



Pakistan's Blasphemy Law and Non-Muslims

By Ismail Royer



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Author Biography

Ismail Royer

Ismail Royer is Research and Program Associate at the Religious Freedom Institute (RFI), a non-profit organization based in Washington, DC. He converted to Islam in 1992 and studied political science at American University. He has studied religious sciences with scholars such as Dr. Jaafar Sheikh Idris and Sheikh Muhammad Nur Abdullah, as well as with a student of Sheikh Abdul Qadr al-Arnaout. From 1993 to 2003, Royer worked in several non-profit Islamic organizations.

In June 2003, Royer was indicted on terrorism-related offenses for assisting the Pakistan-based Lashkar-e-Taiba (LET) and ultimately pleaded guilty to weapons charges related to the violation of United States neutrality laws. Since his release from prison in December 2016, he has worked with nonprofits to promote peace between faiths and undermine religious extremism.

His writing has appeared in publications such as the *Washington Post*, *Journal of Religion and Society*, *Public Discourse*, *Detroit Free Press*, *Al Jumuah*, and *Muslim Matters*.

Executive Summary

Section 295-C of Pakistan's penal code prohibits insulting the Prophet ﷺ and carries a mandatory death penalty. This law was passed based on a claim of *ijma'* (consensus among Islamic scholars) that such an offense is subject to a *hadd* (divinely fixed) punishment. Nearly half of those charged under this statute crimes of *hadd* are Christians, who make up only about four percent of Pakistan's population. Yet there is no consensus among Islamic scholars on the death penalty for non-Muslims who insult the Prophet ﷺ. Some early Islamic scholars held there was no punishment at all in such cases, and most said it was a *ta'zir* offense, i.e., subject to discretionary punishment or none at all.

Under Islamic law, whether and how *ta'zir* punishment is applied depends on the interests of the common good (*maslaha*). Pakistan's application of Section 295-C to non-Muslims promotes harm: mob violence, disrespect for the law, oppression of minorities and the poor, and damage to Islam's reputation. Moreover, such cases are adjudicated by judges who have no expertise in Islamic law or the interpretive tools of Islamic jurisprudence needed to mitigate the statute's harm. Therefore, applying this section to non-Muslims contradicts Islamic law.

Under Islamic law and from a policy perspective, the only relevant question is whether enforcing Section 295-C against non-Muslims promotes the common good. Because it clearly does not, the government of Pakistan should immediately stop doing so and pardon those accused or convicted under it. Muslim religious leaders should make it clear that Islam does not require the death of non-Muslims who insult the Prophet ﷺ and that the true way to show love for him is not mob violence, but dignified behavior, patience, and wisdom.



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Preface

The purpose of this monograph is to give sincere advice to the people and government of Pakistan. Allah states in the Quran:

إِنَّ الْإِنْسَانَ لَفِي خُسْرٍ - إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَتَوَّصَوْا بِالْحَقِّ
وَتَوَّصَوْا بِالصَّبْرِ

Indeed, humanity is at loss: except those who believe and do righteous deeds, and advise each other with truth, and advise each other with patience.¹

And the Prophet ﷺ said:

الدِّينُ النَّصِيحَةُ

This religion is sincere good will.²

The author is certain that Pakistan is better and more worthy than the problems described herein. The intended outcome of this effort is nothing but the well-being and happiness of Pakistan's people in this life and the next.

1 Quran, Surah al-Asr 103:2-3.

2 Imam Abul-Hussain Muslim ibn al-Hajjaj. 2007. *English Translation of Vol. 1 of Sahih Muslim*. Trans. Nasiruddin al-Khattab. Riyadh: Dar as-Salaam, 150-151.

Introduction

by Abdullah Hamid bin Ali

Life is a gift from God, and every person has only one life to live in this ephemeral realm. Human beings are very special creatures in that they have been given sovereignty over all life forms on this planet. According to Abu Hamid al-Ghazali (d. 1111) in the “Book of Repentance” of his magnum opus *Ihya ‘Ulum ad-Din*, the gravest of mortal sins are those that seek to alienate humans from their Creator and deny His worthiness of human devotion.³ These sins include idolatry, disbelief, atheism, apostasy, and blasphemy. Since human beings were created to serve and worship God, when they refuse to acknowledge God’s sovereignty and gratuitous blessings, they are deemed to be ingrates and estranged from their Maker. Furthermore, they expose their souls to the eternal damnation of Hell.

Secondary to those sins wherein a person’s heart turns away from God, al-Ghazali places sins committed against human life and bodily integrity (*nafs*).⁴ If human beings are created to serve God, then to take their life would naturally undermine God’s goal for humanity. Therefore, killing or other physical violence against a fellow human being is deemed punishable and worthy of retribution (*qisas*), unless God Himself has ordained it for transgressions that warrant punitive, redemptive, exemplary, or restorative adjustment. In other words, capital and corporal punishments appear to violate this divine “no harm” rule, but because the presumptive benefits flowing from punishment (e.g. protecting society from theft or insurrection) often outweigh its harms, the latter are deemed a tolerable sacrifice for the sake of communal harmony and the common good.

According to the Quran:

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا
وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

...whoever takes a life for other than murder or for sowing discord in the land, it as if he has murdered all of humanity. And whoever spares one life, it is as if he has spared the lives of all humanity.⁵

3 Abu Hamid al-Ghazali. 1957. Vol. 4 of *Ihya Ulum ad-Din*. 4 vols. Cairo: Dar Ihya al-Kutub al-Arabiyya, 15-17.

4 Ibid.

5 Quran, Surah al-Ma'idah 5:33.

This Quranic decree seemingly clashes with the Prophet's ﷺ permission to execute formerly married fornicators (*ath-thayyib az-zani*),⁶ “those who change their lifeway,”⁷ and “those who abandon their lifeway, defecting from the collective.”⁸ Even more controversial is his supposed statement, “Kill whoever reviles a prophet.”⁹ Despite the spuriousness of this hadith,¹⁰ most mainstream Muslim scholars have historically considered disparaging Prophet Muhammad ﷺ to be a capital crime that warrants the perpetrator's execution, regardless of his or her retraction or repentance.

Blasphemy injunctions are curious in that they not only appear to contravene the Quranic teachings on God's forgiveness of “all sins,”¹¹ but also because many scholars generally extended the applicability of blasphemy laws to non-Muslims living in protected status in Muslim lands (*ahl adh-dhimmah*). Prominent theologians, jurists, and Sufis alike stood in near unison regarding the governors' religious duty to execute all such blasphemers and disparagers, be they Muslim or non-Muslim, just as they agreed upon the lack of governmental discretionary authority to stay the execution even if the person retracts, repents, or converts to Islam. But this virtual unanimity was not much different from their near consensus on the obligation to kill apostates.

It is often a major challenge for contemporary minds to contain their outrage at rules that seem so irrational and illiberal. But considering the nature of the world order under which the pre-moderns lived may help one appreciate—even if one still may not agree with—the reasoning of earlier times. In the pre-modern world people lived under the presumption of war rather than of peace, which is a generally acknowledged convention today. Under that world order, people's lives, wealth, honor, and freedom were at constant risk of being violated if collectives had no peace treaty, strategic alliance, or truce with their neighbors. In the absence of such agreements, marauding, raping, kidnapping, and enslaving captives were considered fair game. And since culture, belief, and sociopolitical coherence were all intertwined, the early Muslim community in particular and other nations in general made no distinction between defense of “religion” and defense of the “polity” and “community,” whose stability ensured their relative safety from invasion and disharmony.

6 Muhammad ibn Ismail al-Bukhari. 1997. *The English Translation of Vol. 8 of the Meanings of Sahih al-Bukhari*. Trans. Muhammad Muhsin Khan. Riyadh: Dar As-Salaam, 423-424. See also Muslim. 2007. Vol. 4, 442.

7 Ar. “من بدل دينه فاقتلوه”. Al-Bukhari. 1997, vol. 9, 46.

8 Ar. “التارك لدينه المفارق للجماعة”. Muslim. 2007. Vol. 4, 442.

9 Ar. “من سب نبيا فاقتلوه”. Collected by, *inter alia*, Abul-Qasim Sulaiman ibn Ahmad at-Tabarani. 1997. *Al-Mu'jam as-Sagheer*. Beirut: Dar al-Fikr, 236.

10 See, e.g., Nur ad-Din Abi Bakr al-Haytami. 1994. Vol. 6 of *Majmu'a az-Zawa'id wa Manba' al-Fawa'id*. 10 vols. Cairo: Maktaba al-Qudsi, 252. Al-Haytami says that An-Nasa'i, an early hadith compiler, accused one of the narrators of this hadith of lying: رماء النسائي بالكذب

11 Quran, Surah Zumar 39:53.

In this sense the Arabic word *deen*, typically translated as “religion” and in this introduction as “lifeway,” is more than the mere “belief” in Islamic theology and its revealed moral code. Consequently, when Prophet Muhammad ﷺ said, “Kill whoever changes his *deen*,” it could not have meant that one should kill any person who loses faith in Islam as God’s true religion. Otherwise, the Prophet ﷺ would have killed Qurrah ibn Maysarah, Abdullah b. Sa’d ibn Abi as-Sarh, and al-Ash’ath ibn Qays, all of whom apostatized during his lifetime, as well as those Muslims who recanted after he told them of his Night Journey from Mecca to Jerusalem and back. If he ordered any such executions, it was either due to the fact that they had taken innocent life (e.g., Ibn Khatal)¹² or incited others to commit murder. In both instances, the Prophetic orders conform to the Quranic teachings that exclude “murderers” and “those who sow discord in the land” from those whose lives, if taken, would be equivalent to murdering all of humanity.¹³

What all of this means is that the soundest rationale undergirding the punishment warranted for apostasy and blasphemy is that these acts constituted a form of defection or high treason. The verdict could not validly rely on the mere premise that the apostate “no longer believes in God” or “the religion of Islam,” nor on the notion that the non-Muslim “has openly professed negative views about the prophet ﷺ” whose religion is commonly known to be rejected by that very non-Muslim. Such people’s rejection of the message is no secret. Moreover, if they had not entertained such negative views, they naturally would have converted. In other words, the non-Muslims’ disbelief is in and of itself a form of blasphemy, yet not in a form that warrants punishment. Consequently, the most logical conclusion is that pre-modern scholars were concerned with the breakdown of the community’s cohesiveness, as opposed to mere difference of belief, and thus feared that allowing such public proclamations or defection to another religion would encourage insurrection or invasion.

12 Ibn Khatal was a tax collector for the Muslims who murdered someone, apostatized, and fled to Mecca. The Prophet’s ﷺ order concerning his execution is related in al-Bukhari, 1997. Vol. 4, 173-174, among other sources. For a discussion by a classical-era author of the reasons for his execution, see Yusuf ibn Abdullah ibn Abdul-Barr. [N.d.] Vol. 6 of *At-Tamhid lima fil-Muwatta’ min al-Ma’ani wal-Asanid*. 26 vol. Cairo: Maktaba Ibn Taymiyya, 167. Ibn Abdul-Barr wrote in part that Ibn Khatal “had killed a man from the Muslim Ansar, then apostated. This is what the compilers of the Prophet’s ﷺ biography mentioned, and for all of them it was what justified his execution.” In Arabic the passage reads: كان قد قتل رجلا من الأنصار مسلما ثم ارتد . كذلك ذكر أهل السير، وهذا يبيح دمه عند الجميع

13 For a detailed discussion of apostasy in Islamic jurisprudence, see Abdullah Bin Hamid Ali. 2011. “Preserving the Freedom for Faith: Reevaluating the Politics of Compulsion.” *The Review of Faith & International Affairs* 9 (2), 3-9. Available at <https://www.lamppostproductions.com/preserving-the-freedom-for-faith-apostasy/>.

The Prophet's ﷺ mission was to call everyone to the worship of the Creator and to paradise. The ensuing resistance and persecution were deemed unjust because his mission appealed to a sentiment common to all human beings (i.e., the right to believe and to openly profess and follow one's conscience). It would have been hypocritical of Prophet Muhammad ﷺ to circumscribe the right to follow one's conscience as long as doing so posed no threat to the physical safety, harmony, and unity of Muslim society. For this very reason, the Quran unequivocally states, "Let there be no compulsion in religion"¹⁴ and "If your Lord had so willed, all humanity would believe. Will you then compel people to be believers, while it is not for any soul to believe except by God's permission?"¹⁵ In numerous verses God reminds the Prophet ﷺ that his sole duty to proclaim the message,¹⁶ offer the clear proclamation,¹⁷ and "Remind! For, you are merely a reminder."¹⁸ In the same vein, He informs the Prophet ﷺ that he is not their keeper,¹⁹ trustee,²⁰ compeller,²¹ or overlord.²²

If the views of pre-modern Muslim scholars can be contextualized in such a way, the image of Islam as a religion of promise, purpose, and peace should be easily achievable. If, however, contemporary jurists insist on maintaining the bifurcation of the world into friendly (*dar as-salam*) and hostile territories (*dar al-harb*) between Muslims and non-Muslims, we only reinforce the "clash of civilizations" narrative as well as the claim of Islam's inability to solve contemporary challenges.

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- 14 Quran, Surah al-Baqarah 2:256.
 - 15 Quran, Surah Yunus 10:99-100.
 - 16 Quran, Surah al-Ma'idah 5:95.
 - 17 Quran, Surah an-Nur 24:54.
 - 18 Quran, Surah al-Ghashiya 88:21-22.
 - 19 Quran, Surah an-Nisa' 4:80.
 - 20 Quran, Surah al-An'am 6:107.
 - 21 Quran, Surah Qaf 50:45.
 - 22 Quran, Surah al-Ghashiya 88:22.





