fiqh-e-Jafariyah may be accepted subject to the fulfillment of the usual conditions, but Declaration filed by a person professing to follow any of the aforementioned four recognized Fiqhs other than Fiqh-e-Jafariyah may be referred to the Zakat Administration.”

This distinction between different faiths is legal within the concept of “reasonable classification”. It was held in the **I.A. Sherwani** case,<sup>129</sup> “(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike; (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis; (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standing, and persons, accused of heinous crimes; (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances; (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis of reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25; (vi) that equal protection of law means that all

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<sup>128</sup> Federation of Pakistan v. Ms. Farzana Asar, PLD 1999 SC 476.

<sup>129</sup> I.A. Sherwani v. Government of Pakistan, 1991 SCMR 1041.

persons equally placed be treated alike both in privileges conferred and liabilities imposed; (vii) that in order to make a classification reasonable, it should be based- (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.”

This exemption can also be seen in terms of Chapter III of the Zakat (Collection and Refund) Rules, 1981 where it is stated that, “Zakat shall not be deducted in respect of the assets of non-Muslims; the fact of a person being non-Muslims to be established through the available record with the Zakat Collection Office or a solemn affirmation in writing of the person concerned” (Rule 17). Furthermore, Rule 20 provides, “Zakat shall not be deducted in respect of the assets of a person claiming exemption from deduction on grounds of faith and fiqh under the first proviso to Sub-section (3) of Section 1 of the Ordinance, provided he files with the Zakat Collection Office a declaration on form CZ-50 or an attested copy thereof, within a period of not less than thirty days preceding the Valuation Date. A declaration or an attested copy thereof filed as aforesaid in one Zakat year, whether before or after October 29, 1983, shall continue to be valid for so long as the declaration or its copy, and the asset liable to Zakat to which it relates, remain in the custody of the Zakat Collection Office.”

Furthermore, Zakat also applies to companies, association of persons, or body of individuals where the “majority of the shares of which is owned, or the beneficial ownership of which is held by such citizens” (Section 1(2)). While on the surface this provision is not discriminatory against non-Muslims, it does lead to discrimination if the majority shareholders are Muslim, minority non-Muslim share-holders will be forced to pay Zakat in such a scenario if the “character” of the company is Muslim.

#### **4. Recommendation**

The legal provisions regarding Zakat and Ushr are part of a larger trend towards Muslim-centric legislation that either ignores religious minorities or excludes them. These should be amended and improved to provide for all citizens in need (without any faith-based discrimination), an equal distribution of income support based on a uniform criterion.

## **5. LAWS**

- Zakat and Ushr Ordinance, 1980 – (Section 1(2), 1(3))
- The Zakat (Collection and Refund) Rules, 1981 – (Rules 17, 20)



# **CRIMINAL PROCEDURE CODE, 1898**

## **1. Introduction**

The Criminal Procedure Code (CrPC) 1898 does not adversely affect or discriminate against religious minorities per se, since it only articulates the procedure for administration of criminal justice. The discrimination and enabling environment for faith-based persecution in the criminal justice system originates from the substantive provisions contained in the Pakistan Penal Code (PPC), 1860.

## **2. Legal framework**

Proposals for amendments to the CrPC alone would not be sufficient in alleviating the situation, unless they are accompanied by comprehensive reform in the PPC. However, the CrPC acts as an enabling legislation to allow the enforcement and implementation of the PPC and in doing so in some ways it does contribute towards discrimination.

The most representative example of this is Schedule II of CrPC, which makes a distinction between cognizable and non-cognizable offences. Cognizable offence is one where the police do not need a warrant to make arrests and take cognizance of the complaint made without judicial permission. Most of the offences contained in Chapter XV of the PPC, titled "Offences relating to Religion", including certain blasphemy provisions, are categorized as cognizable offences. The consequence of this is that a police officer has the authority to make a warrantless arrest once a complaint regarding the alleged occurrence of an offence is made. In the offences defined as non-cognizable, the police can proceed with an investigation only when authorized by a court of law.

The CrPC lays down minimum legal evidentiary standards to be complied with even in cognizable offences. The police have the power to arrest anyone suspected of involvement in any cognizable offence, or anyone who is the subject of a reasonable complaint or credible information or about whom they have reasonable suspicion of committing an offence.

According to amendments made by parliament in 2004, no police officer below the rank of Superintendent of Police (SP) can investigate cases involving derogatory remarks in respect of Prophet Muhammad (PBUH). This is a good measure, in theory allowing some

safeguard and greater oversight. However, in practice this condition is unfortunately not being complied with.

## **Qanun-e-Shahadat Order, 1984**

### **1. Introduction**

The Qanun-e-Shahadat Order, 1984 is a federal statute on the laws of evidence in Pakistan. This law applies to all judicial proceedings carried out in all courts. Before the introduction of the Qanun-e-Shahadat Order, the Evidence Act, 1872 was in place. The political regime changed the law to give an Islamic tenor to the Evidence Act and as a result discriminatory provisions were introduced. The amended provisions are discussed below; the rest of the provisions in the Qanun-e-Shahadat Order remain substantially the same as they were under the Evidence Act.

### **2. Relevant provisions of Qanun-e-Shahadat Order**

#### **Preamble**

The Preamble of the Qanun-e-Shahadat Order states that the law would be revised, consolidated and amended to bring it into conformity with the injunctions of Quran and Sunnah. This objective, from the outset, discriminates against religious minorities, prejudices the proceedings against them and ignores what their respective religions might propose.

#### **Article 3: Who may testify**

*Provided further that the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Qur'an and Sunnah for a witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available.*

This Article sets out the standard for the competence of a witness and states that a witness is competent if s/he fulfills the qualifications prescribed by the injunctions of Islam as laid down in the Holy Quran and Sunnah. This law is discriminatory for followers of other religions as they would fail the standard set out to qualify as a competent witness in the said law and since it applies to all the judicial proceedings in or before any court or other judicial and quasi-judicial forums, it discriminates against all religious minorities.

#### **Article 16: Accomplice**

*An accomplice shall be competent witness against an accused person, except in the case of an offence punishable with hadd; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.*

In this Article an accomplice can be a competent witness against an accused person except in case of an offence punishable with religiously mandated *hadd*. This is also

discriminatory to religious minorities because the provision's emphasis on *hadd* does not corroborate with the religious beliefs of minorities.

### **Article 17: Competence and number of witnesses**

*(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah.*

*(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law--*

*(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and*

*(b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman, or such other evidence as the circumstances of the case may warrant.*

This Article also emphasises that a witness is competent if he fulfills the requirement ordained by Quran and Sunnah. This is blatantly discriminatory towards the followers of other religions.

### **3. Recommendations**

1. The preamble of Qanun-e-Shahadat Order should be made religious neutral and should not require its provisions to be in conformity with the injunctions of Quran and Sunnah.
2. Non-Muslims under this Order should not be disqualified from being competent witnesses, thus this condition should be repealed, wherever it occurs.

### **4. Laws**

- Qanun-e-Shahadat Order, 1984 – (Articles: 3, 16, 17)

## **PROVINCIAL LAWS**

## **Punjab**

### **1. Introduction**

Punjab has a religious minority population of 2.79% — of which 2.31% are Christians, 0.13% are Hindus, 0.25% are Ahmadis and 0.10% are Scheduled Castes and other religious minorities.

There are 505 provincial statutes in Punjab of which only a handful are exclusively applicable to the minorities, such as the Hindu Dispossession of Property Act, 1916, the Sikh Gurdwara Act, 1925, and the Punjab Hindu Women's Right to Agricultural Land Ordinance, 1959

### **2. Laws applicable in Punjab that discriminate against religious minorities**

#### **Zakat and Ushr Ordinance, 1980**

The Zakat and Ushr Ordinance, 1980 applies only to Muslim citizens of Pakistan. It was extended to the whole of Pakistan but after the omission of the concurrent list by the eighteenth constitutional amendment, under Article 270AA of the 1973 Constitution, it is applicable to all the provinces including Punjab. It must be noted that this law is specific to Muslims and thus deprives non-Muslims of any benefit from Zakat funds.

#### **Motion Picture Ordinance, 1979**

This ordinance lays down the law for regulation and censorship of films.

Section 6 of this law relates to principles of guidance in certifying films and states that a film or any part thereof if prejudicial to the glory of Islam cannot be certified for exhibition in cinema houses. This law relates to Islam and does not take into account other religions whose followers are equal citizens of Pakistan. If a film contains anything prejudicial to the religion or beliefs of minorities it is not subjected to a uniform standard of censorship. This law therefore is clearly discriminatory towards minorities, as their religious sentiments are not taken into consideration while censoring films for public exhibition.

#### **Punjab Bait-ul-Mal Act, 1991**

Section 4 of this law states that the government may establish a fund to be known as Punjab Bait-ul-mal. The fund receives grants from various sources such as the federal government, local bodies, international Islamic agencies and voluntary donations including *Sadqa*, *Khairat* and *Atiyat*. On a simple reading of this section it seems that only members of the Muslim community can contribute to the fund. Whether minorities can also contribute to the fund is unclear.

Section 5, which deals with the utilization of the funds states that it shall be utilized for the relief of the poor and needy without mention of race or religion, so it can be safely said that the benefit of this law extends to all people in Punjab without discrimination. However, in practice non-Muslims do not receive funds from the Bait-ul-Maal.

### **The Punjab Pre-emption Act, 1991**

The law is applicable to the entire province of Punjab. The concept of pre-emption and its interpretation is made in accordance with the Quran and Sunnah. It is equally applicable to non-Muslims.

### **The Punjab Office of Ombudsman Act, 1997**

The oath, which forms part of the First and Second Schedule, concludes with the phrase “*May Allah Almighty help and guide me.*” From the very outset this gives the impression that only a Muslim can be employed as the Ombudsman. The rest of the Act does not have the same language nor does it imply that only a Muslim can be appointed as or employed at the office of the Ombudsman. The text of the oath is discriminatory towards minorities. A general prayer of allegiance to Pakistan should be preferable.

### **The Punjab Holy Quran (Printing and Recording) Act, 2011**

This Act was made to ensure that the text of the Holy Quran is free from errors of printing and recording and that damaged or Shaheed copies of the Quran are properly disposed of. The government of Punjab patronizes the printing and recording of the Holy Quran whereas no such law exists in Punjab regarding the holy books of minorities living in Punjab.

## **The Musician Muslim Shrines Act, 1942**

Section 3 of this Act sets out the punishment for singing and dancing at Muslim shrines for women and girls, which may be with or without musical instruments. It is not clear whether this punishment is restricted to Muslim women or whether it extends to women from minorities and thus needs to be revisited.

### **3. Recommendations**

1. Section 3 of The Musicians and Shrines Act, 1942 should be revisited. There should be laws in Punjab regarding the promotion of the holy books of minorities as they do for the Holy Quran.
2. The oath for the Punjab Office of Ombudsman should be a general prayer of allegiance to Pakistan.
3. The interpretation of laws in accordance with the Holy Quran and Sunnah should not relate to non-Muslims.
4. Non-Muslims should have access to funds from the Bait-ul-Maal.
5. Section 6 of the Motion Pictures Ordinance does not allow films that are prejudicial to the glory of Islam to be exhibited. Freedom of expression should be respected without allowing for incitement or abuse of any religion.
6. The Zakat and Ushr Ordinance is specific to Muslims; it should allow non-Muslims to benefit from Zakat funds.

### **4. Laws**

- Zakat and Ushr Ordinance, 1980
- Motion Picture Ordinance, 1979
  - Section 6
- Punjab Bait-ul-Mal Act, 1991
  - Section 4, 5
- Punjab Pre-emption Act, 1991
- Punjab Office of Ombudsman Act, 1997



- Punjab Holy Quran (Printing and Recording) Act, 2011
- Musicians at Muslim Shrines Act, 1942
  - Section 3
- Hindu Dispossession of Property Act, 1916
- Sikh Gurdwara Act, 1925
- Punjab Hindu Women's Right to Agricultural Land Ordinance, 1959

## **Balochistan**

### **1. Introduction**

The civil dispute resolution mechanism systems in Balochistan include the Civil Procedure Code (CPC), 1908 and the Balochistan Civil Disputes (Shariat Application) Regulation which was promulgated in 1976 when the Frontier Crimes Regulation, 1901 was abolished. The Regulation was promulgated in pursuance of Article 247 (4) of the 1973 Constitution with the approval of the president of Pakistan. The tribal areas of Khyber Pakhtunkhwa and Balochistan, under the colonial categorization of 'tribal' and 'settled', are governed under the executive authority of the province (in case of Provincially Administered Tribal Areas) and the federation (in case of Federally Administered Tribal Areas). The respective legislatures cannot legislate for them.

The Provincially Administered Tribal Areas of Balochistan have been listed under Article 246 of the constitution and include:

1. Zhob District;
2. Loralai District (excluding Duki Tehsil);
3. Dalbandin Tehsil of Chaghi District; and
4. Murri and Bugti Tribal territories of Sibi District.

### **2. Laws applicable in Balochistan that discriminate against religious minorities**

#### **Balochistan Civil Disputes (Shariat Application) Regulation, 1976**

According to section 3 of the Regulation, if all the parties to a dispute of civil nature agree that the dispute should be decided under the Regulation, the dispute will be adjudicated under it. The Regulation has been framed to decide disputes between the Muslim parties in accordance with Muslim Shariah laws. A dispute relating to a non-Muslim party can only be adjudicated if the non-Muslim party agrees.

A number of contentious issues arise from the adjudication mechanism provided for non-Muslims. The main contentions are:

1. If a non-Muslim does not agree for a decision to be in accordance with Shariah, which law shall apply to resolve the dispute? Can the personal code of the minorities apply?

2. If both the parties are non-Muslim who will adjudicate the case, as under the Regulation it is to be decided in accordance with Shariah by the qazi (Muslim religious scholar)?

Appeal against the resolution of disputes by qazis lies with the members of Majlis-e-Shoora (parliament), who are *sanad* holders and have no knowledge or experience of the laws of the community. This is in violation of Article 4 and 25 of the constitution, as individuals are to be dealt with in accordance with the law and citizens are entitled to equal treatment under the law.<sup>130</sup>

### **Dastoor-ul-Amal Diwani-e-Kalat**

This is applicable to areas that were part of the Kalat princely state. The state consisted of vast areas in Balochistan including Kharan, Khuzdar, Sibi and Kohlu Districts.

The princely state of Kalat was governed by Dastoor-ul-Amal Diwani-e-Kalat, which was enacted in 1952. Civil jurisdiction is exercised by qazis who have to decide civil cases in accordance with the Shariah law. Appeals lie to Majlis-e-Shoora comprising two members (ulema) and a sessions judge. Since its promulgation, the Civil Courts Ordinance, 1962 has not been extended to these areas, and therefore, civil courts do not function here.

Section 22 deals with disputes relating to minorities. According to this section, the disputes relating to non-Muslims have to be decided by a “jirga” (members of jirga are not specified) consisting of Muslim and non-Muslim members. The members are not professionals with any knowledge of the laws of the minority communities. Hence, such adjudication violates the right of minorities to be treated in accordance with law as per Article 4 of the constitution. Further, the application of different laws to minorities violates the right to equality guaranteed under Article 25 of the constitution.

Moreover, the uncodified Hindu family laws prevailing in Pakistan preclude Hindu women from seeking divorce. It is pertinent to mention here that the right to divorce for Hindu women has been granted in the Special Marriage Act legislated in 1954.

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<sup>130</sup> Constitution of Pakistan 1973, Section 4: Right of individuals to be dealt with in accordance with law, etc. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

Constitution of Pakistan 1973, Section 25: Equality of citizens. All citizens are equal before law and are entitled to equal protection of law.

### **3. Recommendations**

1. Section 22 of Dastoor-ul-Amal Diwani-e-Kalat may be repealed.
2. Civil Courts Ordinance, 1962 may be extended to the Provincially Administered Tribal Areas.
3. Judicially qualified officers trained in the laws of minorities be appointed.
4. Family laws of the minorities be enacted on the basis of non-discrimination.
5. Currently there is no law on inheritance for Hindus. This needs to be enacted, as Hindu law on inheritance is significantly different.
6. Family courts (if established) should also be applicable to minorities and deal with them according to the laws relevant to their communities, including inheritance laws.

### **4. Laws**

- Balochistan Civil Disputes (Shariat Application) Regulation, 1976
  - Section 3
- Dastoor-ul-Amal Diwani-e-Kalat, 1952
  - Section 22

# Sindh

## 1. Introduction

Sindh has long enjoyed a reputation for being the most diverse and tolerant amongst the provinces in Pakistan. This rich history of tolerance is now under threat given the inroads made by terrorist outfits within Sindh as well as a climate of growing intolerance towards minorities.<sup>131</sup> The worrisome growth of the *Ahle Sunnat Wal Jamaat* group, previously known as the *Sipah-e-Sahaba* Pakistan, has contributed to the waning tolerance in the province.

Following the eighteenth constitutional amendment<sup>132</sup> and the devolution of the Ministry of Minorities to the provinces, the Minority Affairs Department in Sindh was separated from the Religious Affairs Department in 2010 and this marked a shift in governmental policy as it promised a more focused approach towards minority welfare.