Overview

In June 2009 a group of village women near Lahore, Pakistan, quarreled while picking berries. The incident began when several Muslim women refused to drink from a cup touched by the lone Christian woman among them, Asia Bibi, on the grounds that she was “unclean.” The case ended with her being placed on death row, accused under Section 295-C of the Pakistani Penal Code for insulting the Prophet ﷺ in the heat of the argument.

In November 2010 Governor Salmaan Taseer of Punjab province met with her and announced that he would appeal to President Asif Ali Zardari for a pardon.²³ In response, segments of the religious establishment accused him of implementing a “Western conspiracy against Islam” and threatened to unleash “anarchy” if she were released.²⁴ Religious leaders and organizations went so far as to declare Taseer a blasphemer and an apostate because he had sought a pardon for a blasphemer.²⁵ On January 4, 2011, he was assassinated by his bodyguard Mumtaz Qadri, who argued that the murder was justified because the governor was an apostate.²⁶ On February 29, 2016, the government executed Qadri for Taseer’s murder. His supporters subsequently turned his grave into a shrine,²⁷ where they have since held rallies and honored him in other ways.

23 “Taseer to take Asia’s clemency appeal to president.” 2010. *The Express Tribune*. November 11. <https://tribune.com.pk/story/79315/asiya-bibi-seeks-presidential-pardon/>.

24 “Sunni Ittehad Council warns of anarchy if Asia pardoned.” 2010. *Dawn*. November 26. <https://www.dawn.com/news/585859/sunni-ittehad-council-warns-of-anarchy-if-asia-pardoned>.

25 “Events that led to Taseer’s murder.” 2011. *The News*. January 6. <https://www.thenews.com.pk/archive/print/278526-events-that-led-to-taseer%E2%80%99s-murder>.

26 Salman Masood, and Carlotta Gall. 2011. “Salman Taseer, Punjab Governor, Shot Dead in Islamabad.” *The New York Times*. January 4. <http://www.nytimes.com/2011/01/05/world/asia/05pakistan.html>.

27 Asad Hashim. 2017. “In Pakistan, a shrine to murder for ‘blasphemy.’” *Al Jazeera*. February 17. <http://www.aljazeera.com/indepth/features/2017/02/pakistan-shrine-murder-blasphemy-170206103344830.html>.

*Previous page: photo illustration of a memorial to slain Punjab governor Salman Taseer and his assassin, Mumtaz Qadri.

Ms. Bibi's case is not unique. Non-Muslims make up only about 4 percent of Pakistan's population, but were about 40 percent of those charged between 1953 and 2012 with this offense.²⁸ Moreover, as the Supreme Court of Pakistan has observed, most such cases originate in personal vendettas rather than genuine instances of blasphemy.²⁹ Misuse of Section 295-C means that the mere accusation can ruin or even end a person's life³⁰ and "frequently trigger[s] mob violence before any official actions like police arrests and judicial trials can be taken."³¹ In other words, this law has become a driver of sectarian violence, lawlessness, and instability.

In this monograph,³² I argue that the government's way of handling such allegations is not justified by Islamic law, but rather opposes the most authoritative sources of the Hanafi school of jurisprudence that it claims to follow. Indeed, far from vindicating the Prophet ﷺ, the treatment meted out to the accused non-Muslims detracts from the spirit of the religion with which he was sent. Moreover, Pakistan's prosecution of such people is contrary to Islam in that it causes great harm to the people and the government by generating instability, injustice, and disrespect for the law.

28 *Malik Muhammad Mumtaz Qadri v. the State*. 2015. Supreme Court of Pakistan Criminal Appeals No. 210 and 211 of 2015. www.supremecourt.gov.pk/web/user_files/File/Crl.A._210_2015.pdf: 26. Others have calculated that religious minorities are 52 percent of those accused in blasphemy cases. Menaal Safi Munshey. 2015. "Blasphemy Laws and Human Rights in Pakistan." *Oxford Human Rights Hub*. April 16. <http://ohrh.law.ox.ac.uk/blasphemy-laws-and-human-rights-in-pakistan/>.

29 *Malik Muhammad Mumtaz Qadri v. the State* 2015, 26.

30 *Ibid.*, 26.

31 Amjad Mahmood Khan. 2015. "How Anti-Blasphemy Laws Engender Terrorism." *Harvard International Law Journal Online* 56. http://www.harvardilj.org/wp-content/uploads/Antiblasphemy-Laws_0608.pdf, 12.

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The Origins of Pakistan's Blasphemy Law

Pakistan's blasphemy laws originate in the Indian Penal Code (IPC) enacted for the Subcontinent by the British colonial government in 1860.³³ The code was intended "to replace a patchwork of Muslim and Hindu laws overlaid with a mixture of transplanted English laws and East Indian Company regulations to ensure, as much as possible, a singular standard of justice."³⁴ The Indian Law Commission, the body that drafted the IPC, explicitly stated that its goal was to replace the law "of the Mohammedans."³⁵ In essence, the code was "designed to make imperial authority more effective and legitimate."³⁶

Just as Pakistan's penal code does today, the 1860 code included Chapter 15, "Of Offences Relating to Religion,"³⁷ which read:

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*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.*³⁸

33 Osama Siddique and Zahra Hayat. 2008. "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects and Free Speech Implications." *Minnesota Journal of International Law* 17(2), 336.

34 Barry Wright. 2016. "Macaulay's Indian Penal Code: Historical Context and Originating Principles." *In Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, ed. Wing-Cheong Chan, Barry Wright, and Stanley Yeo. London: Routledge, 22.

35 Siddique and Hayat 2008, 336.

36 Wright 2016, 22.

37 Siddique and Hayat 2008, 337.

38 Indian Penal Code Act XLV. [1860] 1861. Indian Penal Code. Calcutta: G.C. Hay & Co., cited in Siddique and Hayat 2008, 338.

*Previous page: Colonial officials of the British Empire.

In 1927, the Criminal Law Amendment Act (XXV of 1927) inserted Section 295-A into Chapter 15, which read:

*Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*³⁹

Historians generally conclude that “the purpose of Chapter 15 was the maintenance of order in a multi-religious society and the containment of attacks targeted at any religion.”⁴⁰ This was important to the British colonial state because it “partly justified its imperial mission as impartially regulating and administering a multiplicity of particularistic communities through the rule of law. In this imperial legal rhetoric, the colonizers had brought peace to, and secured order in, primordial, fractious, and antagonistic religious communities.”⁴¹

In terms of Chapter 15 specifically, the commission wrote that its purpose was to avert any risk of “the dissolution of society.”⁴² This was a danger, a member of the commission explained, because in India,

*the Government has so much to apprehend from religious excitement among the people. The Christians are numerically a very small minority of the population, and in possession of all the highest posts in the Government, the tribunals, and in the army. Under their rule are placed millions of Mahomedans, of differing sects, but all strongly attached to the fundamental articles of the Mahomedan creed, and tens of millions of Hindoos, strongly attached to doctrines and rites which Christians and Mahomedans join in reprobating. Such a state of things is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration.*⁴³

39 Ibid., 338.

40 Ibid., 338.

41 Asad Ali Ahmad. 2009. “Specters of Macaulay.” In *Censorship South Asia: Cultural Regulation from Sedition to Seduction*, ed. Raminder Kaur and William Mazzarella. Bloomington: Indiana University Press.

42 Ibid., 336-37.

43 Lady Trevelyan, ed. 1866. Vol. 2 of *The Works of Lord Macaulay Complete*. London: Longmans, Green, and Co., 490-91.

Pakistan inherited the IPC, including Chapter 15, when it was created in 1947 by the partition of India.⁴⁴ During his 1977-1988 rule, General Zia-ul-Haq introduced five additional sections to Chapter 15 via martial law amendments⁴⁵ that “pertain only to offenses against Islam, as opposed to applying generally to all religions as did the original clauses in Chapter 15.”⁴⁶ The new sections included 295-B, which punishes defiling the Quran; 295-C, which punishes insulting the Prophet ﷺ; and Sections 298 (A-C), which imposes restrictions on the Ahmadi sect.⁴⁷ Section 295-C, introduced in 1986, provides:

*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 Mohammed (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.*⁴⁸

During parliamentary debate in 1986, proponents of this section based their argument on the supposed unanimity (*ijma'*) among Islamic religious scholars that death for insulting the Prophet ﷺ is a *hadd* (divinely fixed) punishment for everyone, regardless of religion.⁴⁹

In 1990 a petition challenging Section 295-C was brought before Pakistan's Federal Shariat Court, which has “exclusive jurisdiction to hear petitions challenging state laws as repugnant to Islam.”⁵⁰ This petition argued that the alternative punishment of life imprisonment for violating the statute was repugnant to Islamic law and should be declared void, and that anyone who violated Section 295-C must receive the death penalty.⁵¹ The court heard from several members of the country's religious establishment and eventually ruled that “all the Jurisconsults and Scholars agreed” that death is mandatory for such an act. The court thus struck down the alternative punishment of life imprisonment and held that death was the only possible sentence.⁵²

44 Muhammad Khalid Masud. 2005. “Communicative Action and the Social Construction of Shari'a in Pakistan.” In *Religion, Social Practice, and Contested Hegemonies. Reconstructing the Public Sphere in Muslim Majority Societies*, ed. Armando Salvatore and Mark Levine. New York: Palgrave MacMillan, 173.

45 Siddique and Hayat 2008, 337.

46 Ibid., 337.

47 Ibid., 311-12

48 Government of Pakistan. 1986. *Pakistani Penal Code § 295-C*.

49 The National Assembly of Pakistan. 1986. *July 9 Debates*. Karachi: Printing Corporation of Pakistan Press. <https://www.scribd.com/document/327051790/9th-July-Parliamentary-Debate-on-295C, 3209-3238>.

50 “Federal Shariat Court.” In *The Oxford Dictionary of Islam*, ed. John L. Esposito. <http://www.oxfordislamicstudies.com/article/opr/t125/e648>. July 3, 2017.

51 Federal Shariat Court. [1987] 1990. “Shariat Petition No.6/L of 1987.” *Muhammad Ismail Qureshi v. Pakistan*. <http://khatm-e-nubuwwat.org/lawyers/data/english/8/fed-shariat-court-1990.pdf>.

52 Ibid.





Pakistan's application of its blasphemy law to non-Muslims is not justified by Islamic law

There is no Ijma' on the Death Penalty for Non-Muslims who Disparage the Prophet ﷺ

As noted above, much of the discourse in Pakistan concerning its blasphemy laws centers on the supposed *ijma'* (consensus among Muslim jurists) on executing anyone who insults the Prophet ﷺ. This assertion is of great significance because *ijma'* is a source of authority second only to the Quran and *Sunnah*⁵³ in all four of Islam's Sunni legal schools (*madhabs*).⁵⁴ Yet contrary to the conclusions of the country's Parliament and Federal Shariat Court, a closer examination of Islamic jurisprudence reveals that there actually is no *ijma'* on this question.

Al-Khattabi (d. 998), a Shafi'i jurist, explained that the authorities "differed in the matter when the insulter was a non-Muslim."⁵⁵ Imam Abu Hanifah (d. 767), the founder of the Hanafi school, Pakistan's predominant *madhab*, said: "They [i.e., non-Muslims] are not killed for insulting the Prophet ﷺ, for that which they have against him of polytheism is worse."⁵⁶ In other words, their worship of other than God and their belief that the Prophet ﷺ was untruthful are far worse than their

53 Taha Jabir al-Alwani. 1990. *Usul al-Fiqh: Source Methodology in Islamic Jurisprudence*. Herndon: International Institute of Islamic Thought, 42. This principle is elucidated by Ibn Kathir, the well-known fourteenth-century commentator on the Quran, in his commentary on Surah an-Nisa' 4:100: "The Ummah of Muhammad is immune from error when they all agree on something, a miracle that serves to increase their honor, due to the greatness of their Prophet ﷺ." Abul-Fida' Isma'il ibn Umar ibn Kathir, *Tafsir al-Quran al-Adheem*. The term *ijma'* is often misunderstood and misused. See, for example, Abdullah bin Hamid Ali. [N.d.] "Scholarly Consensus: Ijma' Between Use & Misuse." *Lamppost Productions*. <http://www.lamppostproductions.com/files/articles/Scholarly%20Consensus.pdf>.

54 These *madhabs* are the Hanafi, Maliki, Shafi'i, and Hanbali. *Madhab* has been defined as "a group of jurists and legists who are strictly loyal to a distinct, integral and, most importantly, collective legal doctrine attributed to an eponym, a master-jurist, so to speak, after whom the school is known to acquire particular, distinctive characteristics..." Wael B. Hallaq. 2005. *The Origins and Evolution of Islamic Law*. Cambridge: Cambridge University Press. <http://www.hadith-studies.com/Hallaq-Origins-Evolution-Islamic-Law.pdf>, 152.

55 Abu Sulayman Hamd ibn al-Khattabi al-Busti. [N.d.] 2009. *Ma'alim as-Sunan fi Sharh Sunan Abi Dawud*. Beirut: Dar al-Kutub al-Ilmiyyah, 322. See also Ibn Abdul-Barr. [N.d.] Vol. 6, 167-168.

56 Ibid. Abu Hanifah says: لا يقتل ما هم عليه من الشرك أعظم

insults. Since Islam takes their non-Islamic beliefs as a given and therefore overlooks them, no punishment is warranted for an equal or lesser offense.