The survey, “Minority rights in Pakistan: historic neglect or state complicity?” conducted by the Pakistan Institute for Peace Studies (PIPS) found that “[a]round 73 per cent of the respondents belonging to non-Muslim minority communities in Sindh said they experienced discrimination due to their religious beliefs. The survey compared the situation of Dalit women in India with that of the Hindu women in Sindh and said the latter were often kidnapped, raped, and converted to Islam despite demands from within the community and its leaders that the authorities must act to apprehend the oppressors.”<sup>133</sup>

## 2. Demographics

Around 50 percent of the country’s minority communities live in Sindh.<sup>134</sup> According to estimates by Pakistan's Hindu Council, Hindus account for 5.5% of Pakistan's total population, with 4.78% of the Hindus living in Punjab province, 1.61% in Balochistan

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<sup>131</sup> Saba Imtiaz and Declan Walsh, ‘Extremists Make Inroads in Pakistan’s Diverse South’, *The New York Times*, (July 15, 2014) available at: <http://www.nytimes.com/2014/07/16/world/asia/militants-in-pakistan-make-inroads-in-the-diverse-and-tolerant-south.html>.

<sup>132</sup> Amendment XVIII (the Eighteenth Amendment) of the Constitution of Pakistan on April 8, 2010, available at: [www.en.wikipedia.org/.../Eighteenth\\_Amendment\\_to\\_the\\_Constitution\\_of\\_Pa...](http://www.en.wikipedia.org/.../Eighteenth_Amendment_to_the_Constitution_of_Pa...)

<sup>133</sup> Kalbe Ali, ‘State blamed for complicity in persecution of minorities’, *Dawn*, (October 4, 2014) available at: <http://www.dawn.com/news/1136134>.

<sup>134</sup> Imtiaz Ali, ‘Half-baked devolution hurting Sindh’, *The News*, (October 11, 2012) available at: <http://www.thenews.com.pk/Todays-News-4-136845-Half-baked-devolution-hurting-Sindh>.

province and 93.33% living in Sindh.”<sup>135</sup> Most of the Hindus living in Sindh “reside in urban areas throughout the province of Sindh, but at least 50 per cent are concentrated in the southwest district of Tharparkar.”<sup>136</sup> “Christians, Ahmadis, Hindus, Sikhs, Parsis, and Buddhists are the minority communities in Pakistan. Representatives of the minorities, who were included in the [surveys], also reported Baha’is and Jews having limited but definite presence in Pakistan, especially in the city of Karachi.”<sup>137</sup>

In places like Larkana, which have seen a recent spate of violence, about 10 per cent of the population (400,000) is Hindu, with many of them running important businesses.<sup>138</sup>

There are no accurate figures regarding the number of Jews present in Sindh, or Pakistan for that matter. However, a useful indicator can be the data provided by the Election Commission of Pakistan (ECP), which states that in the 2013 elections, 800 Jews, 427 women, and 382 men, were registered to vote in the whole of Pakistan.<sup>139</sup> However, it is unclear as to how many of these Jews are there in Sindh.

### **3. Salient issues**

#### **3. (a) -Bonded labour**

Most non-Muslims, particularly in rural Sindh, find themselves caught in the web of bonded labour.<sup>140</sup> A disproportionate number of bonded labourers in Pakistan come from the minority demographic, thus exposing them to deeper economic and social vulnerabilities. Those from the “Scheduled Castes” find themselves being discriminated against doubly, as they are discriminated against not only on the basis of their class and caste by “upper” caste / class Hindus and Muslims, but also on the basis of their religion.

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<sup>135</sup> Society for the Protection of the Rights of the Child (SPARC), ‘The Children of Minorities: A National Perspective from Pakistan’, 2014, p. 13 available at: <http://www.sparcpk.org/Publications/Minorities.pdf>.

<sup>136</sup> Ashfaq Yusufzai, ‘Minorities in Pakistan Fear ‘Forced Conversion’ to Islam’, *Inter Press Services*, (May 21, 2014) available at: <http://www.ipsnews.net/2014/05/minorities-pakistan-fear-forced-conversion-islam/>.

<sup>137</sup> Society for the Protection of the Rights of the Child (SPARC), ‘The Children of Minorities: A National Perspective from Pakistan’, 2014, p. 14 available at: <http://www.sparcpk.org/Publications/Minorities.pdf>.

<sup>138</sup> Imdad Soomro, ‘Larkana on fire’, *The News on Sunday*, (March 23, 2014) available at: <http://tns.thenews.com.pk/larkana-on-fire/#.VJGDaMnEjX4>.

<sup>139</sup> ‘Election 2013: 800 Jews to cast vote in Pakistan’, *The News Tribe*, (March 24, 2013) available at: <http://www.thenewstribe.com/2013/03/24/election-2013-800-jewish-to-cast-vote-in-pakistan/>.

<sup>140</sup> Church World Service, ‘Religious Minorities in Pakistan’s Elections’, at 59.

This nexus of double exploitation is unique and finds a manifestation in the phenomenon of bonded labour.<sup>141</sup>

### 3. (b) -Violence

Date	Incident
09/01/2014	2 Christian children kidnapped (three-year-old Christy and two-year-old grandson Suleman alias Raja) from Christian Colony, New Yard, Rohri. <sup>142</sup>
31/01/2014	Mob violence in Jati. <sup>143</sup>
24/02/2014	Dr Partab Rai, the registrar at the Chandka Medical College Hospital (CMCH) pediatric department, was shot at and seriously wounded in his private clinic located on Bakrani Road by armed men. <sup>144</sup>
18/03/2014	Christian youth throws acid at Holi gathering, wounding 5 people. <sup>145</sup>
31/03/2014	Attack on a temple in Verhijhap village, Tharparkar District. <sup>146</sup>
17/07/2014	Ahmadi businessman shot dead in Nawabshah. <sup>147</sup>
31/07/2014	Ashok Kumar Malhi and Heera Lal Malhi (Umerkot) were shot dead upon returning home after closing their confectionery shop when the robbers tried to deprive them of around Rs.500, 000 they were carrying. They offered resistance upon which the robbers shot them dead. <sup>148</sup>
31/07/2014	2 brothers killed in Umerkot
22/09/2014	Ahmadi doctor gunned down in Mirpurkhas. <sup>149</sup>

<sup>141</sup> Human Rights Commission of Pakistan, “The State of Human Rights in 2013”, at 96.

<sup>142</sup> ‘Christians protest kidnapping of two children’, *Dawn*, (January 10, 2014) available at: <http://www.dawn.com/news/1079423>.

<sup>143</sup> ‘Rumour triggers violence, sows fear in Jati’, *Dawn*, (January 31, 2014) available at: [www.dawn.com/news/1083806](http://www.dawn.com/news/1083806).

<sup>144</sup> ‘PMA, Hindu Panchayat continue protest’, *Dawn*, (February 27, 2014) available at: <http://www.dawn.com/news/1089641>.

<sup>145</sup> ‘Christian youth throws acid at Holi gathering’, *The Nation*, (March 18, 2014) available at: <http://nation.com.pk/national/18-Mar-2014/christian-youth-throws-acid-at-holi-gathering>.

<sup>146</sup> Zia Ur Rehman, ‘Sindh acts to protect Hindu minority’, (April 16, 2014) available at: [http://centralasiaonline.com/en\\_GB/articles/caii/features/pakistan/main/2014/04/16/feature-01](http://centralasiaonline.com/en_GB/articles/caii/features/pakistan/main/2014/04/16/feature-01).

<sup>147</sup> ‘Slain Ahmadi businessman laid to rest’, *Dawn*, (July 17, 2014) available at: <http://www.dawn.com/news/1119727>.

<sup>148</sup> ‘Umerkot remains shut over killing of traders’, *Dawn*, (August 3, 2014) available at: <http://www.dawn.com/news/1122856>.

<sup>149</sup> Zeeshan Bhatti, ‘Ahmadi doctor gunned down in Mirpurkhas’, *The Express Tribune*, (September 23, 2014) available at: <http://tribune.com.pk/story/766104/ahmadi-doctor-gunned-down-in-mirpurkhas/>.

While violence has been frequent, there have been calls for condemnation of such attacks from certain circles. For instance, the *Jea Sindh Mutahida Mahaz* (JSQM) called for a complete shutter down in major cities of interior Sindh to protest against violence directed at minorities.<sup>150</sup>

In 2013, the highest number of Ahmadi killings was reported from Karachi, Sindh—a total number of 6 Ahmadis were killed. Cases of assault were reported from Badin, Nawabshah, Larkana and Karachi.<sup>151</sup>

Members of the Bohra community—a Sunni Muslim community—were also targeted in Sindh. In October 2013, a member of the Bohra community and a relative were injured in Karachi while another Bohra was killed in December.<sup>152</sup> The attacks were believed to be carried out on sectarian grounds.

Religious tensions are constantly brewing under the surface as simple rumours can trigger mob violence. In late January, rumours that a 12 year old Muslim girl had been abducted by local “nomads” resulted in mass violence in Jati, near Thatta. The mob believed that the girl had been abducted by Hindu Bagri nomads. As a result, the clinic of Dr. Manghal and a medical store owned by a Kohistani Hindu family was ransacked.<sup>153</sup> Furthermore, the homes of families belonging to minority groups were pelted with stones.<sup>154</sup> It was reported that “[i]n a bid to pacify public anger, Senior Superintendent of Police (SSP) Mastoi has suspended Station House Officer (SHO) of Jati Ashok Kumar while police have also arrested Sunil Dutt, social worker and president of Hindu Panchayat (community) of Jati and about half a dozen Bagri nomads.”<sup>155</sup> According to ‘Life for All’, March 2014, was the “worst month of attacks on Hindus in 20 years with five temples attacked, up from nine during the whole of 2013.”<sup>156</sup> All this violence took place in Sindh.

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<sup>150</sup> ‘Shutter down in Sindh against attacks on minorities’, *Dunya News*, (December 19, 2014) available at: <http://dunyaews.tv/index.php/en/Pakistan/218194-Shutter-down-in-Sindh-against-attacks-on-minorities>.

<sup>151</sup> Human Rights Commission of Pakistan, “The State of Human Rights in 2013”, at 88.

<sup>152</sup> *Ibid* at 101.

<sup>153</sup> ‘Rumour triggers violence, sows fear in Jati’, *Dawn*, (January 31, 2014) available at: [www.dawn.com/news/1083806](http://www.dawn.com/news/1083806).

<sup>154</sup> ‘200 protesters booked after violence in Jati’, *Dawn*, (February 1, 2014) available at: <http://www.dawn.com/news/1084034>.

<sup>155</sup> ‘Rumour triggers violence, sows fear in Jati’, *Dawn*, (January 31, 2014) available at: [www.dawn.com/news/1083806](http://www.dawn.com/news/1083806).

<sup>156</sup> Syed Raza Hassan, ‘Pakistan's Hindus, other minorities face surge of violence’, *Reuters*, (May 6, 2014) available at: <http://uk.reuters.com/article/2014/05/06/uk-pakistan-minorities-idUKKBN0DL1AS20140506>.



### 3. (c) -Forced conversions

According to a report by the 'Movement for Solidarity and Peace,' approximately 1,000 non-Muslim girls are converted to Islam each year in Pakistan, aged from 12 to 25.<sup>157</sup> "The Report estimates that up to 700 of these women are Christian and 300 Hindu."<sup>158</sup> While it is near impossible to gauge the exact figures, amongst these, every month, an estimated 20 or more Hindu girls are abducted and converted, according to the Human Rights Commission of Pakistan (HRCP).<sup>159</sup>

In January 2013, it was reported that a 15-year-old girl was abducted, forced to convert to Islam and subsequently married to an employee of a minister in Karachi. In February 2014, it was reported that Jumna and Pooja were abducted and then taken to a mosque to convert them to Islam. They were recovered and produced in court by the police.<sup>160</sup>

April 2014, saw a spate of protests from the Hindu community in Sukkur over the kidnapping and forced conversion of a Hindu girl. Rani Bagri went missing about a week before the protests started with the family contending that the police were making no efforts help locate her.<sup>161</sup>

### 3. (d) -Enchroachments

There have been several instances of encroachment on valuable lands owned by Christians, Parsis, Sikhs and Hindus in many of the urban districts of Sindh, particularly in Saddar and other old city areas. This has led to many minority groups being evicted from their place of residence and/or their places of worship and cultural spaces being taken away.<sup>162</sup>

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<sup>157</sup> Farahnaz Zahidi, 'Minority report: A matter of faith', *The Express Tribune*, (April 9, 2014) available at: <http://tribune.com.pk/story/693164/minority-report-a-matter-of-faith/>.

<sup>158</sup> 'Forced conversions', *The Daily Times*, (April 11, 2014) available at: <http://www.dailytimes.com.pk/editorial/11-Apr-2014/forced-conversions>.

<sup>159</sup> Maham Javaid, 'Forced conversions torment Pakistan's Hindus', *AlJazeera*, (August 18, 2014) available at: <http://www.aljazeera.com/indepth/features/2014/08/forced-conversions-torment-pakistan-hindus-201481795524630505.html>.

<sup>160</sup> Shazia Hasan, 'Hindu community irked by 'forced conversions'', *Dawn*, (February 17, 2014) available at: <http://www.dawn.com/news/1087469>.

<sup>161</sup> 'Hindus protest 'kidnap, forced conversion' of teenage girl', *Dawn*, (April 22, 2014) available at: <http://www.dawn.com/news/1101372>.

<sup>162</sup> Ammar Shahbazi, 'Sindh bans sale of minorities' public properties', *The News*, (March 16, 2013) available at: <http://www.thenews.com.pk/Todays-News-4-165487-Sindh-bans-sale-of-minorities-public-properties>.

For instance in Karachi, non-Muslim residents of Lyari have dwindled significantly due to constant threat of violence and daily incidents of harassment motivated by the desire to acquire more land. The HRCP Sindh has found that the Hindu population in Lyari has declined significantly; there were as many Hindus as Christians in the area— but 25 per cent of the Hindus have quietly migrated to India. The “Slaughter House” community, established in 1916 for the sanitary workers of the Karachi Metropolitan Corporation (KMC) is now under threat, subject to the pressures of land grabbing given the fact that it has become valuable property. The population comprised 90 per cent Christians and 10 per cent Hindus, but it now stands empty as the residents have been forced to scatter.<sup>163</sup> A major reason for this is the violence on October 26, 2013, when criminal gangs used intimidation techniques to force the residents out of their homes.<sup>164</sup> These residents are now displaced and live with relatives across the city, with no place to call their own.<sup>165</sup>

At times evictions do not occur as a direct result of violence. In case of the residents of Essa Nagri Colony, the reason was inability to pay back loans offered at impossibly high interest rates. It is reported that 300 houses in Essa Nagri Colony are subject to these informal loans, which due to lack of documentation, have resulted in interest mounting to as high as 100%. It has been seen that if the borrower from a minority community misses an installment, then the lenders double the interest rate, thus trapping the borrower in a “vicious debt cycle.”<sup>166</sup>

### **3. (e) -Evacuee property**

Partial implementation of the eighteenth constitutional amendment has meant that control over evacuee property has not been handed over to the Sindh government. In Sindh 21,700 acres of land is owned by the Evacuee Trust Property Board (ETPB).<sup>167</sup> Thus the delays in resolving issues surrounding the allotment and disputes of such property cannot be fully attributed to the Sindh government. The failure of the ETPB to transfer property to the provinces has meant further delay in an already long-drawn out process.

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<sup>163</sup> Shazia Hasan, ‘Non-Muslim residents of Lyari afraid of returning home’, *Dawn*, (January 3, 2014) available at: <http://www.dawn.com/news/1077953>.

<sup>164</sup> Editorial, ‘Cruelty in Lyari’, *The News*, (January 06, 2014) available at: <http://www.thenews.com.pk/todays-news-8-224837-cruelty-in-lyari/>.

<sup>165</sup> ‘Lyari’s dispossessed’, *Dawn*, (January 4, 2014) available at: <http://www.dawn.com/news/1078223>.

<sup>166</sup> Rabia Ali, ‘Milk the cow: With 100% interest rates, minorities stagger under debt payment’, (February 25, 2014) available at: <http://tribune.com.pk/story/675723/milk-the-cow-with-100-interest-rates-minorities-stagger-under-debt-payment/>.

<sup>167</sup> Shahid Aslam, ‘Who will own the billionaire Evacuee Trust Property Board?’, *The News*, (February 13, 2014) available at: <http://www.thenews.com.pk/Todays-News-5-232182-Who-will-own-the-billionaire-Evacuee-Trust-Property-Board?>

Nevertheless, discriminatory disposal of evacuee property and delay is a salient issue for minorities within Sindh. In a symbolic gesture, the Sindh government announced that it has “decided to approach the federal government to transfer the property/land to the provincial government which was left by the Hindus who migrated to India after partition, mostly falling in district Tharparkar, so that the same can be distributed among the occupant [Hindu] farmers, having their names in the Khasra (record of cultivation) in the area.”<sup>168</sup>

### 3. (f) -Grave desecration

One of the more prominent cases of grave desecration was that of a Hindu man in Badin. The man, Bhuro Bheel, a local Hindu belonging to the lower caste, was exhumed within 12 hours of his burial (October 8, 2013).<sup>169</sup> Given the state of minorities in Pakistan, this incident might not shock as much as it should, however, for the locals it was an anomaly. Local clerics expressed their shock at the incident, “I have been living in Pangrio for the last 40 years and I have never come across such an instance.”<sup>170</sup> The motive behind the incident was that the individual in question had been buried in a Muslim graveyard.

The tradition of burying Hindus along with Muslims is a long one—the shrine of Sindhi Sufi saint and poet Shah Abdul Latif Bhittai also houses the grave of a Hindu saint named Madan Lal. These incidents have been a recent trend; however, their frequency is increasing with time. There had been instances of desecration of graves of Christian families in Karachi (2012), but this was the first of its kind in interior Sindh.<sup>171</sup>

In December 2013, the body of 80-year-old Hindu man Allah Dino Bheel was dug out from its grave in Tando Bago within the Badin district. When the police officials from the Badin and Tando Muhammad Khan districts buried the body back into the grave, there was uproar from the local community. Mosque announcements urged people to shut their

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<sup>168</sup> ‘Sindh wants transfer of land to minorities’, *The Nation*, (August 12, 2014) available at: <http://nation.com.pk/karachi/12-Aug-2014/sindh-wants-transfer-of-land-to-minorities>.

<sup>169</sup> ‘Intolerance spreads in Sindh: Desecration of Hindu grave’, *Dawn*, (October 13, 2013) available at: <http://www.dawn.com/news/1049426>.

<sup>170</sup> ‘Final ‘unrest’: Badin mob digs out Hindu man’s grave’, *The Express Tribune*, (October 8, 2013) available at: <http://tribune.com.pk/story/615028/final-unrest-badin-mob-digs-out-hindu-mans-grave/>.

<sup>171</sup> ‘Christian graves desecrated in Karachi’, *UCA News*, (June 19, 2012) available at: <http://www.ucanews.com/news/christian-graves-desecrated-in-karachi/53447>.

businesses and protest police intervention, which resulted in hundreds staging a sit-in against the police.<sup>172</sup>

### 3. (g) -Places of worship

There are several instances of minorities' places of worship being desecrated or destroyed. In March 2014, Hindu temples were set ablaze following a rumour that a member of the Hindu community had desecrated the Quran.<sup>173</sup> Protestors in Larkana (March 13, 2014) "attacked a Mandir and set the Dharmashala on fire while a few of them surrounded the house of the Hindu man who was accused of burning the pages."<sup>174</sup> Another target was a Kali Mata temple in Hyderabad (March 17, 2014), near Fateh Chowk. The ransackers burnt a deity during the incident.<sup>175</sup> No evidence has been found regarding the alleged blasphemy charge.<sup>176</sup> Nevertheless, action was taken on both sides in two separate First information Reports (FIRs): FIR 31/2014 was registered against the alleged blasphemer, Sagneet Kumar, and against 150 unknown persons for ransacking a stall owned by Parkash Lal and setting ablaze a dharmshala.<sup>177</sup> The riots in Larkana, which caused a material loss of Rs. 3.5 million,<sup>178</sup> resulted in the Supreme Court taking action by directing the Larkana district and sessions judge to launch an investigation into the attack on the Hindu temple.<sup>179</sup>

Within days of the Larkana incident, three Hindu men were booked under Section 153-A Pakistan Penal Code (PPC) (promoting enmity between different groups) and Section 295 PPC (injuring or defiling place of worship, with intent to insult the religion of any class) for hurting religious feelings by writing names of revered Islamic figures on a road in

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<sup>172</sup> 'Six feet under: Body of 80-year-old man dug out from grave', *The Express Tribune*, (December 28, 2013) available at: <http://tribune.com.pk/story/651577/six-feet-under-body-of-80-year-old-man-dug-out-from-grave/>.

<sup>173</sup> Syed Raza Hassan, 'Hindu temple set on fire in Pakistan over blasphemy', *Reuters*, (March 16, 2014) available at: <http://in.reuters.com/article/2014/03/16/pakistan-hindu-temple-fire-idINDEEA2F07G20140316>.

<sup>174</sup> 'Larkana: Hindu worship place set ablaze over 'burning of holy pages'', *GEO News*, (March 16, 2014) available at: <http://www.geo.tv/article-141254-Larkana-Hindu-worship-place-set-ablaze-over-burning-of-holy-pages>.

<sup>175</sup> Mohammad Hussain Khan, 'Arsonists blamed for Hindu temple burning in Hyderabad', *Dawn*, (November 21, 2014) available at: <http://www.dawn.com/news/1145998>.

<sup>176</sup> 'Temple torching a sorry affair', *Waqt News*, (March 17, 2014) available at: Print.

<sup>177</sup> 'Blasphemers', mob booked in temple attack, sacrilege cases', *Dawn*, (March, 20, 2014) available at: <http://www.dawn.com/news/1094204>.

<sup>178</sup> 'Communal tension in Larkana subsides', *Dawn*, (March 18, 2014) available at: <http://www.dawn.com/news/1093760>.

<sup>179</sup> Jamal Khurshid, 'SC orders judicial inquiry into Larkana riots', *The News*, (March 21, 2014) available at: <http://www.thenews.com.pk/Todays-News-4-239413-SC-orders-judicial-inquiry-into-Larkana-riots>.

Sakhi Usman Shah village of Badin district.<sup>180</sup> Further incidents also took place in Mithi, Tharparkar district where the Jab temple was attacked (March 30, 2014) and in Shikarpura the Bhagwat Geeta temple was attacked (May 7, 2014).<sup>181</sup> The former Chief Justice of Pakistan (CJP), Justice Tassaduq Hussain Jilani took strong notice of the incident and during a suo motu hearing deplored the inaction regarding the attacks on temples.<sup>182</sup>

Another temple was burnt down under similar circumstances when allegations of blasphemy led to an attack on a temple located in Tando Mohammad Khan district behind Barrage Colony area. The arsonists set fire to “a deity and religious books in the temple were reduced to ashes in the suspected arson attack.”<sup>183</sup>

There have been other instances of desecration of holy books. On May 24, 2014, the Sikh community lodged their protest against the incidence of desecration of their holy book in various parts of Sindh. They stormed parliament in order to lodge their protest.<sup>184</sup> The alleged desecration took place at Shikarpur and the book was Guru Granth Sahib.<sup>185</sup> The protestors also posited that desecrations also took place in Kashmore, Larkana,<sup>186</sup> Panu Aqil (Sukkur), Mehar (Dadu) and Karachi in the weeks before the parliament protest.<sup>187</sup>

The Supreme Court of Pakistan took suo motu notice of “the alleged denial of access to members of the Hindu community to a century-old temple located in Tando Adam.”<sup>188</sup> The issue centered around the fact that the site was now being used to run a government

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<sup>180</sup> “Blasphemers’, mob booked in temple attack, sacrilege cases’, *Dawn*, (March, 20, 2014) available at: <http://www.dawn.com/news/1094204>.

<sup>181</sup> Nasir Iqbal, ‘CJ hints at guidelines for protecting minorities’, *Dawn*, (May 14, 2014) available at: <http://www.dawn.com/news/1106144>.

<sup>182</sup> ‘Offence against any religion comes under blasphemy laws, says CJP’, *The Daily Times*, (May 14, 2014) available at: <http://www.dailytimes.com.pk/islamabad/14-May-2014/offence-against-any-religion-comes-under-blasphemy-laws-says-cjp>.

<sup>183</sup> Mohammad Hussain Khan, ‘Arsonists blamed for Hindu temple burning in Hyderabad’, *Dawn*, (November 21, 2014) available at: <http://www.dawn.com/news/1145998>.

<sup>184</sup> ‘Sikh community protests against alleged blasphemy’, *Samaa News*, (May 23, 2014) available at: <http://www.samaa.tv/pakistan/23-May-2014/sikh-community-protests-against-alleged-blasphemy>; Iftikhar Firdous, ‘Sikh community storms Parliament to protests against alleged desecration of their holy books’, *The Express Tribune*, (May 23, 2014) available at: <http://tribune.com.pk/story/712049/sikh-community-protests-against-alleged-insult-of-baba-guru-nanak/>.

<sup>185</sup> ‘Sikhs protest attacks on religious sites, desecration of holy book’, *Dawn*, (May 23, 2014) available at: <http://www.dawn.com/news/1108159>.

<sup>186</sup> Tanveer Ahmed, ‘Angry Sikhs march on Parliament House’, *The Daily Times*, (May 24, 2014) available at: <http://www.dailytimes.com.pk/islamabad/24-May-2014/angry-sikhs-march-on-parliament-house>.

<sup>187</sup> ‘Sikh council gives five-day deadline to government for arrest of desecration suspects’, *Dawn*, (May 27, 2014) available at: <http://www.dawn.com/news/1108797>.

<sup>188</sup> Naeem Sahoutara, ‘Suo motu: SC to take up Hindu temple case on Monday’, *The Express Tribune*, (February 23, 2014) available at: <http://tribune.com.pk/story/675071/suo-motu-sc-to-take-up-hindu-temple-case-on-monday/>.

school, which restricted access to the temple. The Supreme Court has called for a report to be submitted regarding the “efforts being made by the government to ensure access of the Hindu community.”<sup>189</sup>

Three Hindu temples were desecrated in Mirpurkhas, Sindh. “During the attack, idols of Hindu deities in the temples of Shiv, Khaitpar and Khushhal Puri in Kot Ghulam Muhammad Taluka were broken by unidentified suspects.” According to police, five members of the Kholi clan had perpetrated these crimes and were subsequently booked.<sup>190</sup>

In June 2014, the former Chief Justice of Pakistan Justice Tassaduq Hussain Jilani took up case regarding alleged illegal occupation of the land of a Hindu temple by Pakistan Peoples Party (PPP) members in Hyderabad, asking for a report on the matter to be submitted to the court. The land on which the temple was built was occupied and then subsequently sold for Rs. 15 million.<sup>191</sup> There were also instances of harassment by a group of Pakistan Peoples’ Party (PPP) activists along with the ‘land mafia’ who sought to acquire a piece of temple land measuring 20,000 square yards for commercial purposes. The harassment included “firing into the air to harass the poor Hindu residents of the compound almost daily” and “issuing death threats with the aim of forcing them out of the settlement and then grab the piece of land.”<sup>192</sup>

There has been a systematic lack of security on part of the provincial government in its failure to protect the minorities’ places of worship. In the aftermath of the Hyderabad temple attack, the local community had “asked the police to deploy personnel at 13 temples in Hyderabad and to establish a picket at their Kali Mata temple in Latifabad. The police authorities, however, deployed personnel for a few days after the March 29, 2014 temple attack in Hyderabad and later withdrew them.”<sup>193</sup>

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<sup>189</sup> Naeem Sahoutara, ‘Hindus being denied access to temple, SC questions authorities’, *The Express Tribune*, (February 26, 2014) available at: <http://tribune.com.pk/story/676049/hindus-being-denied-access-to-temple-sc-questions-authorities/>.

<sup>190</sup> Z Ali, ‘Minorities in Mirpurkhas: Five suspects rounded up for attack on Hindu places of worship’, *The Express Tribune*, (May 29, 2014) available at: <http://tribune.com.pk/story/714717/minorities-in-mirpurkhas-five-suspects-rounded-up-for-attack-on-hindu-places-of-worship/>.

<sup>191</sup> ‘Minority rights: CJ wants to know why temple land was sold off’, *The Express Tribune*, (June 24, 2014) available at: <http://tribune.com.pk/story/726002/minority-rights-cj-wants-to-know-why-temple-land-was-sold-off/>.

<sup>192</sup> ‘Temple compound residents continue protest over ‘harassment’’, *Dawn*, (July 10, 2014) available at: <http://www.dawn.com/news/1117122>.

<sup>193</sup> ‘Community leaders decry kidnappings, temple attacks’, *The Express Tribune*, (June 9, 2014) available at: <http://tribune.com.pk/story/719220/community-leaders-decry-kidnappings-temple-attacks/>.

In March 2013, a Jewish welfare body, the Bene Israel Trust, submitted an application to the Sindh High Court for the protection of the land of the Magen Shalom Synagogue where a shopping mall was built after the place of worship had been demolished in the 1980s. The application requested that the trust be allowed to take “control of the property so it can maintain the land of the place of worship. (The Bene Israeli community was made of Jews who were traditionally found in Konkan, roughly the coastal region from Goa to Karachi).”<sup>194</sup>

The attacks on property and places of worship have spurred the Sindh government to take measures regarding security around churches and mandirs. The government has announced plans to install closed circuit television (CCTV) cameras and form a special force for the security of temples and churches.<sup>195</sup> The government has also announced a plan to recruit youth from minority community for the security and protection of minorities and their worship places.<sup>196</sup> However, no systematic measures have been taken thus far to put these proposals into place.

Appeals by the Human Rights Commission Pakistan (HRCP) were made to preserve the Sri Ratneswar Mahadev Temple in Karachi, which was under threat from the construction of an underpass in Clifton. The Sindh High Court took notice of the matter and in October 2014, a contempt of court notice was issued to the Karachi Metropolitan Corporation administrator for flouting its order for the preservation of 150-year-old Sri Ratneswar Mahadev Temple in Clifton.<sup>197</sup>

Mass on New Year’s Eve has been frequently interrupted by violence or threats of violence. This threat of violence is born out of real attacks that have occurred over the years.<sup>198</sup> Churches all over Pakistan (including Sindh) have been forced to alter their traditional timings of mass in order to accommodate security fears. As the clocks struck

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<sup>194</sup> Naeem Sahoutara, ‘Jewish trust goes to court to take back demolished Karachi synagogue land’, *The Express Tribune*, (March 18, 2014) available at: <http://tribune.com.pk/story/683952/rachel-josephs-legacy-jewish-trust-goes-to-court-to-take-back-demolished-karachi-synagogue-land/>.

<sup>195</sup> Zulfiqar Kunbhar, ‘Special force for security of mandirs, churches on cards’, *The Daily Times*, (May 16, 2014) available at: <http://www.dailytimes.com.pk/sindh/16-May-2014/special-force-for-security-of-mandirs-churches-on-cards>.

<sup>196</sup> Hafeez Tunio, ‘Sindh to train minority members to protect their worship places’, *The Express Tribune*, (July 9, 2014) available at: <http://tribune.com.pk/story/733207/sindh-to-train-minority-members-to-protect-their-worship-places/>.

<sup>197</sup> Tahir Siddiqui, ‘Contempt notice issued to KMC chief in Clifton temple case’, *Dawn*, (October 30, 2014) available at: <http://www.dawn.com/news/1141199>.

<sup>198</sup> ‘Away from the bullets: New Year’s Eve mass to be held before midnight’, *The Express Tribune*, (January 1, 2014) available at: <http://tribune.com.pk/story/653092/away-from-the-bullets-new-years-eve-mass-to-be-held-before-midnight/>.

the advent of 2013, there was aerial firing and shelling at the Central Brooks Memorial Church in Saddar, Karachi causing several injuries. In a separate incident in the Drigh Road Church (Karachi), a girl lost her life due to firing.<sup>199</sup>

In April 2014, there was an incident in Hur Colony, Sanghar where a congregation of the Hindu community, Bheel, Oad, Kolhi and Meghwar castes, was raided by the police and four Bhagats (hymn-chanters) were detained. The police claimed that the raid took place following complaints by neighbours who allegedly reported disturbance by the noise of the hymn-chanting at the congregation.<sup>200</sup>

### **3. (h) -Hindu migrations**

There has been an influx of Hindu migrations into India in recent years. Sindh, home to a majority of the Hindu population, has seen a concerted exodus. Members of the Hindu community have either fled to India or refused to return after religious pilgrimage.<sup>201</sup> Not only is this an indictment of the condition of minorities within Pakistan, it speaks of suffering endured by those who migrate to India.<sup>202</sup> It has been reported that since 2012, about 1,000 families have been struggling to migrate to India.<sup>203</sup>

### **3. (i) -Blasphemy**

In April 2014, a member of the Ahmadi community, Tahir Ahmed, was arrested in the town of Tando Allahyar, 240 kilometers northeast of Karachi. The arrest took place after an angry mob approached his house and an Ahmadi place of worship on its ground floor following the allegation.<sup>204</sup>

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<sup>199</sup> 'Away from the bullets: New Year's Eve mass to be held before midnight', *The Express Tribune*, (January 1, 2014) available at: <http://tribune.com.pk/story/653092/away-from-the-bullets-new-years-eve-mass-to-be-held-before-midnight/>.

<sup>200</sup> 'Hindus protest 'raid' on congregation', *Dawn*, April 22, 2014. <http://www.dawn.com/news/1102262>.

<sup>201</sup> AFP, 'Pakistani Hindus seek safety in India', *Dawn*, (March 6, 2012) available at: <http://www.dawn.com/news/700550/pakistani-hindus-see-safety-in-india>.