According to the great Hanafi scholar Imam al-‘Ayni (d.1453), Abu Hanifah’s position was adopted by Imam al-Bukhari (d. 870), the compiler of the hadith collection popularly known as *Sahih al-Bukhari*.⁵⁷ Al-‘Ayni inferred that this was al-Bukhari’s opinion from the latter’s treatment of the following hadith in his collection:

*A Jew passed by Allah’s Messenger ﷺ and said, “As-Saamu ‘Alaik.” Allah’s Messenger ﷺ said in reply, “Wa ‘Alaik.” Allah’s Messenger ﷺ then said to his companions, “Do you know what he said? He said, ‘As-Saamu ‘Alaika.’” They said, “O Allah’s Messenger! Shall we kill him?” The Prophet ﷺ said, “No. When the People of the Book greet you, say: ‘Wa ‘Alaikum.’”*⁵⁸

The meaning of this incident lies in a play on words. The Muslim greeting is “As-Salaamu ‘alaikum” (“Peace be upon you”). “As-Saam,” on the other hand, means “death,” and so the Jewish passerby was wishing death upon the Prophet ﷺ to his face while also mocking the Muslim greeting. He also used the singular form of “upon you,” rather than the more common plural form, implying not only inappropriate familiarity but also specificity. When the Companions asked if they should kill the man, he merely instructed them to reply, “And upon you.”

Al-‘Ayni points out the significance of al-Bukhari’s putting this hadith in a chapter that he titled, “If a non-Muslim, or other than him, abuses the Prophet ﷺ.”⁵⁹ In Islamic jurisprudence, al-Bukhari’s chapter headings, together with the hadith he placed under them, are considered legal rulings.⁶⁰ Al-‘Ayni therefore concludes that he followed Abu Hanifah in overlooking such insults. He also reports that Sufyan ath-Thawri (d. 778), an early jurist and hadith scholar, relied on this hadith in adopting the same position⁶¹

57 Badr ad-Din al-‘Ayni. [855] 2001. Vol. 24 of *Umdat al-Qari fi Sharh Sahih al-Bukhari*. 25 vols. Beirut: Dar al-Kutub al-‘Ilmiyah, 121. See also Ibn Abdul-Barr. [N.d.] Vol. 6, 168.

58 Al-Bukhari. 1997, vol. 9, 48.

59 Ibid.

60 “It has been aptly remarked that the headings of the various chapters of the *Sahih* constitute the *fiqh* of Imam al-Bukhari.” Muhammad Zubayr Siddiqi. 1993. *Hadith Literature: Its Origin, Development and Special Features*. Cambridge: Islamic Texts Society, 53. Indeed, the derivation of al-Bukhari’s legal rulings from his chapter titles has developed into its own science: *fiqh al-abwab*. Muhammad Zakariyya Kandihlawi. [N.d.] *Al-Abwab wat-Tarajim li Sahih al-Bukhari*. Karachi: H.M. Saeed Co.

61 Al-‘Ayni [855] 2001, vol. 24, 121. Like Abu Hanifah, ath-Thawri (d. 778) was from the third generation of Muslims after the Prophet ﷺ. He was, as adh-Dhahabi put it, the “Commander of the Believers in *hadith*.” Muhammad ibn Ahmed adh-Dhahabi. 2001. Vol. 7 of *Siyar A’lam an-Nubala*. Beirut: Mu’asas ar-Risala, 236. Ibn Abdul-Barr describes the position of Abu Hanifah, his companions, and ath-Thawri as: يعزر ولا يقتل. Ibn Abdul-Barr. [N.d.] Vol. 6, 168.

and that he concurs with it.⁶² Other Hanafi scholars who held this opinion include al-Jassas (d. 942),⁶³ al-Quduri (d. 1037),⁶⁴ al-Kasani (d. 1191),⁶⁵ al-Manjabi (1287),⁶⁶ and al-Haddad (d. 1720).⁶⁷

To be sure, certain *madhhabs* and scholars supported the death penalty in such cases based on the reports of about ten individuals whom the Prophet ﷺ ordered executed, or whose execution he apparently approved, after he conquered Mecca.⁶⁸ However, many scholars argued that the underlying reason here was not their disparagement as such.⁶⁹ Hanbali scholar Ibn Taymiyya (d. 1328) explained that the Hanafis “interpret the reports of the Prophet ﷺ and his Companions ordering executions of this sort as having been based on public welfare reasons.”⁷⁰ Those reasons, Ibn ‘Abidin says, amounted to “sowing corruption on Earth ... and inciting the non-believers against” the Prophet ﷺ.⁷¹ That is, they were executed for insurrection and inciting war. Ka’b ibn Ashraf is the individual most often cited in this connection,⁷² but it is clear that he was not executed for mere insults. Ibn Kathir said about him: “He went to Medina, where he proclaimed his enmity and incited people to go to war. He had not left Mecca before he had united them to fight the Messenger of God.”⁷³ The Shafi’i hadith scholar Ibn Hajar al-‘Asqalani (d. 1372) reports that Ka’b “approached

62 Al-‘Ayni [855] 2001, vol. 24, 124. Echoing Abu Hanifah, al-‘Ayni concludes: “I say: they are not killed because of that which is greater than [their insults], that is, polytheism.” In Arabic: قلت لم يقتلهم بما هو أعظم منه وهو الشرك

63 Abu Bakr Ahmad bin Ali ar-Razi al-Jassas. 2010. Vol 6. of *Sharh Mukhtasar at-Tahawi*. Beirut: Dar al-Bashir, 142.

64 Ahmad ibn Muhammad al-Quduri. 2004. Vol. 12 of *At-Tajrid*. Alexandria: Dar As-Salaam, 6266.

65 Masoud ibn Ahmad al-Kasani. 1986. Vol. 5 of *Bada’i as-Sana’i fi Tartib as-Shara’i*. Dar al-Kutub al-‘Ilmiyya. Beirut, 113.

66 Ali ibn Zakariya al-Manjabi. [1287] 1994. Vol. 2 of *Al-Lubab fi Jama’ bayna as-Sunnah wa al-Kitab*. Peshawar: Maktaba Haqqaniyya, 765.

67 Abu Bakr ibn Ali al-Haddad. [1397] 2006. Vol. 1 of *Al-Jawhara an-Nayira ‘ala Mukhtasar al-Quduri*. Beirut: Dar al-Kutub al-‘Ilmiyya, 606. Al-Haddad explained: “Insulting the Prophet amounts to insulting God. And they already insult God by saying he has a son.”

68 Some of these reports are fabricated, as, for example, the story of the poetess ‘Asma bint Marwan. Hadith scholar adh-Dhahabi (d. 1348) quoted al-Bukhari and others as saying the narrator of the story is “rejected” and “an evil liar.” Imam Shams al-Din Muhammad ibn Ahmed adh-Dhahabi. [N.d.] Vol. 3 of *Mizan al-Itidal fi Naqd ar-Rijal*. Beirut: Dar al-Ma’rifah, 509. For the conquest of Mecca, see Martin Lings. 1983. *Muhammad: His Life Based on the Earliest Sources*. London: Islamic Texts Society, 297-303.

69 For example, as-Subki wrote, “We know from the Prophet ﷺ, and his kindness, mercy, and compassion that he never took revenge for himself, but only did so when the sanctities of God were violated, and then he took vengeance for God ... so how is vengeance taken for his sake after his death?” Taqi ad-Din as-Subki, *As-Sayf al-Maslul*, cited in Matthew Anderson. 2017. “Prophetic Models, Islamic Jurisprudence, and the Question of Blasphemy.” *Berkley Forum*, July 17. <https://berkleycenter.georgetown.edu/responses/prophetic-models-islamic-jurisprudence-and-the-question-of-blasphemy>.

70 Quoted in Muhammad Amin Ibn ‘Abidin. 2007. *Tanbih al Wulat wal Hukkam ‘ala Ahkam Shatim Khair il Anam*. Cairo: Dar al-Athar, 107.

the polytheists of the Quraish and formed an alliance with them under the curtains of the Kaaba to fight the Muslims.”⁷⁴ Ibn Hajar explains that al-Bukhari’s placement of this incident in a chapter on war in his *Sahih* signifies al-Bukhari’s interpretation that Ka’b was killed for waging war against the Muslims.⁷⁵ Al-‘Ayni states that Ka’b and others like him “were not killed merely for their insults [of the Prophet], but rather it was surely because they aided [the enemy] against him, and joined with those who fought wars against him, and supported them.”⁷⁶

Moreover, despite the threat they posed, many of those whom the Prophet ﷺ had ordered executed sought and were granted clemency. And as discussed in more detail below, there are dozens of instances of the Prophet ﷺ overlooking and pardoning insults and even assaults.⁷⁷ For these reasons, the Hanafis and those who shared their view did not find Ka’b’s story and similar reports applicable to their perspective on the issue.

Many Pakistanis who support the death penalty for non-Muslims cite Ibn al-Bazzaz, a fourteenth-century Hanafi scholar from the Crimea. He was the first one to introduce this notion into Hanafi jurisprudence when, in a legal commentary, he cited a *fatwa* to this effect by Ibn Taymiyya as the most authoritative one on the issue.⁷⁸ Ibn al-Bazzaz’s opinion gained currency in subsequent years as Ottoman authorities promoted it in their efforts to mobilize Sunnis against their Safavid Shiite rivals.⁷⁹

Two subsequent Hanafi scholars, however, definitively refuted this line of thinking and lamented that it had crept into the school’s jurisprudence.⁸⁰ The first, Husam Chelebi (d. 1520), an Ottoman judge and scholar, “argued that the Hanafi school had historically been loath to impose the death penalty for insulting the Prophet ﷺ,

71 Ibn ‘Abidin 2007, 110.

72 Including by the Federal Shariat Court, when it held that the death penalty was mandatory for insulting the Prophet ﷺ. See *Muhammad Ismail Qureshi v. Pakistan* 1987, 13, 16.

73 Abul-Fida Ismail Ibn Kathir. *The Life of the Prophet Muhammad*. Trans. Trevor Gassick. Reading: Garnet Publishing. Vol. 3, p. 7.

74 Ahmad ibn Hajar al-‘Asqalani. 1986. Vol. 7 of *Fath al-Bari fi Sharh Sahih al-Bukhari*. Cairo: Dar ar-Rayyan li at-Turath, 392.

75 Ibid., p. 397.

76 Al-‘Ayni [855] 2001, vol. 24, 121. In Arabic: لم يقتلهم بمجرد سبهم، وإنما كانوا عوناً عليه، ويجمعون من يحاربونه، ويؤيده

77 See, for example, Mohammad Elshinawy and Omar Suleiman. 2017. “How the Prophet Muhammad ﷺ Rose Above Enmity and Insult.” *Yaqeen Institute*. <https://yaqeeninstitute.org/en/mohammad-elshinawy/how-the-prophet-muhammad-%EF%B7%BA-rose-above-enmity-and-insult/>.

78 Wagner 2015, 538-539

79 Ibid., 539.

80 Ibid., 539.

and he identified the source of the contagion as Ibn al-Bazzaz.”⁸¹ The second scholar, Ibn ‘Abidin (d. 1836), expanded on Chelebi’s work and systematically deconstructed Ibn al-Bazzaz’s arguments, concluding that the death penalty is not mandatory in such a case.⁸² His analysis is discussed below.



“It is clear that no *ijma’* exists about applying this specific punishment to non-Muslims.”

Accordingly, it is clear that no *ijma’* exists about applying this specific punishment to non-Muslims. Moreover, although the Hanafi school was generally the most lenient Sunni school on this issue, there was no *ijma’* within the Shafi‘i school either. A significant contingent of Shafi‘is, including the great hadith scholar Imam an-Nawawi (d. 1277),⁸³ held that some punishment short of death was acceptable but not mandatory.⁸⁴ Ibn Hajar held that insulting the Prophet ﷺ could be overlooked in the interest of harmonious relations with non-Muslims.⁸⁵ Indeed, ash-Shafi‘i himself offered divergent views on this question.⁸⁶ It is also reported from at least one Hanbali scholar, Qadi al-Hulwani (d. 1111), that a non-Muslim who insults God and His Messenger ﷺ should not be killed.⁸⁷ The Yemeni scholar and reformer ash-Shawkani (d. 1839) concurred with al-Asqalani that such insults could be overlooked in the interest of harmony.⁸⁸ Given all of the above, the claim that Section 295-C’s application to non-Muslims is grounded in *ijma’* is false.

81 Ibid., 539.

82 Muhammad Amin Ibn ‘Abidin. 1978. Vol. 1 of *Majmu’at Rasa’il Ibn ‘Abidin*. Beirut: Dar Ihya’ at-Turath al-‘Arabi, 354, cited in Mark Wagner. 2015. “The Problem of Non-Muslims Who Insult the Prophet Mu‘ammad.” *Journal of the American Oriental Society* 135(3), 539.

83 An-Nawawi actually held that insulting the Prophet ﷺ breached a non-Muslim’s covenant with the Muslim authorities. However, he also held that the sovereign “may pardon him or release him for a ransom, as may seem to him most advantageous.” *Minhaj et Talibin: A Manual of Muhammadan Law according to the School of Shafi‘i*. 1914. Trans. E. C. Howard. London: W. Thacker and Co., 469.

84 The *ikhtilaf* (difference of opinion) among the Shafi‘is on this issue is discussed by Ibn Taymiyya (1990) in *as-Sarim al-Maslul ‘ala Shatim ar-Rrasul* (Beirut: al-Maktaba al-‘Ariyya) and Taqi ad-Din as-Subki (2000) in *as-Sayf al-Maslul ‘ala man Sabba ar-Rasul* (ed. Iyad al-Ghuj, Amman: Dar al-Fath), cited in Wagner 2015, 529-540.