<sup>202</sup> "Prajapati's plight embodies the adversity that is commonly experienced by thousands of Pakistani Hindus like him, who have fled perceived persecution and harassment to take refuge in Hindu-majority India, only to be rebuffed and treated with suspicion." Shweta Desai, 'Pakistani Hindus 'unwelcome' in India', *AlJazeera*, (February 18, 2014) available at: <http://www.aljazeera.com/indepth/features/2014/02/pakistani-hindus-unwelcome-india-201421063012210386.html>.

<sup>203</sup> Zahid Gishkori, 'Legislator raises fears of Hindu exodus from Sindh', *The Express Tribune*, (June 10, 2013) available at: <http://tribune.com.pk/story/561224/legislator-raises-fears-of-hindu-exodus-from-sindh/>.

<sup>204</sup> AFP, 'Ahmadi arrested on blasphemy charges', *The Daily Times*, (April 02, 2014) available at: <http://www.dailytimes.com.pk/national/02-Apr-2014/ahmedi-arrested-on-blasphemy-charges>.



In May 2014, four members of the Jehovah's Witnesses in Mirpurkhas were confronted with an angry mob that accused them of blasphemy for selling books with images of god and Moses on them. The four Jehovah's Witnesses were taken to a nearby police station where they were charged with blasphemy.<sup>205</sup> In an area where minorities were previously free to practise their religions as they pleased, the increasing threat of blasphemy charges looms over them as either a fear or a threat that ends in formal charges.

Following the September 22, 2013, church attack,<sup>206</sup> Christians and Muslims clashed in Karachi. One Muslim man died as a result of these clashes but three houses and five vehicles were torched in predominantly Christian areas of the city. Furthermore, three Christian men were charged with blasphemy after the administration of a mosque complained that they attacked the names of the Caliphs with sticks during the protests.<sup>207</sup>

### **3. (j) -Discrimination in fund allocation**

In responding to the victims of the Thar famine in March 2014, the relief authorities exhibited discrimination against the Hindu community. A bulk of the food supplies given to victims were meat-based products; since meat is religiously prohibited to Hindus they have been "restricted to small portions of lentils, which is an insufficient means of whetting appetites, while vegetables, which are strong source of building immune system, have been ignored."<sup>208</sup>

### **4. Minority Affairs Department**

In the year 2013, Rs. 423 million were utilised by the department of minorities for their development activities.<sup>209</sup>

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<sup>205</sup> Saba Imtiaz and Declan Walsh, 'Extremists Make Inroads in Pakistan's Diverse South', *The New York Times*, (July 15, 2014) available at: <http://www.nytimes.com/2014/07/16/world/asia/militants-in-pakistan-make-inroads-in-the-diverse-and-tolerant-south.html>.

<sup>206</sup> In September 22, 2013, a twin suicide bomb attack took place at All Saints Church in Peshawar. It was the deadliest attack on Christian minority in the history of Pakistan available at [www.en.wikipedia.org/wiki/Peshawar\\_church\\_attack](http://www.en.wikipedia.org/wiki/Peshawar_church_attack).

<sup>207</sup> Human Rights Commission of Pakistan, "The State of Human Rights in 2013", at 94.

<sup>208</sup> AFP, 'Thar Hindus not getting appropriate food supplies', *The News*, (March 12, 2014) available at: <http://www.dailytimes.com.pk/national/12-Mar-2014/thar-hindus-not-getting-appropriate-food-supplies>.

<sup>209</sup> 'Sindh wants transfer of land to minorities', *The Nation*, (August 12, 2014) available at: <http://nation.com.pk/karachi/12-Aug-2014/sindh-wants-transfer-of-land-to-minorities>.

Despite 5% quota for non-Muslims, “only eight non-Muslims are employed at the State Life Insurance Corporation of Pakistan which works under the Ministry of Commerce. Four are employed in Karachi and four in Punjab...Out of these eight, only Partab Rai Lakhani, a resident of Sindh, is employed as an Assistant Manager in the corporation’s Karachi office, while the remaining seven occupy low-cadre posts.”<sup>210</sup>

In March 2013, a member of the provincial assembly (MPA) of Sindh and Chairman, Standing Committee on Minorities Affairs, Sindh Assembly, Saleem Khursheed Khokhar submitted a resolution in the assembly regarding misuse of the blasphemy law, which was passed by the Sindh Assembly. The resolution was as follows:

“The ransacking and burning on the alleged charges of blasphemy, when no evidence of the witnesses had been recorded and especially when the accused was already in the custody of police, is a dastardly act of terrorism against the Christian community [...]. He [Quaid-e-Azam Muhammed Ali Jinnah] said that “You are free to go to your temples, you are free to go to your mosques and you are free to go to any other place of worship in this State of Pakistan. You may belong to any religion, caste or creed – that has nothing to do with the business of State.” Government of Sindh is thus requested to take up the case with the Government of Punjab not only to get the attackers / terrorists punished, but also compensate adequately those victims who suffered mentally and monetarily. It is further resolved that the misuse of the blasphemy laws like 295-B and C of PPC should be restrained and the personal disputes are not converted into blasphemy acts.”<sup>211</sup>

This resolution was in response to the Joseph Colony incident in Punjab, but it could very well foreshadow the attacks on Hindu temples that were to follow.

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<sup>210</sup> Muhammad Irfan, ‘A sorry state of affairs: Despite 5% quota, minorities remain out of public service’, *The Express Tribune*, (May 20, 2014) available at: <http://tribune.com.pk/story/710509/a-sorry-state-of-affairs-despite-5-quota-minorities-remain-out-of-public-service/>.

<sup>211</sup> ‘Sindh assembly passes resolution over misuse of blasphemy law’, *The Express Tribune*, (March 11, 2013) available at: <http://tribune.com.pk/story/519136/sindh-assembly-passes-resolution-over-misuse-of-blasphemy-law/>.

At the provincial level, efforts have been made to establish a committee for protection of minority rights in Sindh, which is yet to be set up, “with Chief Minister (CM) Syed Qaim Ali Shah as head to deal with the issues being faced by the minorities in the province.”<sup>212</sup> The CM has also announced that “substantial funds” have been earmarked for minorities, i.e. to provide them protection, development schemes, and “medical aid, scholarship, and financial aid for dowry to the deserving person of the minorities.”<sup>213</sup>

## **5. Provincial laws**

### **5. (a) -Existing laws**

#### **The Sindh Protection of Communal Properties of Minorities Act, 2013**

This Act as per Section 2(b) seeks to protect “*places of worship, monasteries, seminaries, vicarages, dharamshalas, goashalas, burial places, community centres, social welfare, education, health and recreational institutions meant for communal use by minority communities and includes side buildings, vacant places, lands, residential places, offices annexed to the said properties.*” Section 3(1) of the Act posits that, “*No property of a minority community meant for its communal use shall be bought, sold or transferred by any person without [No Objection Certificate] NOC from the Provincial Government.*” The law is a milestone as it will “prevent the commercialisation of minority properties and will deter the land mafia from grabbing the lands of non-Muslims.”<sup>214</sup>

The recent passage of the above mentioned Act made it illegal to sell or transfer any public property owned by minorities without the authorities’ approval. It remains to be seen whether the law adequately provides for the forced evictions that minority groups in Sindh are subject to. Also the law does not provide protection against the authorities themselves, which are more often than not the perpetrators of the evictions themselves.

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<sup>212</sup> ‘Qaim to head committee for protection of minority rights’, *The Daily Times*, (June 9, 2014) available at: <http://www.dailytimes.com.pk/sindh/09-Jun-2014/qaim-to-head-committee-for-protection-of-minority-rights>.

<sup>213</sup> ‘Substantial development funds earmarked for minorities: Qaim’, *The Daily Times*, (August 12, 2014) available at: <http://www.dailytimes.com.pk/sindh/12-Aug-2014/substantial-development-funds-earmarked-for-minorities-qaim>.

<sup>214</sup> Ammar Shahbazi, ‘Sindh bans sale of minorities’ public properties’, *The News*, (March 16, 2013) available at: <http://www.thenews.com.pk/Todays-News-4-165487-Sindh-bans-sale-of-minorities-public-properties>.

Nevertheless, the Act is a positive step and an indication that the government of Sindh is taking the rights of minorities more seriously.

## **5. (b) -Prospective laws**

On August 12, 2014, plans were announced for a bill that sought to replace the word “Scheduled Castes” with non-Muslims in official correspondence to include a greater group of minorities.<sup>215</sup>

In July 2013, the Sindh provincial government moved to form a body that would draft a law to regulate the registration of Hindu marriage and control the menace of forced conversions that lead to forced marriages.<sup>216</sup> Due to lack of laws that allow for registration of Hindu marriages, members of the community are often harassed by authorities to prove their marriage and they face issues when it comes to matters of divorce, alimony and child support.<sup>217</sup> Now that such matters had been devolved to the provincial level, it is unclear whether amendments will be made to the Hindu Marriage Act, 1955 and passed at the provincial level or a wholly new law will be drafted. Furthermore the Christian community has also expressed reservations regarding the lack of legislation to govern their personal laws. The Christian community has serious reservations with the proposed Christian Divorce Act, given that some interpretations of the holy text do not allow for divorce. There were calls for greater involvement of minority groups in the drafting of the new legislation.<sup>218</sup>

## **6. Federal laws**

### **Electoral laws**

Minority leaders have been campaigning vigorously for a separate electoral system to ensure greater and more meaningful representation at elected assemblies. “According to ECP records, the Hindu community is the largest minority registered in Sindh...In

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<sup>215</sup> ‘Sindh wants transfer of land to minorities’, *The Nation*, (August 12, 2014) available at: <http://nation.com.pk/karachi/12-Aug-2014/sindh-wants-transfer-of-land-to-minorities>.

<sup>216</sup> Shazia Hasan, ‘Hindu community irked by ‘forced conversions’, *Dawn*, (February 17, 2014) available at: <http://www.dawn.com/news/1087469>.

<sup>217</sup> ‘Body formed to draft Hindu marriage law’, *Dawn*, (July 17, 2013) available at: <http://www.dawn.com/news/1029535>.

<sup>218</sup> ‘Minority lawmakers demand reformed marriage, divorce laws’, *Dawn*, (February 16, 2014) available at: <http://www.dawn.com/news/1087262>.

Karachi (south), 81,589 of the registered voters are non-Muslim, which is eight percent of the total.”<sup>219</sup> “In Sindh, there are 358,500 registered voters in three constituencies of MirpurKhas and Umerkot, 211,500 in three constituencies of Tando Muhammad Khan, 188,500 in two constituencies of Tharparkar, 173,000 in three constituencies of Sanghar, 76,000 in one constituency of Tando Allahyar, 49,000 in three constituencies of Hyderabad, 38,500 in two constituencies of Ghotki, 26,000 in three constituencies of Khairpur-Mirs, 36,500 in one constituency of Matiari, 20,000 in two constituencies of Sukkur and 18,000 in one constituency of Jamshoro.”<sup>220</sup>

Even within the 10 of the reserved seats for minorities (general seats), the process of picking a minority member of provincial assembly (MPA), a member of the National Assembly (MNA) or senator is problematic. It has been observed that “[e]ven though Pakistan has more Scheduled Caste Hindus, their elected representatives are mostly upper-class Hindus.”<sup>221</sup> “At present, minority representatives from Sindh are mostly Christians and upper caste Hindus, who do not represent the Scheduled Castes as they do not even like to mix with the lower castes.”<sup>222</sup>

Furthermore, it has been found that members of minority groups are more vulnerable to influence from local landlords and influential candidates.<sup>223</sup>

Given the failure of the state and governments to accord adequate protections to the Ahmadi community, they announced their decision to disassociate themselves from the 2013 general elections.<sup>224</sup> In the lead up to the elections, some Scheduled Caste Hindus protested in Mirpurkhas district against political parties who had only given tickets to upper caste Hindus. In the actual elections several parties fielded candidates belonging to

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<sup>219</sup> Umar Nangiana, ‘Minorities hold the key in eight of Sindh’s districts’, *The Express Tribune*, (April 8, 2013) available at: <http://tribune.com.pk/story/532597/minorities-hold-the-key-in-eight-of-sindhs-districts/>.

<sup>220</sup> Muzaffar Mukhtar, ‘Deprived class: Scheduled Caste Hindus decry non-representation in legislature’, *The Express Tribune*, (October 13, 2014) available at: <http://tribune.com.pk/story/774427/deprived-class-scheduled-caste-hindus-decry-nonrepresentation-in-legislature/>.

<sup>221</sup> Z Ali, ‘Minority rights: For the groups with already small numbers, a further marginalisation in parliament’, *The Express Tribune*, (August 3, 2011) available at: <http://tribune.com.pk/story/222846/minority-rights-for-the-groups-with-already-small-numbers-a-further-marginalisation-in-parliament/>.

<sup>222</sup> Muzaffar Mukhtar, ‘Deprived class: Scheduled Caste Hindus decry non-representation in legislature’, *The Express Tribune*, (October 13, 2014) available at: <http://tribune.com.pk/story/774427/deprived-class-scheduled-caste-hindus-decry-nonrepresentation-in-legislature/>.

<sup>223</sup> Church World Service, ‘Religious Minorities in Pakistan’s Elections’, at 61.

<sup>224</sup> Human Rights Commission of Pakistan, “The State of Human Rights in 2013”, at 89.

minority groups. However, none of them were given districts where they or the party had any realistic chance of victory, meaning their selection was merely a token gesture.<sup>225</sup>

There was also a complete failure on the part of the state to provide a safe environment for those who stood for elections. In Tharparkar district, where two Hindu candidates contested election, a local madrassa distributed a pamphlet urging Muslims not to vote for a Hindu candidate. The ECP failed to take any action despite the fact that the code of conduct for political parties explicitly prohibited seeking votes in the name of religion or a particular sect.<sup>226</sup>

Mahesh Kumar Malani from Tharparkar , PS-61, was the only member of a religious minority from anywhere in Pakistan to win a seat. A lower caste female Hindu bonded labourer contested election from Hyderabad district, PS-50. Despite only procuring 503 votes, her candidacy was seen as a huge boost for minorities.<sup>227</sup>

This speaks volumes of the failure of the state and the inability of the democratic process to protect the rights of minorities. The space in political discourse for the minorities is shrinking fast.

## **7. Federal actions directly affecting minorities in Sindh**

In August 2014, the National Assembly “came out strongly for the Hindus of the historic Umerkot district of Sindh, empowering the speaker to name a special committee to investigate alleged excesses such as murders, kidnappings for ransom and attacks on their temples.”<sup>228</sup> However, despite action by the National Assembly, there has been lack of progress on the case that acted as stimuli for the statements in parliament.<sup>229</sup>

Former CJP, Justice Tassaduq Hussain Jilani, took strong notice of the temples being set ablaze in Sindh and directed the Sindh inspector general of police (IGP) to submit a detailed report over the action taken by the police in this context. He also hinted that

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<sup>225</sup> Ibid at 97.

<sup>226</sup> Ibid at 97.

<sup>227</sup> Ibid at 97.

<sup>228</sup> Raja Asghar, ‘Finally, NA moves for Umerkot Hindus’, *Dawn*, (August 7, 2014) available at: <http://www.dawn.com/news/1123792>.

<sup>229</sup> ‘Voice of minorities: Hindus protest lack of progress in Umerkot killings case’, *The Express Tribune*, (September 21, 2014) available at: <http://tribune.com.pk/story/764993/voice-of-minorities-hindus-protest-lack-of-progress-in-umerkot-killings-case/>.

violence directed against other religions could fall under the purview of blasphemy as outlined in Section 295 of the PPC.<sup>230</sup>

## **8. Conclusion**

Given the increasing intolerance taking root in the country, Sindh is not immune to those larger trends. However, it would be erroneous to reduce the plight of Sindh's minorities to merely a by-product of larger trends within the country. Given the rich history of diversity, it comes as no surprise that the recent wave of violence and episodes of intolerance are seen in the context of a society experiencing these episodes for the first time. It is useful to gauge the shock and horror these episodes produce, not just in minority communities, but also in terms of the ruptures it creates within the larger society of Sindh.

## **9. Recommendations**

1. There needs to be complete overhaul in the manner in which minorities are conceptualized and treated by the law. The personal law of the minorities is currently not thorough enough to cater to the needs of minority groups. Furthermore, any amendments to the law, regarding the matter of marriages and inheritance, needs to be seriously revisited. These amendments cannot and should not take place without consultation with the very minority groups they seek to benefit and govern. An inclusive process of legislation is imperative.
2. Furthermore, the practice of forced conversions needs to be curbed head on with legislation specifically designed to address this societal menace. However, the law should only penalize a "forced" conversion. The word "force" be defined narrowly where violence is imminent or present. Protection needs to be awarded to members of minority groups, especially women, and punishments should be prescribed for the perpetrators of conversions carried out through brute force.
3. The problem of forced evictions needs to be tackled by changes to the law of land acquisition, to give special protection to minority groups in order to prevent their socially and economically weak position from being exploited.

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<sup>230</sup> 'Offence against any religion comes under blasphemy laws, says CJP', *The Daily Times*, (May 14, 2014) available at: <http://www.dailytimes.com.pk/islamabad/14-May-2014/offence-against-any-religion-comes-under-blasphemy-laws-says-cjp>.

4. Legislation needs to be passed to ensure protection of places of worship, declaring these places high security areas, thus making it necessary for the government to give them protection.

It is also useful to make a distinction between interior Sindh and the unique dynamics of Karachi. While Karachi has experienced violent episodes and instances of targeting of minorities in the past, it is a fairly new phenomenon within the rest of Sindh. However, one should refrain from viewing Sindh as a place untouched by intolerance until recently, there have been episodes in the past as well, and there is a marked difference between the Sindh of yesteryears and the Sindh we see today.

## **10. Laws**

- The Sindh protection of Communal Properties of Minorities Act, 2013  
-Sections: 2(b), 3(1)
- Pakistan Penal Code ,1860  
-Sections: 153-A, 295



## **KP, PATA and FATA**

### **1. Introduction**

This chapter looks at the impact of the laws applicable in Khyber Pakhtunkhwa (KP), Provincially Administered Tribal Areas (PATA) and Federally Administered Tribal Areas (FATA), on the religious minorities living in these areas.

The chapter is divided into three sections: Khyber Pakhtunkhwa (KP), Provincially Administrated Tribal Areas (PATA) and Federally Administrated Tribal Areas (FATA) with two further subsections in each. The first subsection gives a brief introduction to territory, while the other identifies and discusses the laws that discriminate against minorities directly or by omission of any protection to them.

KP and FATA form two distinct administrative units and thus their minorities will be dealt with separately. PATA, however, has no separate recorded figures on the population of minorities and hence it will be looked at as part of KP.

KP has a recorded minority population of 0.56% of which Christians account for 0.21 %, Hindus 0.03%, Ahmadis 0.24%, and Scheduled Castes and others make up 0.08% of the minority population. Out of these a majority of the minorities reside in urban areas.

In FATA out of its total population, 0.07% are Christians, 0.03% Hindus, 0.21% are Ahmadis and 0.10% make up Scheduled Castes and others.<sup>231</sup>

KP and PATA fall within the legislative jurisdiction of the provincial legislature. FATA comes under direct federal rule. This area holds a special status as only those Pakistan laws apply here that have been extended to this area by the President. Family laws are excluded from this study due to their special status.

### **2. Khyber Pakhtunkhwa (KP)**

#### **2. (a) -Introduction**

The province of Khyber Pakhtunkhwa lies in the northwest region of Pakistan. It is geographically connected to FATA, the provinces of Punjab and Balochistan and the territories of Gilgit-Baltistan. Renamed as Khyber Pakhtunkhwa through the eighteenth constitutional amendment, it was previously known as North-West Frontier Province (NWFP)<sup>232</sup> created by the British in 1909. Before the Mughals incorporated its territories into their Indian realm, the province, FATA and some areas of Balochistan were part of

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<sup>231</sup> Population by Religion, Sex and Urban/rural divide', Census Report, 2008, Pakistan Bureau of Statistics, Islamabad.

<sup>232</sup> NWFP was renamed Khyber Pakhtunkhwa (KP) in April 2010, by the eighteenth constitutional amendment.

Afghanistan. The Sikhs occupied it in 1818 and it was taken over by the British after 1849. In 1970, the princely states of Amb, Swat, Dir and the areas of Kohistan were merged with KP. They were, however, given a special status and referred to as PATA. Thus, administratively KP has two major parts, one consists of the settled districts and the second part is called PATA.

The laws applicable in Khyber Pakhtunkhwa are Acts, adopted by its own elected Assembly<sup>233</sup>; by the West Pakistan Assembly during the one-unit era and which were inherited when one-unit was undone; Ordinances that were promulgated by different martial law regimes and were later on legitimized through constitutional amendments; and federal laws in areas which have fallen under the provincial jurisdiction after the eighteenth constitutional amendment.

## **2. (b) -Implications of the system and laws applicable in KP on minorities**

### **1. The NWFP Pre-Emption Act, 1987**

This Act concerns the right of pre-emption, which is “a right to acquire by purchase an immovable property in preference to other persons by reasons of such rights...”<sup>234</sup> It does not afford the minorities the right for protection of the pre-emption rights in accordance with their own religions or otherwise. Pre-Emption Act, 1987 repealed the NWFP Pre-Emption Act, 1950. The reason for repealing the 1950 Act as mentioned in the Preamble to the 1987 Act is “*to modify the existing law relating to pre-emption, so as to bring it in conformity with the injunctions of Islam as set out in the Holy Quran and Sunnah.*” The Pre-emption Act, 1987 is therefore, an Islamized version of the law of pre-emption. The non-Muslims are given the right of pre-emption against Muslims and vice versa under Section 18 of the Act, “*A Muslim and a non-Muslim may exercise the right of pre-emption against each other.*” It implies that non-Muslims have “to exercise their right of pre-emption in accordance with the law of another religion. It would have been in accord with the rights of minorities if they were allowed to exercise their religious laws on the subject, if any, or they should be allowed to exercise their right in accordance with the repealed law which was secular or they should have been given any other choice.

### **2. NWFP Establishment of Commission on the Status of Women Act, 2009**

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<sup>233</sup> Khyber Pakhtunkhwa Assembly is the unicameral legislative body of the KP province. It was established under Article 106 of the Constitution 1973 available at [en.wikipedia.org/wiki/Khyber\\_Pakhtunkhwa\\_Assembly](http://en.wikipedia.org/wiki/Khyber_Pakhtunkhwa_Assembly).

<sup>234</sup> North-West Frontier Province Preemption Act, 1987 Section 2(3) available at: <http://www.khyberpakhtunkhwa.gov.pk/Gov/Details.php?id=493>.

The Act provides for the establishment of a “Commission on the Status of Women”<sup>235</sup> at the provincial level for the emancipation of women, equalization of opportunities and socio-economic condition. Section 3 of the Act establishes a commission with no female representation for minorities. Membership in the commission should also be extended to women from religious minorities through amendment in the Act.

### **3. Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010**

The Act provides for “*the care, protection, maintenance, welfare, training, education, rehabilitation and reintegration of children at risk in the Khyber Pakhtunkhwa.*”<sup>236</sup>

Section 3 provides for the establishment of the commission, which does not have any minority representation. The Act should be amended to include a person representing the minorities in the commission as it already has representatives from the civil society including lawyers and Muslim religious scholars.

Section 4 deals with the powers and functions of the commission.

Clause (d) of Section 4 states “*to review all provincial laws, rules and regulations affecting the status and rights of children and propose new laws in this behalf, wherever necessary, to safeguard and promote the interest of child in accordance with the Constitution of the Islamic Republic of Pakistan and obligations under international covenants and commitments. Provided that these obligations and covenants are not repugnant to injunctions of Islam.*”

The provision of repugnancy to Islamic injunctions should not be extended to the rights of children belonging to religious minorities; therefore, this clause needs to be amended.

### **4. The Frontier Education Foundation Act, 1992**

The Frontier Education Foundation was established to take measures for promotion and development of education in private sector.<sup>237</sup>

Section 4 of the Act deals with Board of Directors.

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<sup>235</sup> NWFP Establishment of Commission on the Status of Women Act, 2009 available at: [http://www.af.org.pk/Acts\\_Fed\\_Provincial/KP\\_Bill%20Acts\\_since%202002/KP%202009/Tne%20North-West%20Frontier%20Province%20%20Establishment%20of%20a%20Commission%20on%20the%20Stat us%20of%20Women%20Act,%202009.pdf](http://www.af.org.pk/Acts_Fed_Provincial/KP_Bill%20Acts_since%202002/KP%202009/Tne%20North-West%20Frontier%20Province%20%20Establishment%20of%20a%20Commission%20on%20the%20Stat us%20of%20Women%20Act,%202009.pdf).

<sup>236</sup> Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 available at: [kpcpwc.gov.pk/act\\_english.php](http://kpcpwc.gov.pk/act_english.php).

<sup>237</sup> The Frontier Education Foundation Act, 1992 available at: <http://www.fef.edu.pk/downloads/FEF-Act.pdf>.

Section 4(1) *As soon as may be but not later than two months from the date of commencement of this Act, Government shall constitute the Board of Directors consisting of:-*

*(f).Three nominees of the Chief Minister, comprising a male and a female from an education institution belonging to private sector and one person from a non-governmental organization other than educational institutions.*

Section 4, Clause (f) may be amended to include one of the nominees of the chief minister from minorities as a member of the Board of Governors.

Section 13 of the Act deals with functions of the Foundation and states that the Foundation will modernize curricula with emphasis on Islamic, national, economic and industrial aspects.<sup>238</sup> This clause ignores the religions of minorities, therefore; it may be amended to include their respective religions.

### **5. The Khyber Pakhtunkhwa Local Government Act, 2013**

This is an Act “*to construct and regulate local government institutions in the province of Khyber Pakhtunkhwa and to consolidate laws relating to these institutions and to provide for matters connected therewith and ancillary thereto.*”<sup>239</sup> Sections 17, 24 and 27 should be amended to give due representation to women of minorities in the District Council, Tehsil Council and in the village and neighborhood councils respectively. Section 54 also does not provide for representation of minorities in the ‘Local Government Commission’ and needs to be amended accordingly.

### **6. The North-West Frontier Province Katchi Abadis Act, 1996**

This Act is for the regularisation of Katchi Abadis and their development and improvement.<sup>240</sup> Section 6(4) requires amendment to protect the places where minorities observe their religious rites. They should be protected in the same manner as mosques and graveyards are protected. Their places should not be declared as Katchi Abadis. This requires an amendment in Section 6 to protect their places of worship.

### **7. North-West Frontier Province Housing Facilities for Non-Proprietors in Rural Areas Act, 1987**

This Act provides for housing facilities to non-proprietors in rural areas. Sections 3, 4 & 5 enable the government to make housing schemes for the non-proprietor Musthiq-e-Zakat by utilizing the Zakat funds. Since non-Muslims are not entitled to receive Zakat,

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<sup>238</sup> Id. at Section 13, Clause (e) sub-clause (VI).

<sup>239</sup> The Khyber Pakhtunkhwa Local Government Act, 2013 available at: <http://www.khyberpakhtunkhwa.gov.pk/cms/rules/kp.gov.pk-rules-%208d553fa34df147c898663ebf39a0218d.pdf>.

<sup>240</sup> The North-West Frontier Province Katchi Abadis Act, 1996 available at: [http://cmsdata.iucn.org/downloads/north\\_west\\_frontier\\_province\\_katchi\\_abadis\\_act\\_1996.pdf](http://cmsdata.iucn.org/downloads/north_west_frontier_province_katchi_abadis_act_1996.pdf).

therefore, these sections may be amended to make provision for the allotment of plots for housing to non-proprietors of minorities.<sup>241</sup>

### **3. The Provincially administered tribal areas (PATA)**

#### **3. (a) -Introduction**

Article 246(b) of the 1973 Constitution of Pakistan (hereinafter called the constitution) has designated provincially administered sub-divisions known as the Provincially Administered Tribal Areas (PATA). Provincially Administered Tribal Areas of Khyber Pakhtunkhwa include districts of Swat, Lower Dir, Upper Dir, Chitral, Shangla, Bunir, Amb, district Kohistan of Hazara Division and district Kala Dhaka. PATA differs from the rest of the province, since no federal or provincial laws apply to it unless specifically extended by KP's governor, the federation's representative, with the president's consent. Due to various reasons, both political and administrative, it has been governed by a parallel justice system under a series of different legal frameworks, including the PATA Regulations (1975-1994), the Nifaz-e-Shariat (1994-1999) and the Nizam-e-Adl, 1999. In April 2009, the National Assembly endorsed yet another legal framework, the Nizam-e-Adl Regulation, 2009 which imposed Shariah (Islamic law) through qazi (religious) courts as part of a military-devised peace deal with Swat-based militants.

PATA has representation in the national and provincial assemblies, like any other district of KP. Under Article 247 of the constitution, which applies to both PATA and FATA, no law passed by the federal or provincial legislature has effect in PATA unless it is specifically extended, with the president's consent, by the KP governor, the federation's representative. The governor may also "*make regulations for [PATA's] peace and good government,*" again with presidential consent. Hence, while PATA's national and provincial assembly members can present, debate and vote on bills, those bills require both the KP governor's and the president's assent to become law.

Originally, the jurisdiction of the high court and the Supreme Court did not extend to either PATA or FATA. Their jurisdictions were extended to PATA through an act of parliament in 1974. This is a critical distinction from FATA, which still lacks a formal justice system. This was followed by a gradual extension of laws of the land to PATA districts, including the Evidence Act, the Criminal Procedure Code (CrPC), and the

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<sup>241</sup> North-West Frontier Province Housing Facilities for Non-Proprietors in Rural Areas Act, 1987 available at: <http://www.khyberpakhtunkhwa.gov.pk/Gov/Details.php?id=500>.

Pakistan Penal Code (PPC). However, the federal government maintained a judicial system based, along with normal courts, on Shariah and jirgas (tribal councils).

In 1975, after mass public protests over forest royalties in the region, the government introduced two separate regulations, the PATA Criminal Law (Special Provisions) Regulation and PATA Civil Procedure (Special Provisions) Regulation. These gave the local bureaucracy greater latitude in maintaining law and order and settling disputes. They vested judicial powers in the deputy commissioner, who constituted jirgas and referred criminal and civil cases to them. Although jirgas heard the bulk of cases, a parallel system of district and sessions court judges heard three cases of specific kinds: where the government was an interested party; where minors were involved; and offences under Islamic law, such as the Hudood Ordinances and blasphemy laws.

The jirgas were chaired by a *tehsildar* (local land revenue official) or a deputy, and included two representatives from each contesting side in criminal cases; civil cases had one representative from each side. Jirgas would apply *rewaj* (customary law) as well as Shariah. The deputy commissioner had final authority but would generally delegate it to assistant commissioners (ACs) or other subordinates, who were also tasked with overseeing implementation of the rulings. Parties could appeal to the division's commissioner, a senior bureaucrat. The provincial home secretary had revisional authority. Parties could file writ petitions to the Peshawar High Court and finally the Supreme Court.

In 1990, the Peshawar High Court struck down the PATA Regulations as violating fundamental rights enshrined in Article 25 of the constitution. Upholding the decision in 1994 on the grounds that the Regulations undercut the objective of good governance, the Supreme Court ruled that regular civil and trial courts, manned by district and sessions judges, would hear cases in PATA. This essentially merged PATA's justice system into the mainstream legal framework.

However, PATA's judicial system again diverged from the legal mainstream when President Farooq Leghari and then-NWFP Chief Minister Aftab Sherpao, facing a violent Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM)-led campaign for Shariah in 1994, promulgated the Nifaz-e-Shariat Regulation. It imposed Shariah in PATA, but only nominally, by renaming sessions and civil judges and judicial magistrates qazis, while the courts remained under the jurisdiction of the Peshawar High Court. Dissatisfied with this cosmetic change, the TNSM continued to campaign violently for a more rigid

enforcement of Islamic law, gaining another concession from Islamabad in 1999 – promulgation of the Nizam-e-Adl, 1999 which repealed the Nifaz-e-Shariat Regulation and required judges to consult with clerics and religious scholars.

This legal framework remained in place until April 2009. Following yet another violent campaign by the TNSM, now operating as a Tehreek-e-Taliban Pakistan (TTP) faction, the government signed a peace deal that conceded the militant's demands for imposition of Shariah in Swat and adjoining PATA districts. Under Nizam-e-Adl Regulation, 2009 Shariah is enforced in PATA by qazi courts, presided over by government-appointed judicial officers trained in Islamic law; an appellate court, the *Dar-ul-Qaza*, was established at the level of the high court, and a final appellate court, the *Dar-ul-Darul-Qaza*, was established at the level of the Supreme Court. With the enactment of this legal framework, many national laws, including ones that protect women, are no longer extended to PATA.

### **3. (b) -Implications of the system and laws applicable in PATA on minorities**

#### **Shariah Nizam-e-Adl Regulation, 2009**

This is a Regulation to “*provide for Nifaz-e-Nizam-e-Sharia'h through Courts in the provincially Administered Tribal Areas for the North-West Frontier Province, except the Tribal Areas adjoining Mansehra district and the former State of Amb.*”<sup>242</sup>

Section 6 of the Act deals with the qazis and their powers and functions. It is discriminatory as it excludes minorities to function as qazis in the area of Malakand. Section 7 deals with executive magistrates. Section 7(2) may need revisiting as it states that “*the District Magistrate and all other Executive Magistrates shall discharge their function, responsibilities and exercise powers according to the established principles of Shariah and other laws for the time being in force in the said area.*” It would not be possible for a magistrate from a minority to exercise his powers in accordance with Shariah as such is not applicable on him. Section 9(1) states that proceedings and resolution of cases must be in accordance with Shariah, this again is highly problematic when minorities are being dealt with. Section 13(5) states that where a case is referred for opinion to *Musleheen* is in accordance with the Shariah, the court will make it as rule and will announce it but if is found to be otherwise then it will be null and void. This subsection requires amendment to bring into its ambit the opinions expressed in cases

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<sup>242</sup> Shariah Nizam-e-Adl Regulation, 2009 available at:  
[http://www.app.com.pk/en/index.php?option=com\\_content&task=view&id=73492&Itemid=2](http://www.app.com.pk/en/index.php?option=com_content&task=view&id=73492&Itemid=2).

involving minorities. Section 14(2) also requires amendment to provide for dealing with cases of minorities which are not family matters.<sup>243</sup>

#### **4.The Federally administered tribal areas(FATA)**

##### **4. (a) -Introduction**

FATA comprises seven predominantly Pashtun administrative units known as tribal agencies, and six tribal areas known as Frontier Regions<sup>244</sup>

It has an ambiguous constitutional and legal status. FATA has a special status: it is a part of Pakistan and yet ‘independent’ as government documents call them. This independent status means that, at best, tribesmen could decide their internal civil disputes through the traditional jirga system. Moreover, tribesmen as per their traditions could keep and display arms publicly. Otherwise this independence has had nothing to do with political or strategic affairs.