85 Al-Asqalani. 1986. Vol. 11, 46.

86 Wagner 2015, 532-533.

87 Ibn Taymiyya 1990, 6, cited in Wagner 2015, 532-533.

88 Muhammad ibn Ali ash-Shawkani. 1993. Vol. 7 of *Nayl al-Awtar Sharh Muntaha al-Akhbar*. Cairo: Dar al-Hadith, 224.

A Non-Muslim's Disparagement of the Prophet ﷺ Does not Violate the Covenant with Muslim Authorities

Pre-modern Islamic polities, similar to other imperial polities, regarded people of other religions as conquered subjects to be governed within the framework of a peace covenant (*'aqd adh-dhimma*),⁸⁹ which entailed paying a special tax (*jizya*) in return for certain protections and rights.⁹⁰ Thus, some scholars framed the issue as whether a non-Muslim subject (*dhimmi*) who insulted the Prophet ﷺ had severed his or her covenant with the Muslim authorities. When Pakistan's Federal Shariat Court held that death was the only punishment for violating Section 295-C, it relied in large part upon non-Hanafi Islamic legal treatises to conclude that this act broke this covenant and exposed him or her to execution.⁹¹

But this was not the Hanafis' traditional view. For example, al-Marghinani, a twelfth-century author of an authoritative book of Hanafi jurisprudence, wrote:

*We argue that insulting the Prophet ﷺ is an expression of unbelief on [the dhimmi's] part and the unbelief that he has [due to his disbelief in Islam] does not prevent his covenant, so his added unbelief does not remove it. His covenant is not terminated unless he moves over to enemy territory or the enemy subdues a territory and wages war against us.*⁹²

His reasoning reflects that of Abu Hanifah, as discussed above: The non-Muslims' disbelief implies such disparagement. But since their disbelief is tolerated under the

89 "This is the situation of *dhimmi*, protected but subordinated Jews and Christians, throughout the Muslim world in the Middle Ages. It is also the situation of Jews in Byzantium and much of Western Europe, and of Muslims in the Christian kingdoms of Spain, in Sicily, and in the Latin Levant." John Tolan. 2010. "The Legal Status of Religious Minorities in the Medieval Mediterranean World: A Comparative Study." In *Hybride Kulturen im mittelalterlichen Europa: Vorträge und Workshops einer internationalen Frühlingsschule/Hybrid Cultures in Medieval Europe: Papers and Workshops of in International Spring School*, eds. Michael Borgolte and Bernd Schneidmüller. Berlin: Akademie Verlag, 141-149.

90 For a good overview of the status of the *dhimmi*, see Tasneem Alkiek. 2017. "Religious Minorities under Muslim Rule." *Yaqeen Institute*. <https://yaqeeninstitute.org/en/tesneem-alkiek/religious-minorities-under-muslim-rule/>. See also Anver M. Emon. 2012. "Religious Minorities and Islamic Law: Accommodation and the Limits of Tolerance." In *Islamic Law and International Human Rights Law: Searching for Common Ground?* eds., M. Ellis., A.M. Emon, and B. Glahn. Oxford: Oxford University Press. https://www.law.utoronto.ca/utfl_file/count/users/aemon/islamic%20law%20and%20human%20rights%20-%20religious%20pluralism.pdf, 323-243.

91 The FSC cited *Ash-Shifa* of Qadi Iyad, a Maliki, and *as-Sarim al-Maslul* of Ibn Taymiyya, a Hanbali. See *Muhammad Ismail Qureshi v. Pakistan* 1987, 18-19 and *passim*.

92 Burhan ad-Din al-Marghinani. 1997. Vol. 4 of *Al-Hidayah fi Sharh Bidayat al-Mubtadi'*. Karachi: Idarat al-Quran wal-'Uloom al-Islamiyyah, 138.

covenant, a *fortiori* their insults are, in essence, just an extension of their disbelief, which is already officially tolerated, and thus does not break the covenant. Likewise, Imam at-Tahawi (d. 933), the great Hanafi scholar of hadith and creed, allowed that a *dhimmi*'s covenant could, in theory, stipulate a specific punishment for insulting the Prophet ﷺ, but "if not stipulated it will not make shedding the blood of a non-Muslim permissible."⁹³ And Ibn 'Abidin stated: "The authoritative opinion in our school ... is that the *dhimmi*'s covenant is not nullified by cursing the Prophet ﷺ ... The view that his covenant is breached is contrary to the school's opinion, namely, the dominant opinion stated in the legal manuals and commentaries."⁹⁴ To be sure, an opinion does exist within the Hanafi school that execution is a potential penalty for certain offenses that do not breach this covenant.⁹⁵ The point here is that the Hanafi school does not consider insulting the Prophet ﷺ a breach of this covenant, such that he or she is deemed an enemy at war with the Muslims and thus can be killed.

In any event, the *dhimmi* rules are of dubious relevance to this issue under Pakistani law, given that Pakistan conceives of itself not as a pre-modern imperial polity but as a nation state operating on a model of equal citizenship. Thus, its non-Muslim citizens are not *dhimmis*⁹⁶ and are to be dealt with according to an entirely different jurisprudence.⁹⁷ Accordingly, the non-Hanafi Islamic law treatises relied on by the Federal Shariat Court have no bearing on the issue of Pakistan's application of Section 295-C to its non-Muslim citizens, insofar as these treatises require the death penalty on the basis of the non-Muslim's *dhimmi* status.

For the Hanafis, There is no Hadd Punishment for a Non-Muslim who Disparages the Prophet ﷺ

As noted above in Chapter 2, the Federal Shariat Court of Pakistan held in 1990 that insulting the Prophet ﷺ "comes within the purview of *hadd* and the punishment of death provided in the Holy Quran and *Sunnah* cannot be altered."⁹⁸ What does *hadd* mean, and why does it matter whether insulting the Prophet ﷺ is a *hadd* offense?

93 At-Tahawi. 1997. Vol. 5 of *Mukhtasar Ikhtilaf al-'Ulama*. Beirut: Dar al-Basha'ir al-Islamiya, 505.

94 Ibn 'Abidin 2007, 105.

95 Ibid.

96 Article 25(1) of the Constitution of Pakistan states: "All citizens are equal before [the] law and are entitled to equal protection of [the] law."

97 See, e.g., Abdallah bin Bayyah. 2016. *The Rights of Religious Minorities in Predominantly Muslim Majority Communities*. <http://www.marrakeshdeclaration.org/Files/Booklet-eng.pdf>, 12. See also pages 16-17 of Abdal Hakim Murad, "Quranic Truth and the Meaning of 'Dhimma.'" *Kalam Research & Media*. https://www.kalamresearch.com/pdf/dhimma_final.pdf

98 *Muhammad Ismail Qureshi v. Pakistan* 1987. See n. 52.

Hadd vs. Ta'zir

The *hadd* (pl. *hudud*) are “a series of fixed, mandatory criminal sanctions” specified in the Quran and *Sunnah*, the foundational sources of Islamic law.⁹⁹ The term refers to “both the major crimes and their associated punishments in Islamic criminal law.”¹⁰⁰ As these laws are deemed to have been revealed by God, humans are “barred from making or altering these laws...”¹⁰¹ Moreover, “[i]n the case of crimes of *hudud*, when the crime has been established, it is mandatory for the judge to award the punishment decreed for such a crime, without diminishing or adding to it.”¹⁰²

The Federal Shariat Court relied primarily on non-Hanafi treatises to rule that insulting the Prophet ﷺ is a *hadd* offense. Moreover, most of the Hanafi authorities cited by the court who held that a non-Muslim’s insult could be punished at all noted that the offense was from the category of *ta'zir* (censure, reprimand), which refers to acts described in the Quran and *Sunnah* as sinful actions rather than as legal offenses. Such offenses are deemed to pose a lesser threat to public safety than the *hudud*.¹⁰³ “Unspecified crimes meant unspecified sanctions, and such offenses were typically handled case by case—similar to common law crimes and punishments that took shape through the tremendous discretion of early Anglo-American judges in both definitions of crimes and decisions to punish.”¹⁰⁴ In the case of *ta'zir*, the judge has the discretion to select from a range of punishments or to forgo punishment altogether, based on the need for deterrence,¹⁰⁵ the ruler’s policy preferences (*siyasa*), and the public interest (*maslaha*).¹⁰⁶

The range of available *ta'zir* punishments includes a frown of disapproval, verbal chastisement, imprisonment, whipping, and exile.¹⁰⁷ According to Ibn Taymiyya, such a punishment may consist of “an infliction of some pain on a man by word or action or

99 Intisar A. Rabb. 2011. “The Islamic Rule of Lenity: Judicial Discretion and Legal Canons.” *Vanderbilt Journal of Transnational Law* 44 (1299), 1316.

100 Ibid.

101 Ibid., 1323.

102 Muhammad Abdel Haleem, Adel Omar Sherif, and Kate Daniels, eds. 2003. *Criminal Justice in Islam: Judicial Procedure in the Shari'a*. London: I.B. Tauris, 19.

103 Abdel Haleem et al., 2003, 70-71. See also Peters, Rudolf. 2005. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty First Century*. Cambridge: Cambridge University Press, 54.

104 Intisar A. Rabb. 2015. *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*. New York: Cambridge University Press, 35.

105 Peters 2005.

106 Rabb 2015.

107 'Abdul-Hayy al-Lucknawi. [N.d.] *Al-Qawl al-Jazim fi Saqut al-Hadd bi Nikah al-Maharim*. Lucknow: Matba' Yusufi, 35-36.

by avoiding saying a good word to him or doing a good deed for him. It may be by harsh admonition or reproach; it may be by forsaking him and neglecting to salute him until he repents...by imprisonment, by beating, by daubing the face black or making the guilty ride backwards on a donkey.”¹⁰⁸ Ibn ‘Abidin notes that in the Hanafi school, the range of discretionary punishments may also include death if the ruler believes that it will serve the public welfare.¹⁰⁹ At the same time, unlike *hadd* offenses, *taz’ir* offenses are amenable to intercession and pardon.¹¹⁰

Imam at-Tahawi wrote: “And whoever [insulted the Prophet ﷺ] from the people of the covenant, then verily he is disciplined but not killed.”¹¹¹ The Maliki scholar Qadi Iyad (d. 1149) attributes to the Hanafi madhab (and to ath-Thawri) the view that non-Muslims who insult the Prophet ﷺ are not to be executed, but “chastised and given a *ta’zir* punishment.”¹¹² Ibn ‘Abidin relates the opinion of the twelfth-century hadith scholar Ibn al-Mu’ayyid, who held that such offenders could be executed “but are not, since it is not a matter of [enforcing] a *hadd* offense, but rather [a matter of] public policy (*siyasa*); it is left to the ruler to enforce if he finds that it would promote the common welfare (*maslaha*).”¹¹³ Ibn ‘Abidin agreed that the death penalty was an option, but that if he or she “is merely punished, that would not be contrary to the opinion of the school.”¹¹⁴ Ibn Taymiyya describes the Hanafi position in similar terms: The non-Muslim offender is not killed, “although he can be punished for making [his blasphemy] public...”¹¹⁵ Like the Hanafis, ash-Shafi’i held that insulting the Prophet ﷺ “does not reach the level of a *hadd* crime.”¹¹⁶

108 Ahmad ibn ‘Abdul-Halim ibn Taymiyya. [N.d.] 2000. *Ibn Taymiyya on Public and Private Law in Islam, or Public Policy in Islamic Jurisprudence*. Trans. Omar A. Farrukh. Al-Khobar: New National Publishers & Distributors, 128-29.

109 Ibn ‘Abidin 2007, 108.

110 Abul-Hasan Ali ibn Muhammad al-Mawardi. [N.d.] 1996. *Al-Ahkam as-Sultaniyah: The Laws of Islamic Governance*. Trans. Asadullah Yate. London: Ta-Ha Publishers, 10-11.

111 Abu Bakr al-Jassas. 2010. Vol. 6 of *Sharh Mukhtasar at-Tahawi*. Beirut: Dar al-Basha’ir al-Islamiya, 142. In Arabic: *ومن كان من ذلك من أهل الذمة: فإنه يؤدب ولا يقتل*

112 Quoted in Ibn ‘Abidin 2007, 104.

113 Ibid.

114 Ibid, 110.

115 Ibn Taymiyya 1990, cited in Ibn ‘Abidin 2007, 107.

116 Muhammad ibn Idris ash-Shafi’i. 1990. Vol. 4 of *Al-Umm*. Beirut: Dar al-Fikr, 218, cited in Wagner 2015, 533.

Hadd avoidance: The “doubt canon”



As demonstrated above, there is considerable disagreement (*ikhtilaf*) among Islamic legal authorities as to whether this act is a *hadd* or a *ta'zir* offense. Indeed the more well-known Hanafi position is that such insults are not punishable offenses or are, at most, *ta'zir*. Under these circumstances, the legal principle of *hadd* avoidance counsels against the death penalty in such cases. The Prophet ﷺ said:

ادْرَءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ فَإِنَّ
الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ

*Avoid applying the hudud upon the Muslims as much as you can. If the criminal has a way out, then leave him to his way. Verily, it is better for the leader to make a mistake forgiving the criminal than it is for him to make a mistake punishing the innocent.*¹¹⁷

Based upon this and similar hadith, as well as statements from the Companions and policy considerations derived from the canonical texts, from the earliest years of Islamic history Muslim jurists have sought to avoid punishing the accused whenever possible, seeing excessive punishment “both as a moral wrong for which they might be accountable if they authorized it and as a means of social control that shifted power from them to the ruling authorities.”¹¹⁸ To this end, they elucidated what has been referred to as the “doubt canon.” According to the formulation of Abu Hanifah’s two most illustrious students, Abu Yusuf and Muhammad ash-Shaybani, this canon is *idra’u ‘l-hudud bi’l-shubahat* (“avoid imposing criminal sanctions [*hudud*] in cases of doubt”).¹¹⁹

The doubt canon was invoked to avoid *hudud* punishment in cases where, for example, the evidence against the accused was unclear or where the law was ambiguous or not well-known. It was also used to avoid *hudud* punishment when there was some question as to whether the offense fell under the category of *hudud* or *ta'zir*.

117 *Sunan at-Tirmidhi* 1424.

118 Rabb 2015, 35.

119 *Ibid.*, 36.

For example, in the view of the illustrious Hanafi jurist Ahmad al-Quduri (d. 1037), “the very fact of different juristic opinions as to whether [an offense] fell under the technical definition of [a *hadd* crime] automatically required avoidance of the *hadd* punishment, for fear that it would not be authorized by God.”¹²⁰ In light of the manifest diversity of opinion as to whether insulting the Prophet ﷺ is a *hadd* or *ta’zir* offense, or even whether it should be overlooked altogether, the principle of *hadd* avoidance counsels against treating it as a *hadd* offense that mandates the death penalty.

The common good (maslaha) is not served by applying Pakistan’s blasphemy law to non-Muslims

As mentioned above, the scholars of Islamic law explained that *ta’zir* offenses were “punishable at the discretion of a judge or caliphal official according to the policy preferences of the political authority (*siyasa*) if certain acts constituted behavior that threatened to compromise public order or the public interest (*maslaha*), which the caliph was charged with upholding.”¹²¹ To understand how authorities should approach a given *ta’zir* offense, then, one must understand the concepts of *siyasa* and *maslaha*.

The great Maliki legal theorist Shihab ad-Din al-Qarafi (d. 1285) described *siyasa*, usually translated as “policy preferences,” as “that power entrusted to the government to improve society. Exercises of this power were valid insofar as they were undertaken with the purpose of enhancing the community’s welfare and did so improve it in fact.”¹²² *Siyasa* laws “were not extrapolated from scripture by religious legal scholars, but rather crafted by Muslim rulers according to their own philosophies of government and ideas about how best to maintain public order.”¹²³

In Arabic, *maslaha* means “a cause or source of something good and beneficial. In English it is frequently rendered as ‘public interest,’ although it is much closer in meaning to well-being, welfare, and social weal.”¹²⁴ In the view of Islamic jurists, it is “the embodiment of the purpose of the law.”¹²⁵ The Hanafi jurist Abu Bakr al-Jassas is

120 Ibid., 178.

121 Rabb 2015, 35 note 40, citing al-Mawardi. [N.d.] 1978. *Al-Ahkam as-Sultaniyya*. Ed. Muhammad Fahmi as-Sirjani. Cairo: al-Maktaba at-Tawfiqiyya, 250, 266-69; and al-Mawardi. [N.d.] Vol. 2 of *Kitab al-Hudud min al-Hawi*, 1022.

122 Asifa Quraishi-Landes. 2015. “The Sharia Problem with Sharia Legislation.” *Ohio Northern University Law Review* 41(16) 545, 551.

123 Ibid., 550.

124 Felicitas Opwis. 2005. “Maslaha in Contemporary Islamic Legal Theory.” *Islamic Law and Society* 12 (2), 182-183.

125 Ibid., 183.

one of the earliest scholars to reference the concept.¹²⁶ Its most well-known elucidator was the Shafi'i jurist Abu Hamid al-Ghazali, who argued that *maslaha* was the underlying purpose of the divine law. In practice, according to him, this term means to preserve for all of humanity “the five essentials of their well-being,”¹²⁷ namely, religion, life, intellect, property, and lineage.¹²⁸ When a law fails to protect these essential elements, it produces *mafsada*,¹²⁹ which the Tunisian scholar Ibn Ashur (d. 1973) defined as “an attribute of the act whereby corruption or harm happens always or mostly to the public or individuals.”¹³⁰ As the great Hanbali jurist Ibn al-Qayyim (d. 1350) explained, any matter that abandons *maslaha* for *mafsada* is, by definition, not from the divine law.¹³¹

Therefore, in light of the foregoing, the determinative question is whether Pakistan achieves *maslaha* by applying its blasphemy law to non-Muslims. The clear answer is that it does not. Rather, it produces *mafsada* in the form of chaos and oppression, harm to Islam's reputation, and even more blasphemy.

The determinative question is, does Pakistan achieve Maslaha by applying its blasphemy law to non-Muslims?

Pakistan's application of blasphemy laws to non-Muslims promotes chaos

Section 295-C of Pakistan's criminal code derives from and contributes to the widespread misunderstanding that Islam categorically ordains the death penalty for non-Muslims who insult the Prophet ﷺ and, as such, helps create an environment that legitimizes mob violence against the accused. Thus Mumtaz Qadri, who assassinated Governor Salman Taseer, argued before the Supreme Court of Pakistan that he “was under a religious and moral, and hence legal, obligation to kill an apostate who had committed the offence of blasphemy, particularly when the State had failed to take any legal action against the offender.”¹³² The court's rejoinder was telling: If this were to be accepted as a mitigating circumstance, “then a door shall become open for religious vigilantism which may deal a mortal blow to the rule of law in this country where divergent religious interpretations abound and tolerance stands depleted to an alarming level.”¹³³

126 Ahmad b. 'Ali al-Jassas. 1981. *al-Fusul fil-Usul*. Lahore: al-Maktaba al-'Ilmiyya, 133-135, cited in Opwis 2005, 188, and note 21.

127 Opwis 2005, 188.

128 Muhammad at-Tahir ibn Ashur. 2006. *Treatise on Maqasid ash-Shari'ah*. Trans. Mohamed El-Tahir El-Mesawi. Herndon: The International Institute of Islamic Thought, 118.

129 Opwis 2005, 188.

130 Ibn Ashur 2005, 96.

131 Muhammad ibn Abi Bakr az-Zar'iyy (Ibn Qayyim al-Jawziyya). 1991. Vol. 3 of *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*. Beirut: Dar al-Kutub al-'Ilmiyya, 11.

132 *Malik Muhammad Mumtaz Qadri v. the State* 2015, 17.

The court was right but did not go far enough: The threat to the rule of law in the country lies not merely in accepting a religious justification for vigilante murder, but in the existence of the blasphemy law itself. The correlation between the law's existence and the breakdown of respect for authority is demonstrated by the fact that before it was passed, only two extrajudicial murders associated with blasphemy allegations had been reported. In contrast, since its passage there have been fifty-seven such murders, most of them of members of religious minority communities.¹³⁴ The situation has worsened since the Federal Shariat Court's 1990 determination that the death penalty is mandatory for violations of Section 295-C, given "the implicit sanction it grants extremist elements ... to themselves inflict the penalty through vigilante justice if the court does not deliver according to their wishes ... [L]egal sanction for death to the accused is an added impetus to their taking the law into their own hands."¹³⁵

The existence of the blasphemy law itself is a threat to the rule of law in Pakistan.

When individuals are accused, "courts and authorities are frequently overruled by Pakistani citizens engaging in vigilantism to bring justice upon alleged blasphemers" before any legal processes can even begin.¹³⁶ Police often make arrests "in order to appease violent mobs who storm the neighborhoods and homes of accused blasphemers."¹³⁷ As noted earlier, one supposedly religious group literally threatened to unleash "anarchy" if Asia Bibi were pardoned.¹³⁸ Politicians and judges are also frequent targets of violence and intimidation in connection with blasphemy laws.¹³⁹ This includes Salman Taseer as well as Minorities Minister Shahbaz Bhatti, who was assassinated by the Pakistani Taliban for working to reform these laws.¹⁴⁰ Government officials like these are targeted because of the popular notion that, as Mumtaz Qadri argued, "it is not just defiling the sacred name of the Holy Prophet Muhammad (peace be upon him) which constitutes blasphemy but *criticizing the law regarding blasphemy is also blasphemous*."¹⁴¹ The blasphemy laws have thus created:

133 Ibid.

134 Arafat Mazhar. 2015. "Why blasphemy remains unpardonable in Pakistan." *Dawn*. February 19. <https://www.dawn.com/news/1163596>.

135 Siddique 2008, 383.

136 Matt Hoffman. 2014. "Modern Blasphemy Laws in Pakistan and the Rimsha Masih Case: What Effect—if Any—the Case Will Have on Their Future Reform." *Washington University Global Studies Law Review* 13 (2) 371, 383.

137 Ibid.

138 Ibid., note 2.

139 Ibid.

140 Declan Walsh. 2011. "Pakistan minister Shahbaz Bhatti shot dead in Islamabad." *The Guardian*. March 2. <https://www.theguardian.com/world/2011/mar/02/pakistan-minister-shot-dead-islamabad>.

141 *Malik Muhammad Mumtaz Qadri v. the State*. 2015, 23.

*this informal system whereby vigilantism wins out in the arena of blasphemy law enforcement—where arrests are made based on popular pressure and protests, punishment is handed down in the street more often than in the courtroom, and politicians, on fear of assassination, feel constrained to maintain the status quo—has created a system of governance in Pakistan that exists and operates outside of the realm of the government’s control, and outside of the rule of law.*¹⁴²

Under Islamic law, this state of affairs is totally unacceptable. As the Maliki scholar al-Qurtubi (d. 1273) stated in his magisterial exegesis of the Quran, “there is no dispute among the scholars that all criminal punishments, such as execution, cannot be carried out except by those in authority who are obliged to carry out the ... *hadd* punishments, etc.”¹⁴³ Ibn Rushd (d. 1198) said that *ijma’* has been reached on this matter,¹⁴⁴ and Allamah al-Kasani al-Hanafi likewise confirmed, “The only one who implements criminal punishment is the ruler or the one the ruler has appointed for this duty.”¹⁴⁵ The Hanbali Ibn Rajab (d. 1393) said, “It is not permissible to transgress the authorities or take authority into one’s hands, even if the authorities themselves are falling short in fulfilling their responsibilities.”¹⁴⁶ The Egyptian Shafi’i scholar Abu Bakr ad-Dimyati (d. 1893) said that if anyone other than the authorities kills a criminal, “then he will be punished for transgressing against the authorities.”¹⁴⁷

Accordingly, those who take it upon themselves to kill alleged blasphemers are sinful corrupters because their action creates an atmosphere of chaos and disrespect for the law, which contributes to the breakdown of public order—a condition which is far worse than the harm caused by the alleged blasphemy. As Imam al-Ghazali wrote, when government authority breaks down “the world will undoubtedly become ruined and religion and the world will suffer injury and damage.”¹⁴⁸ The current situation is a source of tremendous public disorder. It is, therefore, a source of *mafsada* rather than *maslaha*.

142 Hoffman 201, 383.

143 Abu ‘Abdullah Muhammad al-Qurtubi. 2006. Vol. 3 of *Al-Jami’ li Ahkam al-Quran*. Beirut: Mu’assasah Risalah, 66. al-Qurtubi’s remarks occur in his explanation of Surah al-Baqarah 2:178. While he and others quoted here specify *hadd* punishments, Islam’s prohibition on vigilantism extends to *ta’zir* punishments as well. See, for example, Kingdom of Saudi Arabia, General Presidency of Scholarly Research and Ifta’. [N.d.] No. 2095 of *Fatwas of the Permanent Committee* (holding that a stipulation in a tribal settlement imposing a fine is forbidden “because such a fine is a financial discretionary punishment [*ta’zir*]” and “such a punishment is to be decided only by judges.”).

144 Ibn Rushd said: “They agreed that the person who applies this *hadd* is the imam as is the case in all other *hudud*.” Abdallah al-Abadi. 1995. *Sharh Bidayah al-Mujtahid wan-Nihayah al-Muqtasid*. Beirut: Dar as-Salam, 2259.

145 Alauddin Abi Bakr bin Mas’ud al-Kasani al-Hanafi. 1986. Vol. 7 of *Bada’i as-Sana’i fi Tartib ash-Shara’i*, 57.

146 Abul-Faraj Zayn-ud-Deen ‘Abdur-Rahman ibn Ahmad ibn Rajab. 2002. Vol. 2 of *Majmu’ ar-Rasa’il*. Cairo: al-Faruq al-Hadithah lit-Tiba’ah wan-Nashr, 608.

Pakistan's application of blasphemy laws to non-Muslims results in oppression

As the Supreme Court of Pakistan has observed, “The majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community.”¹⁴⁹ Thus, “procedural issues, the propensity for misuse of blasphemy laws for *mala fide* purposes, the social and political pressures that impede the objective and fair adjudication of blasphemy cases, and the vulnerability of the accused, especially if they belong to a minority, further confound and aggravate the situation.”¹⁵⁰

Moreover, the number of registered cases under Section 295-C has increased sharply since the Federal Shariat Court declared death the only possible sentence. Thus, it is clear, “based on a review of the nature of allegations made in these cases and their eventual verdicts, that the death sentence has increased the potency of Section 295-C as an instrument for victimization.”¹⁵¹ As the Lahore High Court observed in a recent judgment, this increase “shows that the law was being abused ... to settle ... scores.”¹⁵²

A disturbing number of those accused of blasphemy are children and the mentally disabled.¹⁵³ For example Rimsha Masih, a fourteen-year-old mentally disabled Christian girl, was arrested and charged with blasphemy in 2012.¹⁵⁴ Salamat Masih, Rehmat Masih, and Manzoor Masih, all thirteen-year-old Christian boys, were sentenced to death in 1995 for supposedly writing offensive words on a mosque wall. The sentences of Salamat and Rehmat were overturned for lack of evidence, while extremists murdered Manzoor during his trial.¹⁵⁵

Amnesty International has meticulously documented how Pakistan's blasphemy laws have been used as a tool of injustice and oppression. Some of their findings are presented below:

147 Abu Bakr Uthman b. Muhammad Shata al-Bakri ad-Dimyati. 1995. Vol. 4 of *I'anat at-Talibin ala Hill Alfadh Fath al-Mu'in*. Beirut: Dar al-Kutub al-'Ilmiyya, 157.

148 Ann K. S. Lambton. 1981. *State and Government in Medieval Islam*. Oxford: Oxford University Press, 124, translated from al-Ghazali. 1972. *Nasihah al-Muluk*, ed. Jalal ed-Din Huma'i. Tehran: Anjuman-i Asar-i Milli, 131-132.

149 *Malik Muhammad Mumtaz Qadri v. the State* 2015, 26.

150 Siddique 2008, 335.

151 Ibid., 342.

152 Ibid.

153 Amnesty International. 2016. “As Good as Dead: The Impact of the Blasphemy Laws in Pakistan.” December 21. <http://www.refworld.org/docid/585a41704.html>, 12.