Provisions of the constitution regarding the tribal areas are quite unclear: according to Article 247(1) the executive authority of the Federation shall extend to FATA. But strangely according to clause (3) of the same Article, it is from parliament that the executive authority of the federation or government of Pakistan is derived, but none of its (parliament’s) Acts could be applied to FATA (unless the president so directs).

The administrative set-up of FATA hinges upon a government official known as ‘political agent’ (PA). Constitutionally, the president of Pakistan has discretion to make laws for FATA or bring about any change in the status of the territory. The president looks after FATA through his nominee, the governor of Khyber Pakhtunkhwa, who is ex-officio the top administrator of FATA.

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<sup>243</sup>“ Notwithstanding anything contained in any law for the time being in force/ all cases, suits, inquires, matters and proceedings in courts, pertaining to the said area, shall be decided by the courts concerned in accordance with Sharia’h: Provided that cases of non-Muslims in matters of adoption, divorce, dower, inheritance, marriage, usages and wills shall be conducted and decided in accordance with their respective personal laws.”

<sup>244</sup> Article 246 (c) of the constitution states: “Federally Administered Tribal Areas includes (i) Tribal Areas, adjoining Peshawar district; (ii) Tribal Areas, adjoining Kohat district; (iii) Tribal Areas, adjoining Bannu district;

(iiia) Tribal Areas adjoining Lakki Marwat District;

(iv) Tribal Areas adjoining Dera Ismail Khan district;

(iva) Tribal Areas adjoining Tank District;

(v) Bajaur Agency; (vi) Orakzai Agency; (vii) Mohmand Agency; (viii) Khyber Agency; (ix) Kurram Agency; (x) North Waziristan Agency; and (xi) South Waziristan Agency.



Frontier Crimes Regulation, 1901 (FCR) is the only legal-administrative mechanism through which FATA has been linked to the state of Pakistan. The FCR law that has always been termed as draconian by the tribesmen and experts for its repressive and inhuman nature has worked as a legal framework to manage the affairs of FATA since 1901. The British devised the FCR to achieve the tasks of legal, political and social control in FATA. However, this huge task was addressed by giving sweeping powers not only to the PA but also to the notables in different parts and tribes of FATA.

To date the judicial set-up in FATA is completely informal and traditional. Tribal jirgas not only decide civil cases but also many criminal cases of varying nature. Certain collective and important matters are also decided by the high-powered jirgas. Jirga members are nominated by the PA and maybe construed as agents of the government.

Neither the Supreme Court of Pakistan nor the Peshawar High Court has any jurisdiction in FATA. The government has introduced reforms under which the draconian clauses of the FCR, like Section 40, have been amended. However, many harsh elements of the FCR remain intact which need to be changed to make the framework more humane.

#### **4. (b) -Implications of the system and laws applicable in FATA on minorities**

The minority population of FATA consists of 5,740 Christians, about 7 to 8 thousand Hindus and 30 to 33 thousand Sikhs, mostly in Kurram, Orakzai and Khyber Agencies. Minority population in FATA is about 50,000. Christians are mostly settlers who came at different times from different parts of Punjab after 1909; Hindus and Sikhs are indigenous Pakhtuns.

##### **1. The Frontier Crimes Regulation, 1901(Amended in 2011)**

This Regulation provides for maintenance of peace, law and order and good governance. Clause (b) of Section 2 does not provide for the inclusion of representative of minorities in the Council of Elders. It therefore, needs to be amended to provide the same.

##### **2. The Federally Administered Tribal Areas Local Government (Election) Regulation, 2002.**

This is a Regulation to regulate FATA local government elections. Subsection (1) of Section 8 may be amended to provide for minority women, and also to give representation to minorities in the nominated members in the Agency Council.

Subsection (2) of Section 9 may be amended to provide for inclusion of women from minorities, and representation of minority in the nominated members in the Tehsil Council. There is no representation of minorities in the Union Council and therefore, Section 10 of the Regulation may be amended to give representation to the minorities.

3. Christians living in FATA, some living there since 1914, cannot get a domicile. Those living for generations now are issued permanent residence certificates, which is not the same as a domicile. Not that FATA domicile is a very attractive thing but still this discrimination denies the minorities quotas in jobs, educational institutions or any other benefits including representation etc.

4. Hindus/Sikhs and other indigenous minority communities (other than the Christians mentioned above) are given domicile but they are not represented in Jirgas etc. They cannot become Maliks and thus cannot be part of any Jirga.

5. Though minorities are allowed representation in all provincial assemblies, National Assembly and the Senate, there is no representation of minorities from FATA at any level.

## **5. Recommendations**

1. Laws based on Shariat should not be applied to non-Muslims.
2. There should be representation of women from minorities in the District Council, Tehsil Council, and in the Local Government Commission.
3. One member of religious minorities should be included in the Board of Governors under Frontier Education Foundation Act, 1992.
4. Permanent Residence Certificate (PRC) issued to the Christians should be replaced with domicile certificates.
5. Hindus/Sikhs and other indigenous minority communities should be given representation in Jirgas.
6. The places where minorities observe their religious rites should not be declared "Katchi Abadis".
7. There should be provisions for the allotment of plots for housing to non-proprietors of minorities.

8. There should be a representative of minorities in the Council of Elders.
9. In the Federally Administered Tribal Areas, local government representation should be given to minorities in the Agency Council, Tehsil Councils and Union Council.
10. Minorities from FATA should be given representation in provincial assemblies, National Assembly and Senate.

## **6. Laws**

- The NWFP Pre-Emption Act, 1950
- The NWFP Pre-Emption Act, 1987  
-Section: 18
- NWFP Establishment of Commission on the Status of Women Act, 2009  
-Section: 3
- Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010  
-Sections: 3, 4
- The Frontier Education Foundation Act, 1992  
-Sections: 4, 13
- The Khyber Pakhtunkhwa Local Government Act, 2013  
-Sections: 17, 24, 27, 54
- The North-West Frontier Province Katchi Abadis Act, 1996  
-Section: 6
- North-West Frontier Province Housing Facilities for Non-Proprietors in Rural Areas Act, 1987  
-Sections: 3, 4, 5
- Shariah Nizam-e-Adl Regulation, 2009  
-Sections: 6, 7(2), 9(1), 13(5), 14
- Frontier Crimes Regulation, 1901  
-Section: 40
- The Frontier Crimes Regulation, 1901 (Amended in 2011)  
- Section: 2 (b)
- The Federally Administered Tribal Areas Local Government (Election) Regulation, 2002

-Sections: 8(1), 9(2), 10

- PATA Criminal Law (Special Provisions) Regulation, 1975
- PATA Civil Procedure (Special Provisions) Regulation, 1975
- The Constitution of Pakistan 1973

-Articles: 25, 246 (b), 247

## Gilgit Baltistan

### 1. Introduction

Situated in the northern part of Pakistan, the territories of Gilgit-Baltistan are unique in their geo-political importance as they share borders with the province of Sinkiang in China, Afghanistan, Khyber Pakhtunkhwa and Kashmir — both occupied and Azad.

In 1840, the armed forces of Maharaja Gulab Singh invaded Baltistan while Gilgit was conquered in 1842, except for the states of Hunza and Nagar. Gilgit-Baltistan has remained under the command and control of the Federation of Pakistan administratively since its independence. Frontier Crimes Regulation, 1901 remained in force here until 1974. During the regime of General Zia-ul-Haq, martial law was extended to Gilgit-Baltistan as Zone “E” but Gilgit-Baltistan still could not become part of the Islamic Republic of Pakistan constitutionally.

Gilgit-Baltistan still does not fall under the umbrella of Article 1, of the Constitution of Pakistan 1973. However, it is covered under Clause (d) of Sub Article 2 and Sub Article 3 of the Article 1 of the constitution. The people of Gilgit-Baltistan have no representation in the parliament of Pakistan. Resultantly, they have been deprived of the many fundamental rights granted in a democratic state. The Supreme Court of Pakistan in the case of **Al-Jahad Trust and Nine Others v. The Federation of Pakistan** in Constitutional Petitions Nos. 11 and 17 of 1994 passed an order on May 28, 1999 directing the Federation of Pakistan to extend the provision of fundamental rights to the people of the Northern Areas (Gilgit-Baltistan) within six months. This judgment has not yet been carried out. The discrimination against the people of Gilgit-Baltistan starts with the denial of their basic political rights.

The Federation of Pakistan introduced political reforms with the abolishment of *Jagirdari* feudal land-holding system, by extending it to Gilgit-Baltistan in 1974. In 1982, Gilgit-Baltistan was given three observer seats in the central Majlis-e-Shoora (parliament). In 1994, the ‘Council of Northern Areas’ was replaced by the ‘Legislative Council of Northern Areas’ and the posts of deputy chief executive and speaker were introduced. The Legislative Council of Northern Areas was replaced by the Northern Areas Legislative Assembly during General Musharraf’s rule in 2007. Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 was passed by Pakistan People’s Party government. Through this a new body, the Gilgit-Baltistan Council has been created. It is headed by the prime minister of Pakistan. A new position of governor has been

introduced while the position of deputy chief executive has been replaced by the chief minister. According to the Order of 2009, the power to legislate on 54 subjects lies with the Council while 61 subjects are under the jurisdiction of the Gilgit-Baltistan Assembly.

## 2. Religious Background

Before the spread of Islam in this region, the people were mostly Zoroastrians, Buddhists, Hindus, and Bons. Stupas, statues, and carvings are a common sight in Gilgit-Baltistan as a testament to the ancient religions. Incidentally these statues, stupas, and places of worship are deteriorating and require preservation.

## 3. Minorities in Gilgit-Baltistan

Since no reliable official data is available, for tabulating the population of religious minorities in this area approximate values have been used.

Christians are the largest religious minority population residing in Gilgit-Baltistan. Most are permanently settled in the area due to economic and employment opportunities. Most Christians are either in the service or tourism sector, whilst others are in the Army. A breakdown of the number of Christians as well as their churches is given below.

Sr.#	AREAS	NO. OF CHURCHES	POPULATION
	Gilgit City	02	700
	Diamar	01	100
	Skardu City	01	200
	Ghanche	Nil	100
<b>GRAND POPULATION:</b>			<b>1100/-</b>

Interviews conducted with elders from the Christian community as well as preachers reveal that they have perhaps not been subjected to discrimination nor have they faced any hurdles to the observance of their religious rites from the Muslim community.

The Shining Light Community Development Organization working in Gilgit is a Christian organization, which is engaged in empowering communities through education, training and development work. They also have a public school namely “Shining Light”

in Jutial, Gilgit, where 400 students are enrolled and are receiving quality education. Out of these 400 students only 55 are Christian and the rest are Muslim. The school has students enrolled from various economic backgrounds including the children of judges, bureaucrats and politicians, which speaks highly of the school. The Christian community in Gilgit-Baltistan is undoubtedly playing an important role in promoting quality education in the region.

All kinds of disputes are resolved with the intervention of the church. However, a grave issue is pending. The Christian community living in Baltistan does not have a graveyard allotted to them for the burial of their dead and they are compelled to move the dead bodies to either their native land or Gilgit.

There are approximately 100 Bahais and Ahmadis living in the Gilgit-Baltistan region. The Ahmadiya community has its Bait-ul-Ahmadiya in Gilgit.

Though Hinduism and Buddhism were amongst the ancient religions in Gilgit-Baltistan, during the course of the research for this paper, no person of either religion was found living in the region.

While examining the laws extended to Gilgit-Baltistan, no law including acts, orders, ordinances, and rules were found to be repugnant to the rights, status, dignity, belief, and self-esteem of the minorities. It is pertinent to mention that federal laws are extended to Gilgit-Baltistan subject to a notification issued by the Gilgit-Baltistan Council.

It is important to preserve the holy sites of not only the religious minorities living in Gilgit-Baltistan but also those of the ancient religions. Heritage sites of Sikhs, Hindus and Buddhists must be preserved through proper legislation by the Gilgit-Baltistan Legislative Assembly. The lax attitude of the government has resulted in the loss of many evacuee properties, which have lost their historical importance and value whilst others have been severely damaged. Some important sites for restoration are:

- a. Gurdwara, Skardu City.
- b. Buddha Rock, Manthal, Skardu.
- c. Buddha Rock, Kargah Nala, Gilgit.
- d. Buddhist rock carvings found at different places in Baltistan — village Nar, Lamsa Shigar, Mehdi Abad, Sailing Khaplu.

#### **4. Recommendations**

1. The government should continue to ensure that religious minorities enjoy a non-discriminatory status in Gilgit-Baltistan.
2. The holy sites of religious minorities should be preserved. HRCP and other civil society organizations should communicate their concerns to the authorities in Gilgit-Baltistan as well as the Federal government.
3. The Christian community living in Baltistan should have a separate graveyard allotted to them for the burial of their dead.

#### **5. Laws**

- Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009



# Azad Jammu and Kashmir

## 1. Introduction

Azad Jammu and Kashmir is a self-governing state, with a special relationship with the state of Pakistan. The subjects of defence, foreign affairs, currency, and coinage and international trade are handled by Pakistan. Before partition it was part of the erstwhile state of Jammu and Kashmir which was one of the 565 princely states in the sub-continent. For long time the legal and constitutional structure of Azad Jammu & Kashmir remained dependent on the policies of the various governments of Pakistan. After continued uncertainties, in 1974 AJ&K Interim Constitution Act was promulgated (hereinafter called the Act 1974).

A list of 18 fundamental rights was incorporated in it as laid down in Section 4(4) of the Act 1974. Right No.10 relates to the freedom of religion and belief of the state subjects. Right No.11 prohibits taxation for the purpose of any particular religion. Right No.12 protects the state subjects from receiving religious instructions or taking part in any religious ceremony of any religion other than his own. The above noted rights along with others, with some modifications, are similar to the rights provided in the 1973 Constitution of Pakistan (hereinafter called the constitution).

The majority of the laws enforced in Azad Jammu & Kashmir have been adapted time to time from those enforced in Pakistan.<sup>245</sup> The territory has maintained a climate of religious harmony and tolerance to a greater extent than Pakistan. To assess the minorities' freedom of belief it may be useful to look at the first information reports (FIRs) registered in district Mirpur. No FIR was registered in year 2013 in any one of six police stations in district Mirpur under Sections 295 to 298-C, Chapter XV of Azad Penal Code, corresponding to the Pakistan Penal Code (PPC),1860. Only one FIR was registered in 2014 – against the Geo Television Network. Since liberation, the AJK governments have been keen to Islamize the existing laws and to introduce the new Islamic laws but have not met with any significant success.

The population of AJ&K is almost 100% Muslim. However, within the Muslims, there are reports of inter-sect tensions but these have rarely turned violent. Islam is the state religion of AJ&K and no law against the injunctions of Islam can be promulgated.

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<sup>245</sup> The AJK Adaptation of Laws Resolution 1948; The AJK Adaptation of Laws Act, 1959; The AJK Adaptation of Laws Act, 1988; The AJK Council (Validation and Adaptation) Act, 1998.

## **2. State of Jammu and Kashmir**

### **2. (a) -Brief history<sup>246</sup>**

The erstwhile state of Jammu and Kashmir comprised Kashmir, Jammu, Gilgit, Baltistan, Ladakh, Kargil, and Aksai Chin. The total area of un-divided Jammu and Kashmir was 85,806 square miles. Geographically and physically, it was mostly located in the Himalayan Mountains and stretched out in the present northeast of Pakistan and northwest of India, Russia, China, and Afghanistan also bordered it towards the north. It was one of the four largest states in the sub-continent among the 562 princely states at the time of its division in 1947. It was also one of 21 major states which actually had state governments. The Muslims of Jammu and Kashmir started a war of liberation against its Dogra ruler at the time of partition of the subcontinent in 1947.

### **2. (b) -Liberation of Azad Jammu and Kashmir**

The territory at present called Azad Jammu and Kashmir (comprising 5134 square miles) and Gilgit-Baltistan (28,000 square miles) were liberated by the people of the respective regions. The Northern Areas were historically and constitutionally part of the state of Jammu and Kashmir before August 14, 1947. But under the Karachi Agreement of 1949, the leadership of the Muslim Conference, rather Azad Jammu & Kashmir, handed over the control of Gilgit-Baltistan to the federal government of Pakistan.<sup>247</sup> Unlike Azad Jammu & Kashmir, Gilgit-Baltistan did not have any constitutional and legal power and was controlled by the federal government of Pakistan till 2009, when the government of Pakistan introduced Gilgit-Baltistan Empowerment and Self-Governance Order, on August 28, 2009. Azad Jammu and Kashmir is separated by the Line of Control from that part of the state of Jammu & Kashmir which is held by India.