154 Ibid.

155 Siddique 2008, 329.

Many people accused of blasphemy are forced to undergo a gruelling trial due to several factors: vaguely formulated laws, the low standard of evidence required for conviction, and the manner in which allegations are often uncritically accepted by the police, the prosecuting authorities, and even trial court judges, who may themselves also face threats and intimidation...

There are frequent reports of the lack of independence by trial courts and sometimes even high courts, largely due to pressure exerted by complainants or others in support of the law. The accused are often presumed guilty and the burden is on them to prove their innocence rather than on the prosecution to prove their “guilt” beyond reasonable doubt...

Many individuals have been convicted of blasphemy on the basis of a standard of proof below that of “beyond a reasonable doubt.” This is particularly the case with charges filed under Section 295-C, because an individual can be convicted and sentenced to death solely on the basis of oral testimonies of a few prosecution witnesses.¹⁵⁶

In sum, Pakistan’s blasphemy laws are “a potent tool for the victimization of religious minorities and relegation of these minorities, in many instances, to the status of fearful pariahs subject to legally mandated persecution.”¹⁵⁷ This is a shameful state of affairs, given that Pakistan’s constitution declares that the principles of “tolerance and social justice, as enunciated by Islam, shall be fully observed.” In this connection, the Quran tells Muslims:

قُلْ أَمَرَ رَبِّي بِالْقِسْطِ

Say: “My Lord has commanded justice.”¹⁵⁸

And:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ
وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

Verily, Allah orders justice and good conduct, and giving to relatives, and forbids all shameful deeds and bad conduct and oppression. He admonishes you that perhaps you will be reminded.¹⁵⁹

156 Amnesty International 2016, 12.

157 Siddique 2008, 306.

158 Quran, Surah al-A'raf 7:29

159 Quran, Surah an-Nahl 16:90

Likewise, it is as if those who claim to love the Prophet ﷺ have forgotten his warning:

اتَّقُوا دَعْوَةَ الْمَظْلُومِ فَإِنَّهَا تُحْمَلُ عَلَى الْغَمَامِ
يَقُولُ اللَّهُ جَلَّ جَلَالُهُ وَعِزَّتِي وَجَلَالِي لِأَنْصُرَنَّكَ وَلَوْ بَعْدَ حِينٍ

Beware of the supplication of the oppressed, for it is carried above the clouds. Allah the Most High says: “By My Might and Majesty, I will help you in due time.”¹⁶⁰

And the Messenger of Allah ﷺ said:

عَنْ اللَّهِ تَبَارَكَ وَتَعَالَى أَنَّهُ قَالَ يَا عِبَادِي إِنِّي حَرَّمْتُ الظُّلْمَ
عَلَى نَفْسِي وَجَعَلْتُهُ بَيْنَكُمْ مُحَرَّمًا فَلَا تَظَالَمُوا

Allah the Exalted said: “O my servants, I have forbidden oppression for Myself and have made it forbidden among you, so do not oppress one another.”¹⁶¹

It is inconceivable that Muslims could truly love Allah and His Prophet ﷺ while lying about their neighbors in order to pursue petty grudges and vendettas. And yet this very practice is clearly rampant. The Quran warns such people:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدِينَ
وَالْأَقْرَبِينَ إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ
تَلَوْا أَوْ نَعَرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

O you who believe, be those who persistently stand firm in justice as witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. Follow not your desires, lest you not be just. If you distort your testimony or refuse to give it, then Allah is aware of what you do.¹⁶²

Perhaps those who oppress their neighbors justify their actions to themselves on the grounds that their victims are not Muslim. This excuse is patently bogus for all Muslims who understand their religion. All of these verses and hadith apply to non-Muslims just as much as they do to Muslims. As the Prophet ﷺ said regarding the non-Muslims living in peace with the Muslims:

160 Abu al-Qasim Sulaiman ibn Ahmad at-Tabarani. 2016. Vol. 2 of *Al-Mu'jam al-Kabir*. Islamabad: Millat Publications, 2016, 808.

161 Muslim ibn al-Hajjaj. 2007, vol. 6, 444.

162 Quran, Surah an-Nisa' 4:135.

أَلَا مَنْ قَتَلَ نَفْسًا مُعَاهِدَةً لِّهِ ذِمَّةُ اللَّهِ وَذِمَّةُ رَسُولِهِ فَقَدْ أَخْفَرَ
بِذِمَّةِ اللَّهِ فَلَا يَرِخُ رَائِحَةَ الْجَنَّةِ وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ سَبْعِينَ خَرِيفًا

*Indeed, whoever kills one who has a covenant from Allah and a covenant from His Messenger, then he has violated the covenant with Allah and the covenant of His Messenger. So he shall not smell the fragrance of Paradise, even though its fragrance can be sensed from the distance of seventy autumns.*¹⁶³

And:

أَلَا مَنْ ظَلَمَ مُعَاهِدًا أَوْ انْتَقَصَهُ أَوْ كَلَّفَهُ فَوْقَ طَاقَتِهِ
أَوْ أَخَذَ مِنْهُ شَيْئًا بَغَيْرِ طِيبِ نَفْسٍ فَأَنَا حَاجِبُهُ يَوْمَ الْقِيَامَةِ

*No doubt, if anyone wrongs one with a covenant, violates his rights, burdens him with more work than he is able to do, or takes something from him without his consent, then I will be his advocate on the Day of Resurrection.*¹⁶⁴

It is thus apparent that a statute like Section 295-C, whose design and application unquestionably results in the widespread unjust persecution of officially protected people, is a source of harm and corruption (*mafsada*) rather than of *maslaha*.

Pakistan's application of blasphemy laws to non-Muslims encourages blasphemy and harms Islam's reputation

Between 850 and 859, forty-eight Christians living in the Cordoba caliphate presented themselves before Muslim religious officials, denounced Islam and the Prophet ﷺ, and, pursuant to the predominant Maliki school of law, were executed. The actions of these “Martyrs of Cordoba” were “deliberate and provocative, specifically designed to bring about [their] own death.”¹⁶⁵ They “came forward, unsummoned and without any pressure to forsake their religion, to denounce Islam in deliberate violation of the laws against blasphemy.”¹⁶⁶ Their actions “indicated a deliberate knowledge and use of the legal procedures in place, in order to legitimize his/her own death.”¹⁶⁷ Why did they do it?

163 Abu ‘Isa Muhammad ibn ‘Isa at-Tirmidhi. 2007. Vol. 3 of *Jami’ at-Tirmidhi*. Riyadh: Darussalaam, 189.

164 Abu Dawud Sulayman ibn al-Ash‘ath al-Azdi as-Sijistani. 2008. Vol. 3 of *Sunan Abu Dawud*. Riyadh: Darussalaam, 527.

165 Kenneth Baxter Wolf. 1988. *Christian Martyrs in Muslim Spain*. Cambridge: Cambridge University Press, 97.

166 Ibid.

167 Adriano Duque. 2011. “Claiming Martyrdom in the Episode of The Martyrs of Córdoba [Reivindicación del martirio en el episodio de los mártires de Córdoba].” *Collectanea Christiana Orientalia* 8, 28-29.

[T]he martyrs seem to have hoped to be able to provide successive martyrdoms until every Christian in Spain should be so roused against the [Muslims] that he would rise up in rebellion and begin the final Messianic war, during the course of which, they believed, God would intervene, destroy the Arab regime in Spain, and bring history to its End....

By forcing the [Muslim] regime to execute Christian martyr after Christian martyr, they hoped so to discredit that regime and so to enrage against it the very elements they hoped to win back to Christianity, that these elements would return openly to Christianity, and, in alliance with the moderate Christians now similarly enraged, would follow the martyrs' example in being willing to die for the faith.¹⁶⁸

Moreover, they perceived voluntary martyrdom as a way to achieve spiritual heights unattainable through ordinary worship. Many “had received the sacrament of penance as a means of intensifying their asceticism and ... martyrdom was a final expression of their penitential anxiety.”¹⁶⁹

Recognizing that he had a voluntary martyrdom movement on his hands, Cordoba's emir issued an edict promising the death penalty for any future blasphemers. Critically, however, this “was not a well-conceived deterrent” because Christians were attracted by the martyrs' example and it thus “opened the door to waves of imitators, many of whom recognized the act of martyrdom as the perfect realization and culmination of their penitential programs.”¹⁷⁰ The martyrs were able to use “Islamic legal practice as a theoretical and jurisprudential legitimization of orthodox [Christian] power” and “to communicate a strategic message and to legitimize the existence of the religious group they represent[ed].”¹⁷¹ The judge became “the agent that ... recognize[d] the role of the martyr as a negative reflection of Islam and a depositary of Christian faith.”¹⁷²

In 2006, over a millennium later, several Danish imams toured the Middle East to publicize a Danish newspaper's publication of cartoons mocking the Prophet ﷺ. The result was violence around the world, including attacks on churches and Christians that resulted in at least fifty deaths in the Middle East, Africa, and Asia.¹⁷³ In Pakistan, five people were killed in one week,¹⁷⁴ including an eight-year old boy who died when

168 Allan Harris Cutler. 1965. “The Ninth-Century Spanish Martyrs' Movement and the Origins of Western Christian Missions to the Muslims.” *The Muslim World* 55, 330.

169 Jessica A. Coope. 1995. *The Martyrs of Córdoba: Community and Family Conflict in an Age of Mass Conversion*. Lincoln: University of Nebraska Press, 71.

170 Wolf 1988, 25, 118.

171 Duque 2011, 48

172 Ibid., 41-42.

173 “Danish Muhammad cartoon reprinted.” 2008. *Al Jazeera*. February 17. <http://www.aljazeera.com/news/europe/2008/02/20085251217764771.html>.

a protester accidentally fired into a crowd and a man who was killed when protesters downed power lines.¹⁷⁵

In solidarity with the newspaper, publications and websites around the world reproduced the cartoons, and the creators of the American animated television series South Park produced an episode in which the Prophet ﷺ was depicted in a bear suit. One of the show's characters says in a monologue: "Freedom of speech is at stake here, don't you all see? If anything, we should all make cartoons of Mohammed and show the terrorists and the extremists that we are all united in the belief that every person has a right to say what they want."¹⁷⁶

In reaction to this, a young American convert posted threats against the show's creators on an extremist website that he helped operate.¹⁷⁷ These threats received a great deal of media coverage, and the series' creators were widely praised for standing up for freedom of speech. In fact, May 20, 2010, was designated "Everybody Draw Muhammad Day." The event's Facebook page garnered over 100,000 members.¹⁷⁸ In support of this effort, the libertarian journal *Reason* sponsored an "Everybody Draw Mohammed Contest." According to the editor,

The ground of Europe and Asia and all the continents ... is fertilized with the blood and bones of martyrs who have done nothing more than make tangible their thoughts in words, music, and pictures.

There comes a point in any society's existence where it must ultimately, to paraphrase Martin Luther ... dig in its heels and say here we stand, we will do no other ... And at the heart of the liberal project is ... the right to expression ... [N]o one should be beaten or killed or imprisoned simply for speaking their mind ... If we cannot or will not defend that principle with a full throat, then we deserve to choke on whatever jihadists of all stripes can force down our throats.

*Our Draw Mohammed contest is not a frivolous exercise ... It's a defense of what is at the core of a society that is painfully incompetent at delivering on its promise of freedom, tolerance, and equal rights. It's a rebuttal to the notion that we should go limp in the clinches precisely because bullies and bastards can punch or blow us up.*¹⁷⁹

174 Salman Masood. 2006. "Pakistan's Violent Protests over Cartoons Take a Political Turn." *The New York Times*. February 16. <http://www.nytimes.com/2006/02/16/world/asia/pakistans-violent-protests-over-cartoons-take-a-political-turn.html>.

175 David Montero. 2006. "Pakistani riots about more than cartoons." *The Christian Science Monitor*. February 17. <https://www.csmonitor.com/2006/0217/p01s02-wosc.html>.

176 "Cartoon Wars: Part 1." 2006. *South Park* April 6. <http://www.imdb.com/title/tt0786244/quotes>.

177 Carol Cratty. 2011. "Man who threatened 'South Park' creators gets 25 years in prison." *CNN*. February 24. <http://www.cnn.com/2011/CRIME/02/24/virginia.terror.sentence/index.html?hpt=Sbin>.

These two examples demonstrate that attempts to prevent such insults with violence can, and often do, have precisely the opposite effect: They encourage and multiply such insults. The reason, apparent in Cordoba and the modern West, is that a policy and practice of violence against non-Muslims accused of disparaging the Prophet صلى الله عليه وسلم provides would-be “martyrs” and their supporters a platform to demonstrate the alleged nobility, reasonableness, and universality of their own beliefs as against the harshness and intolerance of Muslims.

There is no evidence of any such motivation among those from Pakistan’s religious minorities charged with insulting the Prophet صلى الله عليه وسلم. In fact, as shown above, the evidence suggests that such charges are usually fabricated to settle petty personal grievances. But the reality of Pakistan’s application of its blasphemy laws to non-Muslims is a critical part of the broader, global narrative that Muslims mistreat religious minorities.¹⁸⁰ This narrative is what the above-mentioned contest sponsors and many others sought to challenge with their profane depictions. In other words, by making non-Muslims legally liable for such insults, Pakistan only helps achieve the opposite of what the law intends.