### **2. (c) -Constitutional and legal history**

The official name of the territory under Section 2 of the Act 1974, is “Azad Jammu & Kashmir” (hereinafter to be referred as AJ&K) and it consists of the territories of the state of Jammu & Kashmir for the time being under control of the government of AJ&K. The population of AJ&K is about 4 million. It has three divisions, ten districts, 32 sub-divisions, and 48 police stations.<sup>248</sup>

### **2. (d) -Azad Jammu & Kashmir Interim Constitution Act, 1974**

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<sup>246</sup> Justice(r) Syed Manzoor Hussain Gilani, “The Constitution of Azad Jammu & Kashmir”, 1<sup>st</sup> edition 2008, National Book Foundation, Islamabad.

<sup>247</sup> A. Matters within purview of government of Pakistan, (viii) “All affairs of Gilgit and Ladakh areas under control of the Political Agent. ”

<sup>248</sup> AJ&K Portal available at: [www.ajk.gov.pk/index.php](http://www.ajk.gov.pk/index.php).

The parliamentary form of government replaced the presidential form of government under the AJK Interim Constitution Act, 1974 (hereinafter referred to as Act 1974). There is a legislative assembly which is to be elected on adult franchise basis.<sup>249</sup> The prime minister is elected by the members of the legislative assembly and he is also the executive head of the state. The president is elected by the members of the AJ&K Assembly and AJ&K Council and he is the constitutional head of the state. The AJ&K Council has been created to facilitate special relationship with Pakistan as the Chairman of the Council is the prime minister of Pakistan and five members of federal cabinet are among its members.<sup>250</sup> The prime minister of Pakistan, as the Chairman of the Council, has legislative as well as executive powers regarding the matters about which he has been given powers under the Act 1974. The Supreme Court of AJ&K substituted the Judicial Board, and became the apex and court of final resort of the state.<sup>251</sup> The Supreme Court has not been conferred any original jurisdiction. It has appellate, review, revision and advisory jurisdiction. Under Section 42-A the Supreme Court has been granted inherent powers to issue any direction or order to do complete justice in any matter pending before it. There is also a high court under Section 43, which has been granted the power to issue certain writs under Section 44 of the Act 1974, along with powers of an appellate and revision court.

### **3. Freedom of religion in Azad Jammu and Kashmir**

#### **Constitutional context**

Islam is the state religion of Azad Jammu & Kashmir as enunciated and laid down in Section 3 of the Act 1974. The corresponding provision in the constitution of Pakistan is Article 2. The wording of the Section 3 of the Act 1974 is the same as of Article 2 of the constitution. Several other Muslim countries also declare Islam as the state religion. But no country other than Pakistan and Azad Jammu & Kashmir provides legal definitions of Muslim and non-Muslim. Section 2(3) of the Act 1974 provides the definition of “non-Muslim” and Article 260(3) of the constitution of Pakistan lays down the definition of “Muslim” and “Non-Muslim”.<sup>252</sup>

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<sup>249</sup> AJ&K Interim Constitution Act 1974, Section 22.

<sup>250</sup> *ibid*, Section 21.

<sup>251</sup> *ibid*, Section 42, 42-D.

<sup>252</sup> Section 2(3), “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 prophet in sense of the word or of any description whatsoever, after Muhammad (peace be upon him), or recognises such a claimant as a proper or religious reformer, is not a Muslim for the purposes of this Act or law.”

The Ahmadis/ Qadianis have been declared as non-Muslim in Azad Jammu and Kashmir as in Pakistan. Section 5(4) makes it mandatory for the president of Azad Jammu and Kashmir to be a Muslim. Under Section 5(6) it is mandatory for the president to make an oath before entering into office, and form of oath means that no non-Muslim may be elected as president. The prime minister, the chief justice of AJK, the chief justice of the High Court of AJK, the speaker and the deputy speaker of the assembly, the ministers, the members of assembly, the advisors, the auditor-general of AJK also can only be Muslim. The Islamic character of state is further manifested in Section 31(5) of the Act 1974, which lays down that “no law shall be repugnant to teaching and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought into conformity with the Holy Quran and Sunnah.” Further, Section 32 postulates that the Assembly may consult the Council of Islamic Ideology to determine whether any proposed law is repugnant to injunctions of Islam. The superior courts of Azad Jammu & Kashmir have power to examine any law, rules and customs in the light of injunctions of Islam and if found against such tenets they can declare it unconstitutional and void.<sup>253</sup> The courts are required to interpret all laws in the light of Islamic principles as laid down in the Quran and Sunnah and such interpretation adopted has to be nearer to Islam.<sup>254</sup> This makes it abundantly clear that while examining the laws affecting the freedom of religion and belief of the state subjects, the courts of AJ&K may test them by the principles provided in the Quran and Sunnah and if found repugnant to the teaching of Islam, declare the same as void.<sup>255</sup>

Therefore, in context of religious freedom, courts are required to interpret Section 31(5) of the Act 1974 and all statutory provisions in accordance with the Holy Quran and Sunnah. The legislative and executive actions are also required to be examined and adjudged under the principles laid down in Quran and Sunnah.

#### **4. The fundamental rights**

The Act 1974 provides under Sub-Section 4 of Section 4, a list of 18 rights, which are usually called fundamental rights. These rights are to some extent similar to the fundamental rights as laid down in chapter II of the constitution of Pakistan. Section 4 provides and guarantees that no law shall be made which contravenes the fundamental

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<sup>253</sup> PLD 1991 AJ&K 76.

<sup>254</sup> PLD 2000 AJ&K 1; PLD 1985 AJ&K 95; PLD 2011 FSC 1.

<sup>255</sup> PLD 1979 SC AJ&K 139; PLD 1991 AJK 76; PLD 2000 AJK 1.

rights and if an existing law contravenes the fundamental rights, the same could be struck down.<sup>256</sup> These 18 civil and political rights are:

1. Security of person;
2. Safeguard as to arrest and detention;
3. Slavery and forced labour prohibited,
4. Protection against the retrospective punishment;
5. Freedom of movement;
6. Freedom of assembly;
7. Freedom of association;
8. Freedom of trade, business or profession;
9. Freedom of speech;
10. Freedom of religion;
11. Safeguard against taxation for purposes of any particular religion;
12. Safeguard as to educational institutions in respect of religion etc.;
13. Provision as to property;
14. Protection of property;
15. Equality of state subjects;
16. Non-discrimination in respect of access to public places;
17. Safeguard against discrimination in services; and
18. Abolition of untouchability

## **5. Protection of religious freedom under fundamental rights**

### **Religious Freedom as a fundamental right**

Before partition, except for short intervals, the inhabitants of the state of Jammu and Kashmir received discriminatory treatment from the rulers, irrespective of the religion or sect they belonged to.<sup>257</sup> The need for laws providing religious freedom and protection to religion, beliefs, and the practices of the respective religions had always been felt. As importance of the protection of religious freedom is universally recognised and has been incorporated in international conventions<sup>258</sup>, the government of Azad Jammu & Kashmir could not live in isolation. Section 4(4) 10 of the Act 1974 is analogous to the provisions of Article 20 of the constitution of Pakistan, Article 18 of Universal Declaration of

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<sup>256</sup> 2002 CLC 1130.

<sup>257</sup> G.M.Mir, “ Kishwar-e-Kashmir ki Panch Hazaar Sala Tareekh”, 2004 Rizwan Books & Publishers, Mirpur.

<sup>258</sup> Universal Declaration of Human Rights, UNO GA Resolution 217(III), available at: <http://www.un.org/en/documents/udhr/>.

Human Rights and Article 20 of the constitution of India, though it places some restrictions in its proviso. The same is reproduced here for convenience:

**Article 10 of the Act 1974: Freedom of Religion. –**

*Subject to law, public order and morality-*

*(a) every state subject has the right to profess and practise his religion; and*

*(b) every religious denomination and every sect thereof has the right to establish, maintain and manage its places of worship.*

*Provided that nothing contained in sub-paragraphs (a) and (b) shall be so construed as to abridge the authority to promulgate laws that may prescribe prohibition or penalty for conversion from Islam or the act of converting or the attempt of converting a Muslim to some other religion.*

The scope of religious freedom given in the Act 1974 is narrow as compared to the corresponding provisions of the constitution of Pakistan and international covenants. A bare reading of clause (a) of Right No. 10, as above mentioned, reveals that the non-state subjects residing in AJ&K cannot claim the protection of this right if any restriction is imposed on them regarding practice or professing of their religion by them. Besides, only such religious practices are protected which are an integral part of the religion. Right No. 10 does not include, like corresponding provision of Pakistan, the words ‘propagate’ which means that propagation of any religion other than Islam is prohibited, and in clause (b) of Right No. 10, the wording ‘establish, maintain, and manage place of worship’ implies that establishment of only ‘places of worship’ is allowed and creation of ‘religious institutions’ is not allowed. Under the proviso attached to this section, the state may promulgate law prohibiting and penalizing the conversion, act of conversion, or attempt at conversion of a Muslim to any other religion.<sup>259</sup> Unlike corresponding constitutional provision of other countries, the constitutional provision prohibits conversion or attempt to convert from Islam. Further, it does not prohibit conversion from other religions. This prohibition is contrary to Article 18 of the Universal Declaration of the Human Rights. The right of freedom of religion is subject to law, public order, and morality.<sup>260</sup>

**Article 11 of the Act 1974: Safeguard against taxation for purposes of a 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.*

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<sup>259</sup> AJ&K Interim Constitution Act, 1974.

<sup>260</sup> PLD 1983 SC AJK 95.

Right No. 11, Section 4 (4) prohibits the imposition of any special tax the proceeds of which are to be spent on a religion other than the religion of that person. It provides this protection to every 'person' living in Azad Kashmir, and not only to 'state subjects.' There is a similar provision in the constitution of Pakistan. It means that no non-Muslim can be compelled to pay any tax the proceeds of which will be spent on the promotion of a religion other than his religion. But no research has been made, and no study is available to show how much money is spent by the government on the religious institutions of different communities.

**Article 12 of the Act 1974: Safeguard 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) 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.*

*(3) No state subject 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) 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.*

*(5) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice, and the Government shall not deny recognition to any such institution on the ground only that the management of such institution vests in that community or denomination.*

*(6) Nothing in this paragraph shall prevent any public authority from making provision for the advancement of any society or educationally backward class of State Subjects.*

The right provided under this section is an extension of rights provided under the preceding two sections i.e. Sections 10 and 11. As discussed earlier freedom of religion is provided to the 'state subjects' only, whereas under this section and the preceding one, safeguards have been provided to every person, whether he is 'state subject' or not. But right to admission in educational institutions receiving aid from public exchequer is only guaranteed to the 'state subjects.' Every religious community has been provided

protection to provide religious education and instruction to the students belonging to that community. No person can be compelled to receive religious education in any education institution other than one of his religion. But in reality there is no regulation, check or curb on teachers of educational institutions to prevent them from propagating their religion or version of religion, sect etc., and not to criticize in the class rooms, the religion, sect, community other than their own.<sup>261</sup> We have observed increase in the practice of teachers at not only government funded schools but also at private ones to malign, criticize other religions, sects or communities during classes in the schools. This negatively impacts the tender minds of the students belonging to the religion, sect or community other than that of the teacher.

#### **Article 17 of the Act 1974: Safeguard against discrimination in service-**

Under Right No. 17 of Section 4(4) protection has been provided against discrimination in the appointments to the service of the state on basis of race, religion, caste or sex. But the fact is, that discrimination on various bases is practised. The appointments, promotions and transfers of civil servants can easily be found to have been made on the basis of links with the people at helm of affairs. In Azad Jammu and Kashmir, no non-Muslim is holding the post of an officer. Only sanitary workers in municipal corporations and some nursing staff in hospitals are found in service.

Under Section 54 of the Act 1974, the president of AJK may suspend all or any of the fundamental rights during the proclamation of emergency made under Section 53 of the Act 1974.

## **6. Laws which affect religion and belief**

### **1. The AJ&K Court and Laws Code, 1948<sup>262</sup>**

#### **Section 42: Laws to be administered:-**

*In questions regarding inheritance to land, immoveable property, rent and goods, succession, special property of females, betrothal marriage, divorce including all forms of dissolution of family relations, dower, adoption, guardianship, minority, bastardy, family relation, wills, legacies, gifts, partitions, contracts or any of religious usage institution the decision shall be:-*

- (a) *The Islamic Shariat Law in cases where parties are Muslims, and*
- (b) *The Hindu Law where the parties are Hindu and*

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<sup>261</sup> The author has his personal experiences, in this regard during his schooling period and now through his family's school going children.

<sup>262</sup> AJ&K Laws Code, vol I, Department of Law, Justice Parliamentary Affairs & Human Rights.



(c) *The dictates of justice, equity and good conscience or any law in force in all other cases.*

#### **Section 48: Modification of the Indian Penal Code & CrPC:-**

*(4)(a) Whoever commits theft, in any form, shall in addition to the punishments prescribed by the Indian Penal Code, be also liable to his hand or hands or any part of hands cut off, as the court may direct.*

*(b) Whoever, whether male or female, commits adultery shall in addition to the punishment prescribed by the IPC be liable to a sentence of flogging in public up to one hundred stripes.*

*(c) Whoever makes a false accusation of adultery against a woman, shall in addition to any punishment prescribed by the IP Code, be liable to flogging up to 80 stripes*

#### **2. Azad Penal Code**

Under Chapter No. XV, Sections No.295 to 298-C offences relating to religion have been made punishable. The provisions of these sections are same as provided in the relevant Sections No.295 to 298-C of Pakistan Penal Code.

#### **3. The Azad Jammu & Kashmir Shariat Court Act, 1993**

##### **Section 7: Powers and Procedure of the Court-**

*“(5) A party to any proceeding before the Court under this Act may be represented by a legal Practitioner who is a Muslim and has been enrolled as an Advocate of High Court...”*

*“(7) A legal Practitioner or jurisconsult representing a party before the Court shall not plead for the party but shall state, expound and interpret the injunction of Islam relevant to the proceedings so far as may be known to him and submit to the Court a written statement of his interpretation of such injunctions of Islam.”*

##### **Section 8: Application of Criminal Procedure Code, 1898 (Act V of 1898)-**

*“The provision of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply, mutatis mutandis, in respect of cases under this Act; Provided that in the said Code the words High Court, Sessions Court, and Magistrate First Class wherever occurring, shall be construed to mean the Azad Jammu and Kashmir Shariat Court, District Criminal Court and Tehsil Criminal Court, as the case may be for the purposes of this Act.*

#### **4. The Azad Jammu Kashmir Shariat Court (Procedure) Rules, 1982**

##### **Rule: 14: Oath for Jurisconsult, etc.**

*“(10) Before presenting his exposition in the Court every jurisconsult, expert or witness shall make oath in Form 2 in English or Urdu.*

*(2) an alim, expert or witness who is required to submit his opinion in writing shall, at the top of his opinion, record the oath referred to in sub-rule(1) and affix his signature to it.*

*Form-2(See rule 14)*

*“ I, \_\_\_\_\_, do solemnly swear that I am a Muslim and believe in the Unit and Oneness of Almighty Allah, the books of Allah, the Holy Quran being last of them. Prophet hood of Muhammad (pbuh) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgment, and all the requirement and teachings of the Holy Quran and Sunnah.*

*That I shall faithfully and to the best of my ability state, expound and interpret the Injunctions of Islam relevant to the proceedings and render all assistance to the Court without pleading for any party:*

*And that I shall not allow my personal interest or the interest of any other person to influence my opinion.”*

#### **5. The Azad Jammu & Kashmir Islamic Penal Laws Enforcement Act (XI of 1974)**

Under Section 26(1) of the above Act certain rules of evidence have been laid down in the cases of Hadd and Qisas, it has been made necessary that two Muslim male witnesses would testify and in all other cases two male witnesses or one male and two female witnesses would testify before the court.

Under Sub-Section (2) of Section 26, the mechanism of tazkiyya al-shuhood, the purgation of the witnesses has been made condition precedent in the cases of Hudood and Qisas, to ascertain their veracity and right oneness.

#### **6. The Offences against Property (Enforcement of Hudood) Act, 1985 (Act XII of 1985)**

##### **Section 24(1):**

*The Presiding Officer of the Court by which a case is tried, or an appeal is heard, under this Act shall be a Muslim:*

*Provided that, if the accused is non-Muslim, the presiding Officer may be a non-Muslim*

#### **7. The Offence of Zina (Enforcement of Hadd) Act, 1985 (Act V of 1985)**

#### **8. The Prohibition (Enforcement of Hadd) Act, 1985 (Act IV of 1985)**

## **9. The Prevention of Gambling (Maisir) Act, 1985**

-Section: 10 Magistrate First Class U/s 30 or qazi especially empowered

## **10. The Offence of Qazf (Enforcement of Hadd) Act, 1985 (Act XIV of 1985)**

## **11. The Azad Penal Code (Amendment) Act, 1995 (Qisas & Diyyat Act)**

## **12. The Code of Criminal Procedure (Amendment) Act, 1995**

## **13. The Substituted Schedule II of CrPC (Offences against Islamic Law)**

## **14. The Execution of Punishment of Whipping Act, 1985**

## **6. Conclusion**

Religious freedom in Azad Jammu & Kashmir has been constitutionally protected. Islam has been declared as religion of the state. No law can be made in AJK against the injunctions of Islam. The courts are required to interpret the laws relating to religion in accordance with the principles laid down by the Quran and Sunnah. There is a gradual process of Islamisation of laws affecting minorities in the state.<sup>263</sup> The constitutional provisions require the president and the prime minister to be Muslim and provide for such other requirements which only Muslim can fulfil. The fundamental rights enshrined in the AJK Interim Constitution Act 1974, are not even theoretically at par with the international covenants and the constitutional provisions of Pakistan relating to religion and religious belief. The Islamic Shariah laws require and impose different fetters for non-Muslims. The limitations on constitutional powers and legislations, along with dependence on Pakistan in many respects hinder major constitutional or legal reforms. Legislation, executive actions and judicial review if made as per true tenants of Islam may be beneficial in creating standardised religious harmony and help in creating a plural society.

## **7. Recommendations**

1. The courts are required to interpret all laws in light of the Islamic principles as laid down in the Quran and Sunnah. This makes it abundantly clear that while examining the veracity of the laws affecting the freedom of religion and belief, the courts of AJK are required to look into the corresponding principles provided in the Quran and Sunnah. This is discriminatory towards other religious minorities.

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<sup>263</sup> Musaa Khan Jalalzai, Islamization and Minorities in Pakistan, 2005, Jumhoori Publications, Lahore.

2. Offences relating to religion have been added in the Azad Penal Code similar to Sections 295 to 298-C in Chapter XV of PPC, which infringe on the rights of minorities.
3. It is recommended that the sections relating to the presiding officer of the court should also be amended. The provision that “*the Presiding officer of the Court by which a case is tried or an appeal is heard, shall be a Muslim. Provided that the accused is a non-Muslim, the Presiding Officer may be a non Muslim*” should be amended to read, “*the Presiding Officer of the Court by which a case is tried, or on appeal is heard, under this Order shall be a qualified judge.*” There shall be no discrimination based on race, religion, caste, sex, residence or place of birth.”
4. Section 5(4) of the AJK Interim Constitution Act, 1974 makes it mandatory for the president of Azad Jammu and Kashmir to be a Muslim. An oath has to be made that she/he is Muslim. Thus no non-Muslim may be elected as president, which is discriminatory and the section should be reformed.
5. The prime minister is also required to be a Muslim under Section 13(2) of the Act 1974 this and the prescribed oath are discriminatory and should be reviewed.
6. Section 7(5) of the Azad Jammu & Kashmir Shariat Court Act, 1993 is discriminatory and should be amended as a party to any proceeding under this Act can only be represented by legal practitioner who is Muslim and enrolled as an Advocate in the High Court.
7. Section 7(7) is discriminatory and should be amended as a legal practitioner or jurisconsult representing a party before the court is required to interpret the injunction of Islam relevant to the proceedings and to submit a written statement of his interpretation of such injunctions of Islam.

## **8. Laws**

AJK Interim Constitution Act, 1974

-Sections: 2, 2(3), 3, 4(4), 5(4), 5(6), 10, 11, 12, 17, 31(5), 32, 42-A.43, 44, 53, 54

- The Constitution of Pakistan 1973

-Articles: 2, 20, 260 (3)

- Azad Penal Code

- Chapter XV: 295, 295-A, 295-B, 295-C, 298, 298-A, 298-B, 298-C
- Pakistan Penal Code, 1860
- Chapter XV: 295, 295-A, 295-B, 295-C, 298, 298-A, 298-B, 298-C
- AJK Courts and Laws Code, 1948
  - Section: 42, 48
- The Azad Jammu & Kashmir Shariat Court Act, 1993
  - Sections: 7, 8
- The Azad Jammu Kashmir Shariat Court (Procedure) Rules
  - Rule: 14
- The Azad Jammu & Kashmir Islamic Penal Laws Enforcement Act (XI of 1974)
  - Section: 26 (1) (2)
- The Offences against Property (Enforcement of Hudood) Act, 1985 (Act XII of 1985)
- The Offence of Zina (Enforcement of Hadd) Act, 1985 (Act V of 1985)
- The Prohibition (Enforcement of Hadd) Act, 1985 (Act IV of 1985)
- The Prevention of Gambling (Maisir) Act, 1985
  - Section: 10 Magistrate First Class U/s 30 or qazi specially empowered
- The Offence of Qazf (Enforcement of Hadd) Act, 1985 (Act XIV of 1985)
- The Azad Penal Code (Amendment) Act, 1995 (Qisas & Diyyat Act)
- The Code of Criminal Procedure (Amendment) Act, 1995
- The Substituted Schedule II of CrPC (Offences against Islamic Law)
- The Execution of Punishment of Whipping Act, 1985

## RECOMMENDATIONS

### FEDERAL LAWS

#### THE CONSTITUTION OF PAKISTAN 1973:

Pakistanis have to decide whether they want religion and its various interpretations to be the supreme law of Pakistan or that the constitution can be based on modern principles of equality, rule of law and democratic governance. If the former course is to be adopted then the citizens must be prepared to be ruled through various trends of interpretations, which range from being most rigid to less conservative in terms of granting equality to women and religious minorities. This decision is central to the development of Pakistan. Pakistanis could retain an Islamic identity –culturally –but incorporate into the constitution all basic rights and concepts of equal protection and opportunities under national laws and policies.

A turnaround from the Zia days can either be made in one swoop or gradually. This would depend on the political choices presented to its leaders. A piecemeal alteration can only ease the situation but it will never give religious minorities and progressive Pakistanis the confidence to think and act freely.

1. Islam could remain the state religion as such provisions exist in other constitutions as well but this provision should simply be of a symbolic nature as in reality a state or a country cannot have a belief or religion.
2. The Objectives Resolution should be placed only in the Preamble. Its insertion in Article 2A has added strains on the courts while interpreting Article 2A. It also overshadows other Articles of the constitution.
3. Article 20 should be strengthened so that it reads as follows:
  - a) *Subject to any reasonable restriction imposed by law to maintain public order and to protect the fundamental rights of others;*
  - b) *Every citizen shall have the right to freedom of thought, conscience and religion. This right shall include freedom of worship, observance, practice and teaching.*
  - c) *No one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his/her choice.*

- d) Provided that any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*
4. There should be no qualification of religion for holding a public or judicial office. As such oaths prescribed for public offices must also be amended accordingly.
  5. The establishment of the Federal Shariat Court should be openly discussed. Its value and performance should be evaluated on the principles of independence of judiciary and separation of powers. Above all an assessment should be made on the workload of the FSC and whether the amount and value of litigation in FSC deserves the resources spent on it.
  6. Articles 62 and 63 should be restored to their original form.
  7. The constitution or the state should not declare the faith of any person and as such the definition under Article 260 of a Muslim is unique to Pakistan. It should be repealed.
  8. There should be no restriction on the freedoms of profession of lawyers based on their religion. Therefore Article 203E (4) be repealed.

#### **ELECTORAL LAWS:**

Laws should be passed to promote greater and meaningful participation of minorities in the electoral processes of the country. The following strategies are recommended to increase the ability of religious minorities to exercise their electoral rights:

1. Minorities should be given dual voting rights where they can vote for their own representative as well as a member running on the general seat in their constituency.
2. Under the current proportional representation system the whole of country is treated as a constituency for minorities. In addition, party bosses virtually select non-Muslim candidates. This needs to be addressed in order to allow the religious minorities to elect their true representatives.
3. Legislation should be enacted, making it mandatory for political parties to award a certain percentage of their tickets on the general seats during elections to non-Muslims.
4. The following issues in the 1973 constitution need to be addressed:

(a) Constitutional provisions make it mandatory that only a Muslim can be the president and the prime minister of the country. This prerequisite needs to be reconsidered.

(b) Members of the National and provincial assemblies and Senate, federal/provincial ministers, ministers of state, speakers and deputy speakers of National and provincial assemblies and chief ministers can constitutionally be non-Muslims but they have to take oath given in the Third Schedule of the constitution that includes a line, “That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan”. This provision should be revised so that religious minorities do not have to take an oath, which contradicts their religious beliefs.

The number of reserved seats for religious minorities should be raised in the same proportion as the increase made in the number of National Assembly seats in 2002. When the number of general seats in the National Assembly was 207, the seats reserved for religious minorities were 10. Even when the number of general seats rose to 272 in 2002, the seats reserved for minorities remained 10. There should have been a proportional increase in the reserved seats for minorities. A proportionate increase should also be made in the provincial assemblies and effective representation of religious minorities ensured in the local bodies as well.

### **GLORY OF ISLAM:**

1. The expression “glory of Islam” can be interpreted widely or in a narrow manner. Court rulings suggest that there is no clear definition of the expression. Each case would depend on the subjective outlook of a judge, the standing of the parties to the dispute, and the political atmosphere during hearings. The words, “glory of Islam” restrict freedom of speech and press. These should be removed as they are likely to be misused and indirectly restrict free thought and speech. They also stifle debate on religion.
2. A law should be enacted to criminalise incitement to violence on the basis of religion. It should be worded in line with Article 20 of International Covenant on Civil and Political Rights (ICCPR) to read as follows:

*“Any advocacy of sectarian or religious hatred that constitutes incitement to violence shall be punished with rigorous imprisonment of up to 10 years or fine up to Rs. 2,500,000 or both.”*



## **HUDDOD LAWS:**

1. The punishments under hadd should be in conformity with international human rights law. The Hudood law legitimises torture and prescribes punishments, which are discriminatory in their application and procedure.
2. The criteria for witnesses in the Hudood Ordinances, discriminates on the basis of gender and religion, which should be amended and it should be based on the competency of the witnesses regardless of their gender or religion.
3. Section 4 Prohibition (Enforcement of Hadd) Order, 1979 which reads, *“Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to non-Muslim citizen of Pakistan who keeps in his custody at or about the time of ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as part of such ceremony”* should be amended to read, *“Provided that nothing in this Article shall apply to non-Muslims.”*
4. It is recommended that the sections relating to the Presiding Officer of the Court should also be amended. The words read that, *“the Presiding Officer of the Court by which a case is tried, or an appeal is heard under this Ordinance shall be a Muslim. Provided that the accused is a non-Muslim, the Presiding Officer may be a non Muslim.”* It should be amended to read, *“the Presiding Officer of the Court by which a case is tried, or on appeal is heard under this Ordinance shall be a qualified judge.”*

There shall be no discrimination based on race, religion, caste, sex, residence or place of birth.

## **OFFENCES RELATING TO RELIGION:**

1. Unless repealed, criminalisation of offences related to religion contained in chapter XV of PPC should carry ingredients of malicious intent (*mens rea*) and they should be made non-cognizable and compoundable.
2. All trials under this chapter should be conducted at the level of the High Courts.

3. Those making false accusation under this chapter should be punished and a section in the law be added to that effect.
4. In trials carried out under Section 295-C PPC, standards of Tazkiya-al -shuhood should be applied to witnesses.
5. The requirement for an SP or higher rank officer conducting the investigation of complaints regarding offences relating to religion must be complied with. The failure to comply should be weighed in favour of the accused.
6. Eventually all sections of law under the chapter of PPC titled 'Offences relating to Religion' that are discriminatory or undermine fundamental rights or principles of due process and fair trial should be repealed.

#### **CITIZENSHIP AND NATURALIZATION:**

1. Through an amendment to Rule 7 of National Database Rules, 2007, the marriage certificate issued by the Hindu *Panchayat* should be recognized as a valid document for the purposes of issuance of certificate /national identity card under the rules. Unless the government makes alternate provisions for registration.
2. All religious freedoms provided under Article 18 of the International Covenant on Civil and Political Rights should be made available to everyone present in the state territory. This should include the guarantee to not be forced to disclose one's religion and the ability to change one's religion in official record.
3. The law must provide for correction of official record/identity documents without any penalty in case the religion of a member of any religious minority community is incorrectly entered as a Muslim in official record.
4. The requirement for all Muslims applying for national identity cards/passports signing a declaration stating that Ahmadis are non-Muslims needs to be done away with as it amounts to an invitation by the state for the citizens to humiliate Ahmadis.

#### **EVACUEE TRUST PROPERTY LAW:**

1. In view of the aforementioned, it is proposed that the law as a whole be repealed and evacuee properties handed over to the recognized religious or

community-based institutions/organizations of the relevant religious minorities.

2. Until that is not done, religious minorities should be represented on the Evacuee Trust Property Board and the chairman should be from such minorities.

### **ZAKAT AND USHR:**

The legal provisions regarding Zakat and Ushr are part of a larger trend towards Muslim-centric legislation that either ignores religious minorities or excludes them. These should be amended and improved to provide (without any faith-based discrimination) for all citizens in need, an equal distribution of income support based on a uniform criterion.

### **QSO:**

1. The preamble of Qanun-e-Shahadat Order should be made religion neutral and should not require its provisions to be in conformity with the injunctions of Quran and Sunnah.
2. Non-Muslims under this Order should not be disqualified from being competent witnesses, thus this condition should be repealed, wherever it occurs.

## **PROVINCIAL LAWS**

### **PUNJAB:**

1. Section 3 of The Musicians and Shrines Act, 1942 should be revisited. There should be laws in Punjab regarding the promotion of the holy books of minorities as they do for the Holy Quran.
2. The oath for the Punjab Office of Ombudsman should be a general prayer of allegiance to Pakistan.

3. The interpretation of laws in accordance with the Holy Quran and Sunnah should not relate to non-Muslims.
4. Non-Muslims should have access to funds from the Bait-ul-Maal.
5. Section 6 of the Motion Pictures Ordinance does not allow films that are prejudicial to the glory of Islam to be exhibited. Freedom of expression should be respected without allowing for incitement or abuse of any religion.
6. The Zakat and Ushr Ordinance is specific to Muslims; it should allow non-Muslims to benefit from Zakat funds.

### **BALUCHISTAN:**

1. Section 22 of Dastoor-ul-Amal Diwani-e-Kalat may be repealed.
2. Civil Courts Ordinance, 1962 may be extended to the Provincially Administered Tribal Areas.
3. Judicially qualified officers trained in the laws of minorities be appointed.
4. Family laws of the minorities be enacted on the basis of non-discrimination.
5. Currently there is no law on inheritance for Hindus. This needs to be enacted, as Hindu law on inheritance is significantly different.
6. Family courts (if established) should also be applicable to minorities and deal with them according to the laws relevant to their communities, including inheritance laws.

### **SINDH:**

1. There needs to be complete overhaul in the manner in which minorities are conceptualized and treated by the law. The personal law of the minorities is currently not thorough enough to cater to the needs of minority groups. Furthermore, any amendments to the law, regarding the matter of marriages and inheritance, needs to be seriously revisited. These amendments cannot and should not take place without consultation with the very minority groups they seek to benefit and govern. An inclusive process of legislation is imperative.
2. Furthermore, the practice of forced conversions needs to be curbed head on with legislation specifically designed to address this societal menace.

However, the law should only penalize a “forced” conversion. The word “force” be defined narrowly where violence is imminent or present. Protection needs to be awarded to members of minority groups, especially women, and punishments should be prescribed for the perpetrators of conversions carried out through brute force.

3. The problem of forced evictions needs to be tackled by changes to the law of land acquisition, to give special protection to minority groups in order to prevent their socially and economically weak position from being exploited.
4. Legislation needs to be passed to ensure protection of places of worship, declaring these places high security areas, thus making it necessary for the government to give them protection.

### **KP, PATA, and FATA:**

1. Laws based on Shariat should not be applied to non-Muslims.
2. There should be representation of women from minorities in the District Council, Tehsil Council and in the Local Government Commission.
3. One member of religious minorities should be included in the Board of Governors under Frontier Education Foundation Act, 1992.
4. Permanent Residence Certificate (PRC) issued to the Christians should be replaced with domicile certificates.
5. Hindus/Sikhs and other indigenous minority communities should be given representation in Jirgas.
6. The places where minorities observe their religious rites should not be declared as “Katchi Abadis”.
7. There should be provisions for the allotment of plots for housing to non-proprietors of minorities.
8. There should be a representative of minorities in the Council of Elders.

9. In the Federally Administered Tribal Areas, local government representation should be given to minorities in the Agency Council, Tehsil Councils and Union Council.
10. Minorities from FATA should be given representation in provincial assemblies, National Assembly and Senate.

**GILGIT-BALTISTAN:**

- a. The government should continue to ensure that religious minorities enjoy a non- discriminatory status in Gilgit-Baltistan.
- b. The holy sites of religious minorities should be preserved. HRCP and other civil society organizations should communicate their concerns to the authorities in Gilgit-Baltistan as well as the Federal government.
- c. The Christian community living in Baltistan should have a separate graveyard allotted to them for the burial of their dead.