Precisely to avoid this sad state of affairs, Islam prohibits Muslims from doing or saying anything that might prompt non-Muslims to insult Islam. The Quran states:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ
كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

*Do not insult those they call upon besides Allah, lest they, out of spite, insult Allah without knowledge. In this way, We make the actions of every nation seem attractive to them. Then they will return to their Lord, and He will inform them about what they did.*¹⁸¹

Ibn Kathir, the great student of Ibn Taymiyya, said about this verse:

Allah prohibits His Messenger and the believers from insulting the false gods of the idolaters, although there is a clear benefit in doing so. Insulting their gods will lead to a bigger evil than its benefit, for the idolaters might retaliate by insulting the God of the believers, Allah, none has the right to be worshipped but He ... On this same subject—abandoning what carries benefit to avert a greater evil—it is recorded in the Sahih that the Messenger of Allah said:

178 Jenny Yuen. 2010. “Draw Mohammed Drawing in Fans, Foes.” *Toronto Sun*. May 20. <http://www.torontosun.com/news/torontoandgta/2010/05/20/14026241.html>.

179 Nick Gillespie. 2010. “Why We’re Having an Everybody Draw Mohammed Contest on Thursday May 20.” *Hit and Run Blog*. May 18. <http://reason.com/blog/2010/05/18/get-ready-for-everyone-draw-mo>.

مَنْعُونَ مَنْ سَبَّ وَالِدَيْهِ

Cursed is he who insults his own parents!

They asked, “O Allah’s Messenger! And how would a man insult his own parents?” He replied,

يَسُبُّ أَبَا الرَّجُلِ فَيَسُبُّ أَبَاهُ وَيَسُبُّ أُمَّهُ فَيَسُبُّ أُمَّهُ

*He insults a man’s father, and that man insults his father,
and insults his mother and that man insults his mother.*¹⁸²

Ibn Kathir’s point is that any benefit gained by insulting others’ false gods is outweighed by the harm of provoking their worshippers to insult the Lord of the Worlds—not, of course, because their insults will harm Him, but because they will feel bitter toward Islam and Muslims and move farther away from Islam’s guidance. Thus, the Quran instructs Muslims to abstain from doing so for the sake of the greater good. Likewise, from the aforementioned hadith forbidding insulting another’s parents, the Maliki hadith scholar and jurisprudent Ibn Battal (d. 1054) derived the principle that “one whose action leads to something prohibited, then that action is prohibited, even if he did not intend something prohibited.”¹⁸³ Similarly, Ibn Hajr al-‘Asqalani explains that the Prophet ﷺ overlooked the Jew’s insult “for the *maslaha* of harmonious relations,”¹⁸⁴ a conclusion that ash-Shawkani reached as well.¹⁸⁵ The discussion by these scholars demonstrates that in determining the value of an action, Islamic law takes into account the balance of its harm and benefit.

In light of the foregoing, it is obvious that a law such as Section 295-C only encourages people to disparage the Prophet ﷺ, repels people from Islam, provides a platform for defaming the religion, and detracts from the *maslaha* and purposes of Islamic law.

180 See, for example, Mohshin Habib. 2013. “Muslim Persecution of Christians Escalating in Pakistan.” *Gatestone Institute*, April 9. <https://www.gatestoneinstitute.org/3664/christian-persecution-pakistan>.

181 Quran, Surah al-An‘am 6:108

182 Imam Abul-Fida Ismail ibn Kathir. 2003. Vol. 3 of *Tafsir ibn Kathir*. Riyadh: Darussalaam, 436-37. Emphasis added. The hadith cited by Ibn Kathir is found, among other places, in al-Bukhari. 1997, vol. 8, 18.

183 Quoted in Al-‘Asqalani. 1986. Vol. 10, 418. In Arabic: من آل فعله إلى محرم يحرم عليه ذلك الفعل وإن لم يقصد إلى ما يحرم

184 Al-‘Asqalani. 1986. Vol. 11, 46. Ibn Hajar said: ذلك كان لمصلحة التألف

185 Ash-Shawkani. 1993. Vol. 7, 224.





Love and Honor of the Prophet ﷺ

In his unsuccessful appeal to the Supreme Court of Pakistan, Mumtaz Qadri argued that he had “acted under the influence of some religious speakers ... whose inciting, provocative and instigating speeches made in a religious meeting” so inflamed his emotions that “his conduct in the matter was not that of a free agent acting on his own.”¹⁸⁶ In a video of that meeting, held four days before the murder in the city where it occurred, Mufti Hanif Qureshi harangues the crowd:

And we explicitly say it without mincing any words that if the death penalty was not provided in Section 295-C for the blasphemers in that case Allah has given us the courage. We know how to trigger a gun, how to shoot somebody dead, and how to behead those who commit blasphemy against our beloved Prophet!

(Crowd) We are the protectors of the dignity of the holy Prophet! We will sacrifice our lives for the dignity of the holy Prophet!

Let them know those who consider Sunnis are cowards that Allah has honored us with the courage and power to strangle those involved in blasphemy, to cut their tongues, and to riddle their bodies with bullets. For this, nobody can arrest us under any law. The punishment of the blasphemer is only death! The blasphemer of the Prophet has no right to live!

(Crowd) We are the servants of the holy Prophet and are ready to die for him! If there is no love for the holy Prophet, life is useless! He who is the friend of the blasphemer is a traitor!

*Dear listeners! We are very polite people. We are peace-loving people, but we can't tolerate disrespect and blasphemy of our holy Prophet. It gives us unbearable pain! We cannot let any blasphemer be alive in Pakistan!*¹⁸⁷

This discourse is representative of the essential emotions and principles that motivate Pakistani supporters of the death penalty for those who disparage the Prophet ﷺ. The murder of the blasphemer is considered an act in defense of the Prophet's ﷺ dignity and thus an expression of love for him. It demonstrates that Sunni Muslims are neither weak nor cowardly, and also alleviates the psychic pain caused by the knowledge that this revered figure has been insulted. But if the supporters would reflect, they would see that these concerns are unfounded or may be resolved peacefully and thereby avoid the above-mentioned harm and corruption that attend violent responses to such allegations.

Love of the Prophet ﷺ Does not Require Killing non-Muslims who Insult Him

Allah says in the Quran:

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ

*The Prophet is closer to the believers than their own selves.*¹⁸⁸

Likewise, the Prophet ﷺ said:

لَا يُؤْمِنُ أَحَدُكُمْ حَتَّىٰ أَكُونَ أَحَبَّ إِلَيْهِ مِنْ وَالِدِهِ وَوَلَدِهِ وَالنَّاسِ أَجْمَعِينَ

*None of you will have faith till he loves me more than his father, his children and all of humanity.*¹⁸⁹

Thus, loving the Prophet ﷺ is a condition of faith. Ibn Taymiyya said: “The Muslims are unanimously agreed that the Prophet ﷺ is the greatest of creation in status before Allah, and no other created being has any status that is higher than his or any power of intercession that is greater than his.”¹⁹⁰ It should therefore be no surprise that Muslims would take such insults very seriously, for the Lord of the Worlds chose him ﷺ, above all of creation, to convey the religion to humanity. He was persecuted and driven out of his hometown so that humanity would be guided. And yet, as his wife Aisha said, he only took revenge when something Allah had forbidden had been transgressed.¹⁹¹ The Quran instructs the Prophet ﷺ and the Muslims that when others abuse them:

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

*Show forgiveness, enjoin what is good, and turn away from the ignorant.*¹⁹²

186 Malik Muhammad Mumtaz Qadri v. the State. 2015, 33. Pakistani investigators reportedly obtained a video of Qadri at this meeting. See “Taseer murder case: ‘Inspirational’ clerics given bail.” 2011. *The Express Tribune*. January 9. <https://tribune.com.pk/story/106934/taseer-murder-case-inspirational-clerics-given-bail/>.

187 Sunni Media. 2014. “Mufti Hanif Qureshi’s sermon with English Subs which made Mumtaz Qadri to kill Salman Taseer.” December 6. <https://www.youtube.com/watch?v=jAMalouD0Ns>.

188 Quran, Surah al-Ahzab 33:6.

189 Al-Bukhari. 1997, vol. 1, 61.

190 Ahmad ibn ‘Abdul-Halim ibn Taymiyya. 2005. Vol 1 of *Majmu’a al-Fatawa*. Al-Mansurah: Dar al-Wafa, 115.

191 Al-Bukhari. 1997. Vol. 8, 444.

192 Quran, Surah al-A’raf 7:199.

When this verse was revealed, the Prophet ﷺ turned to Angel Gabriel and asked, “What does it mean, O Gabriel?” Gabriel replied, “Allah commands you to forgive those who wronged you, give to those who deprived you, and keep relations with those who cut theirs with you.”¹⁹³ The Prophet ﷺ embodied this spirit. As discussed earlier, when a Jew passed by him and mocked the Muslim greeting by wishing death upon him, he told the Companions to do nothing more than merely respond, “And upon you.” As the Quran tells the Prophet and the Muslims:

وَلْتَسْمَعَنَّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ وَمِنَ الَّذِينَ أَشْرَكُوا أَذًى كَثِيرًا
وَإِنْ تَصْبِرُوا وَتَتَّقُوا فَإِنَّ ذَلِكَ مِنْ عَزْمِ الْأُمُورِ

*And you will surely hear much abuse from those given the Scripture before you and from the idolaters. But if you are patient and God-fearing, then verily that is true steadfastness.*¹⁹⁴

And:

وَاصْبِرْ عَلَىٰ مَا يَقُولُونَ

*Be patient with whatever they say.*¹⁹⁵

The Prophet ﷺ exhibited this forbearance not only with verbal abuse, but also with physical attacks. When a Jewish woman tried to kill him by giving him some poisoned mutton, his Companions asked, “Should we kill her?” and he said, “No.”¹⁹⁶ In his Book of Morals and Manners, al-Bukhari placed this hadith in the section “The Book of Dealing with People Cheerfully,” under the heading “Excusing and Pardoning People.”¹⁹⁷ The Quran states:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And we have sent you (O Muhammad) only as a mercy to all the worlds.*¹⁹⁸

Ibn Kathir explains that this verse means that the Prophet ﷺ was sent as a mercy to Muslims and non-Muslims.¹⁹⁹ The Prophet ﷺ said:

إِنِّي لَمْ أُبْعَثْ لَعْنًا، وَإِنَّمَا بُعِثْتُ رَحْمَةً

*I was not sent as a curse, but rather as a mercy.*²⁰⁰

193 Imam Abul-Fida Isma'il ibn Kathir. 2003. Vol. 4 of *Tafsir ibn Kathir*. Riyadh: Darussalaam, 241.

194 Quran, Surah Ali 'Imran 3:185.

195 Quran, Surah al-Muzzamil 73:10.

196 Muhammad ibn Isma'il al-Bukhari. 2000. *Adab al-Mufrad*. Jubail: Dar as-Siddiq, 91.

197 Ibid.

198 Quran, Surah al-Anbiya' 21:107.

199 Ibn Kathir 2003, vol. 6, 511-512.

200 Al-Bukhari 1997, vol. 6, 460.

Would the Arabs' hearts have softened to Islam if the Prophet ﷺ had gone about seeking vengeance from anyone who spoke a harsh word against him? In As-Subki's words: "We know from the Prophet ﷺ, and his kindness, mercy, and compassion, that he never took revenge for himself, but only did so when the sanctities of God were violated, and then he took vengeance for God ... so how is vengeance taken for his sake after his death?"²⁰¹ It was from the Prophet's ﷺ deep wisdom and insight that grace in the face of insult is among the most disarming and attractive of all human qualities. In this he embodied the Quran's teaching:

ادْفَعْ بِالَّتِي هِيَ أَحْسَنُ فَإِذَا الَّذِي بَيْنَكَ وَبَيْنَهُ عَدَاوَةٌ
كَأَنَّهُ وَلِيٌّ حَمِيمٌ وَمَا يُلْقَاهَا إِلَّا الَّذِينَ صَبَرُوا

*Repel evil with that which is better. Then verily, he, between whom and you there was enmity, will become as though he was a close friend. But none is granted that except those who are patient.*²⁰²

Thus, Rabbi Zayd ibn Sun'a of Medina related the signs of true prophethood that he recognized in Muhammad ﷺ that led him to accept Islam: "His forbearance overcame his anger, and his patience would increase with intense abuse."²⁰³ The Companion Abdullah bin 'Amr said the Prophet ﷺ was described in an earlier revealed scripture as follows: "He is not severe, harsh, or obscene in the marketplace, nor does he respond to evil with evil. Rather, he forgives and pardons."²⁰⁴ The Prophet ﷺ said:

إِنَّ الرِّفْقَ لَا يَكُونُ فِي شَيْءٍ إِلَّا زَانَهُ وَلَا يُنْزَعُ مِنْ شَيْءٍ إِلَّا شَانَهُ

*Verily, gentleness is not found in anything except that it beautifies it, and it is not removed from anything except that it disgraces it.*²⁰⁵

Loving the Prophet ﷺ does not mean participating in riots, mobs, and assassinations; rather, it means modeling our character on his. He did not respond to mockery or abuse with violence, but with gentleness, patience, and kindness. This is not "cowardice," but wisdom and forbearance, both of which softened people's hearts toward Islam until they entered it in droves. If our character and actions are the opposite of the Prophet's ﷺ and cause the people to flee from Islam in revulsion, then we must question whether we truly understand what it means to love him.

201 See n. 50.

202 Quran, Surah al-Fussilat 41:35-36.

203 Abu Hatim Muhammad ibn Hibban. [N.d.] Vol. 1 of *Sahih Ibn Hibban*. Lahore: Shabbir Brothers, 443.

204 Related in Ibn Kathir, commentary on Surah Ali 'Imran 3:159.

205 Muslim ibn Hajjaj. 2007, vol 6, 456.

The Honor of Islam and Muslims is not Vindicated by Killing non-Muslims who Insult the Prophet ﷺ

Those who believe that this revered figure's dignity is offended by such statements or enhanced by violent responses to such statements are sorely mistaken, for Allah Himself has elevated the Prophet's ﷺ reputation:

وَرَفَعْنَا لَكَ ذِكْرَكَ

And have We not raised high your reputation? ²⁰⁶

It is from this exaltation that Allah and the angels who accompany His throne exalt the Prophet's ﷺ name:

إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ يَا أَيُّهَا الَّذِينَ ءَامَنُوا صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا

***Verily, Allah and His angels shower blessings on the Prophet. O you who believe!
Ask blessings on him and salute him with a worthy salutation.*** ²⁰⁷

And the Quran describes the Day of Judgment as:

يَوْمَ لَا يُخْزِي اللَّهُ النَّبِيَّ وَالَّذِينَ ءَامَنُوا مَعَهُ نُورُهُمْ يَسْعَىٰ بَيْنَ أَيْدِيهِمْ وَبِأَيْمَانِهِمْ يَقُولُونَ رَبَّنَا أَتْمِمْ لَنَا نُورَنَا وَاغْفِرْ لَنَا إِنَّكَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

***The day when Allah will not humiliate the Prophet and those who believe with him.
Their light will run before them and on their right hands. They will say: "Our Lord!
Perfect our light for us and forgive us! Lo! You are able to do all things."*** ²⁰⁸

Thus, not only has Allah elevated his dignity and reputation, as well as those of his followers, by mentioning him to the angels, but He has also caused the angels to sing his praises, made him beloved to the believers, and will honor him and those with him on the Day of Judgment. To believe, therefore, that his dignity and reputation are harmed one iota by ignorant or malicious muttering betrays a lack of confidence in the security of his position. The most powerful defense of the Prophet ﷺ against those who would denigrate him is to follow his *Sunnah*, embody his character, and demonstrate magnanimity, dignity, and patience toward others. The worst insult to the Prophet ﷺ comes from those Muslims who repudiate his *Sunnah* and heap calumnies upon him by engaging in shameful displays of raging emotion and violence in his name.

206 Quran, Surah al-Inshirah 94:4.

207 Quran, Surah al-Ahzab 33:56. Ibn Kathir relates that *salah*, translated here as "blessings," means that "Allah praises the Prophet ﷺ before the angels, and the *salah* of the angels is their supplication" for him.

208 Quran, Surah at-Tahrim 66:8.





Obstacles to Reform

As we have seen above, “[h]istorically, through the use of certain legal canons... Muslim jurists developed a highly sophisticated and internally regulated method for adjusting [Islamic law] to changing social contexts in a way that reflected the politico-legal institutional architecture and core substantive values of their societies and times.”²⁰⁹ We have discussed how the sources of the *shariah*, the Quran and hadith, and the principles set forth by classical jurists for deriving guidance from them to govern human affairs point inexorably to the necessity of decriminalizing blasphemy by non-Muslims in Pakistan. Realistically, however, there are serious obstacles to such a reform.

One of the main obstacles is structural. “Modern Pakistani law, despite the constitutional commitment to observe the injunctions of Islam, operates ‘on the basis that the modern state law is the dominant legal authority.’ In other words, it follows the modern Western paradigm except that it seeks to adapt the paradigm to Islamic concepts.”²¹⁰ Pakistan’s “Islamization” program proceeded on the assumption that “to return to sharia one should just amend here and there the existing positive-law constitutions and statutes; or assert that a modern state is Islamic if its legislature pays respect to general Islamic legal precepts, such as bans on prostitution or gambling...”²¹¹ “Ironically, these *Shariah* legislation efforts operate from a European paradigm of the nation-state, rather than pre-colonial Muslim norms of law and government, and thus stand in the way of deeper, more creative and authentic thinking about Islamic constitutionalism in the modern world.”²¹²

As one scholar has noted about the Ottoman attempt to codify Islamic law on a European model, Pakistan’s “Islamization” project has, ironically, “challenged not only the position of Islamic law in the state judiciary but also the way Islamic law was traditionally interpreted and applied.”²¹³ This process “basically deprived Islamic jurists of their authority in the law-finding process and transferred it to secular legislatures.”²¹⁴ Islamic law scholar Intisar Rabb has explained that the attempt to incorporate Islamic

209 Rabb 2011, 1303.

210 Ihsan Yilmaz. 2011. “Limits of Law: Social Engineering Versus Civil Disobedience in Pakistan.” *Journal of Research Society of Pakistan* 48(2), 24.

211 Frank Vogel. 2000. *Islamic Law and Legal System: Studies of Saudi Arabia*. Boston: Brill, 219, cited in Quraishi-Landes 2015, 546, note 2.

212 Quraishi-Landes 2015, 546.

213 Opwis 2005, 186.

214 Ibid., 201 note 79.

*Previous page: Pakistani soldiers guard a church as Christian women attend services.

law into a constitutional system while excluding Islamic jurists “actually may prevent political and judicial reform” in those countries

where there is either informal or coordinate constitutionalization of Islamic law, but where judges who have no Islamic law expertise have been empowered to interpret the law without adequate interpretive tools for doing so. In such cases, they tend to crystallize the law without attempting jurisprudential methods to reform it, and exclude the jurists equipped to do so (if they are so inclined—which is, admittedly, quite another question.) ... In such situations, the state has constitutionalized Islamic law, but the institutional arrangement has removed legitimate methods for its dynamic growth or reform by excluding Islamic law experts from the interpretive project ... In short, the judicialization of Islamic law without professional juristic expertise prevents, rather than encourages, legal reform on Islamic grounds.²¹⁵

A paradigmatic case is that of Section 295-C, which was introduced in Parliament via a martial law-era amendment and debated by legislators who, to say the least, were non-specialists in Islamic law. Moreover, courts that review accusations under Section 295-C lack the discretion, flexibility, and expertise in Islamic jurisprudence to employ classical juridical methods such as the high standard of proof, the doctrine of lenity, discretionary punishments, and the pursuit of *maslaha*, to mitigate the statute’s severity.²¹⁶

Moreover, because the blasphemy laws are supported by “a vocal and active portion of the population that has shown a consistent willingness to use violence to exact ‘justice’ on alleged blasphemers and politicians who speak against the laws,”²¹⁷ attempts to amend these laws are generally undertaken by reformers seen as secular opponents of religion in public life. This “creates fierce ‘Islam’ vs. ‘secularism’ political fights that are hard to dislodge,”²¹⁸ for such fights cast proponents as defenders of the Prophet ﷺ and a faith under siege, and opponents as champions of secular progress and the values of human rights. This false dichotomy paralyzes any reform attempt and precludes substantive discussion about whether these laws are even “Islamic” to begin with or, what amounts to the same thing, whether they promote *maslaha*.

215 Intisar Rabb. 2014. “‘We the Jurists’: Islamic Constitutionalism in Iraq.” *University of Pennsylvania Journal of Constitutional Law* 10 (3), 527, 578.

216 See, e.g., page 13 of the Lahore High Court’s judgment in *Bibi v. the State*, in which the court rejected the defense’s appeal to use the higher standard of proof reserved for *hadd* offenses on the ground that it was constrained “in the absence of any corresponding amendment in procedural law.” Available at <http://www.documentcloud.org/documents/2104047-lhc-verdict.html>. Article 203-DD of the Constitution of Pakistan grants the Federal Shariat Court appellate jurisdiction only in cases brought under the Hudood ordinances. See <http://federalshariatcourt.gov.pk/Jurs.html>. It is anomalous that while the FSC has described blasphemy as a *hadd* offense (and legitimized it on that ground), it is not categorized as such in the Pakistani Penal Code.

217 Hoffman 2014, 383.

218 Quraishi-Landes 2015, 558.





Conclusion

Pakistan's blasphemy law began life as a colonial-era penal code that was subsequently amended under martial law. Contrary to the assumptions underlying it, there is no 'ijma that non-Muslims who insult the Prophet ﷺ must be killed. The most definitive Hanafi opinion is that this a *ta'zir* offense that need not be punished at all, depending on where the *maslaha* lies. Moreover, it is not even arguable that the public good is served by applying this law to non-Muslims, for history shows that it results erodes the rule of law and initiates inter-community strife; oppresses the weak and the poor; and damages the reputation of Muslims, Islam, and the Prophet ﷺ.

We have demonstrated that it is not blasphemy, treason, or a Western conspiracy to argue that Section 295-C should not be applied to non-Muslims. Rather, those who claim to defend the Prophet's ﷺ reputation by fomenting chaos and oppression are the ones who have defamed him and betrayed the message with which he was sent. True love of the Prophet ﷺ is expressed by following his *sunnah*; emulating his qualities of dignity, patience, justice, and kindness; and pursuing the well-being of humanity as a whole, regardless of religion or lack thereof.

Alleviating the harm caused by this policy is a thorny problem, given that the traditional methods of the ulema are not viable under Pakistan's existing legislative and judicial arrangement, and that the national discourse as to this policy is locked in a completely unnecessary controversy over *shariah* and secularism. It is unnecessary because the determinative question from the point of view of Islamic law is whether this policy advances the public interest. Insofar as this should also be the determinative question for Christians, Hindus, or people of no religion, there is no reason to be sidetracked by debates over religion and secularism. Ibn al-Qayyim said, "Allah the Exalted has made clear in His law that the objective is the establishment of justice between his servants and fairness among the people, so whichever path leads to justice and fairness is part of the religion and can never oppose it."²¹⁹

219 Ibn al-Qayyim 1978. Vol. 1 of *At-Turuq al-Hikmiya fi Siyasah Shar'iya*. Cairo: Matba'ah Madani, 19.

I recommend three avenues for addressing the problem of Section 295-C.

1. The President of Pakistan should direct law enforcement agencies to stop enforcing the provision against non-Muslims and pardon any non-Muslims accused or convicted under it. This would prevent its further use as a tool of inter-community strife and personal vendettas, as well as alleviate the injustice and personal damage suffered by those wrongly affected by its enforcement.

2. A petition should be brought before the Federal Shariat Court asking it to declare the enforcement of Section 295-C against non-Muslims repugnant to the *shariah*. Proposed grounds for this petition are: (1) Abu Hanifah, al-Bukhari, ath-Thawri, and others considered that no punishment was warranted for non-Muslims who disparage the Prophet ﷺ; (2) in the alternative, the dominant Hanafi opinion is that such disparagement is a *ta'zir* offense, meaning that a discretionary punishment or no punishment at all as is to be determined by the public interest, an option that the current law does not provide; and (3) the *maslaha* in the case will be best served by suspending the enforcement of Section 295-C against non-Muslims pending consideration of the issue by the legislature in terms of how this statute is harming Pakistani society. If it is argued that the statute is not repugnant to the *shariah* on the grounds that many Hanafi scholars who viewed disparagement of the Prophet ﷺ as merely a *ta'zir* offense still allowed execution as a potential punishment, the answer is that they allowed execution for public policy reasons at a time when blasphemy took the form of sedition and insurrection, not in the case of arguments between illiterate peasant women, the graffiti of impoverished children, or the babbling of the mentally disabled, as Section 296-C currently mandates due to the way it is written and enforced.

3. Religious leaders should acknowledge that the *shariah* does not require the death penalty in such cases, much less the assassination of Muslims or others who say that such a punishment is optional. They should announce that calling for assassinations and organizing riots and mobs does not show love for the Prophet ﷺ, but rather violates the *shariah*, sows corruption in the land, and supports the agenda of those who are hostile to Islam. Furthermore, they should acknowledge and teach their followers that true love for the Prophet ﷺ calls for embodying his character traits of dignity, patience, and gentleness toward those who personally insulted him.



Glossary

‘Aqd adh-dhimma (عقد الذمة): An ‘*aqd* is a covenant or treaty. Historically, in an Islamic imperial polity, the ‘*aqd adh-dhimma* was a covenant of protection between non-Muslim subjects and a Muslim government that permitted the former to reside peacefully within Muslim lands and comprised rules governing the scope of their liberty and behavior.

Dhimmi (ذمي): A non-Muslim party to the ‘*aqd adh-dhimma* who permanently resided in an Islamic imperial polity.

Fatwa (فتوى): An authoritative, non-binding legal opinion given by an Islamic jurist in response to a question.

Hadd (حد; pl. hudud, حدود): Literally, “limit.” A mandatory, fixed punishment defined in the Quran or hadith for certain serious offenses.

Hadith (حديث): Literally, a “report,” “account,” or “occurrence”; a report of the speech, actions, approval or disapproval, and appearance of the Prophet ﷺ. The hadith are a means by which the Sunnah (q.v.) is known. Along with the Quran, it is a canonical source of religious law as well as spiritual and moral guidance.

Ijma‘ (إجماع): A consensus or agreement among Islamic scholars on a religious issue; the third most important source of Islamic law after the Quran and Sunnah.

Ikhtilaf (اختلاف): A disagreement among Islamic scholars about a religious issue. The opposite of *ijma‘*.

Jizya (جزية): A poll tax paid by a *dhimmi* to enter into the ‘*aqd adh-dhimma*.

Madhhab (مذهب): A school of thought within Islamic jurisprudence defined by a core legal doctrine and attributed to a founding jurist. Within Sunni Islam, the four major madhabs are the Hanafi, Maliki, Shafi’i, and Hanbali. The predominant madhab of Pakistan is Hanafi.

Mafsada (مفسدة): Harm to the public interest or individual, corruption, and the opposite of *maslaha*.

Maslaha (مصلحة): Literally, “righteousness” or “goodness,” that which benefits the public and the private individual, and the public good or commonweal.

Shariah (شريعة): Literally, “way” or “road,” the idealized law of God for His creation concerning how to behave in this world. The sources of information about this law are the Quran and the sunnah.

Siyasa (سياسة): Laws or policies made by Muslim rulers concerning matters left unspecified in the Quran and *Sunnah*, generally in the realm of governance and public order, and in pursuit of the public interest (*maslaha*).

Sunnah (سنة): The lived example of the Prophet ﷺ and, along with the Quran, one of the two sources of the *shariah*. The *Sunnah* is known primarily, though not solely, through the hadith.

Ta‘zir (تعزير): An offense whose punishment is not specified in the Quran or hadith and, as such, is handed down at the judge’s discretion.

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