

## **Personal-cum-Political Security & Blasphemy Laws in Pakistan: A Critical Analysis**

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### **Abstract**

The 1973 Constitution in Pakistan, grants the right to personal security and political security, particularly freedom of speech. Such privileges of the citizens are conditional in nature and can be revoked whenever the security of the state, the glory of Islam, public order, or incitement to an offence is involved. The government legislated blasphemy laws to ensure the glory of Islam in different eras. However, Pakistan citizens were subjected to litigation and even death on the plea of blasphemy. This paper is divided into three main parts: Part-I deals with the Conceptualisation of Personal and Political Securities. Part-II sheds light on the brief critical evolution of blasphemy laws in Pakistan. Part-III deals with the various case studies with respect to personal security (life security), political security (freedom of speech), and blasphemy laws and offers a conclusion.

### **Conceptualisation of Political Security**

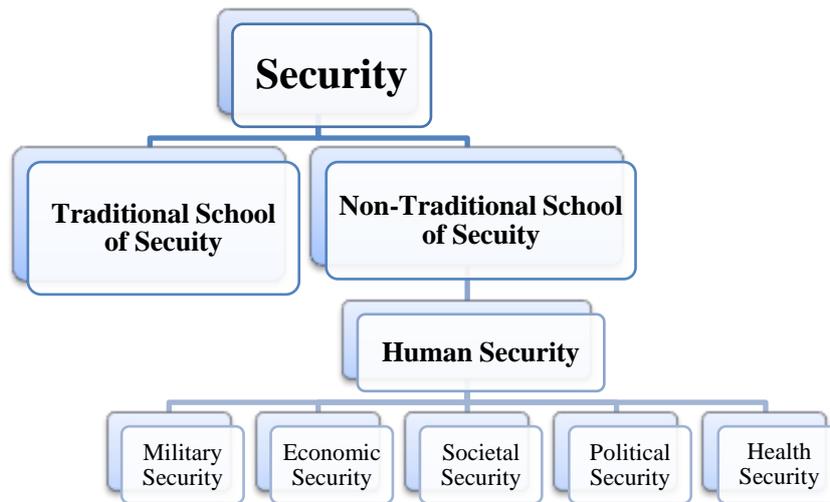
Scholarship on security can be divided into two broad camps – traditional and non-traditional approaches to what is defined as security. To traditional scholars, the security of the state or military security is of primal significance, and other types of security are secondary. The latter camp does not completely negate the importance of military security, however, it mainly emphasises human security – where human beings are a referent object (Collins, 2013). Barry Buzan has broadened the scope of security by encompassing economic, societal, political, environmental, and military security (Anthony & Hasan, 2001; Buzan, 1998). J. L. Austin's Speech Act Theory provided a foundation to erect the structure of the edifice of non-traditional security (Booth, 2004; Lipschutz, 1995). Relying on this theory, Ole Waever says when groups or individuals perceive some threat to their existence by the functional actors, and the audience gives meaning to it, the securitising agents take notice of such threat, and allocate and mobilise the available resources to securitise the referent object against the functional actors. According to Speech Act Theory, it is the audience who gives meaning to something or somebody or group of people as an existential threat when it feels security threats to their core values like life, property, cultural values, or other fundamental rights. The securitising agents also takes in cognizance of

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such existential threats to securitise such threat posed to a referent object (Buzan, 1998; Collins, 2013; & Amir, 2013: 63) by allocating and mobilising all resources against the functional actors (Collins, 2013: 136).

**Figure-1** Various Security Paradigms



(Amir & Japal, 2017: 125)

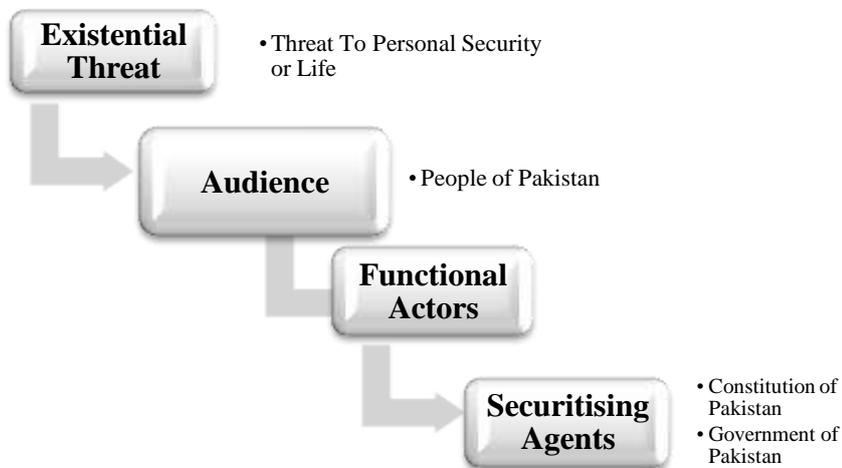
Freedom of speech falls under the purview of political security. Political security here is conceived in both micro (individual) and meso (national) contexts. For instance, Article 8 of the 1956 Constitution (The Constitution of Pakistan, 1956: 3) and Article 9 of the 1962 Constitution of Pakistan (The Constitution of Pakistan, 1962: 8) protects the right to ‘freedom of speech’ with certain conditions, including that such right should not threaten the security of the country, or friendly relations with other states, or sabotage public order, undermine moral values, exhibit contempt of court, or incite an offence. The 1973 Constitution of Pakistan through the 4<sup>th</sup> Constitutional Amendment added the word Islam in Article 19 to grant freedom of speech to citizens. This Constitutional Amendment has restricted this right not to misuse speech against the glory of Islam

Sometimes this political right is misused and people target religious dignitaries and their teachings, which lead to threatening the personal security of the accuser(s). Article 5 (2) of the 1956 Constitution (The Constitution of Pakistan, 1956: 3) and Article 1 (Chapter-I of Part-II) of the 1962 Constitution of Pakistan (The Constitution of Pakistan, 1962: 5)

protects the right to 'life or liberty' save in law. Similarly, Article 9 of the 1973 Constitution of Pakistan protects the same right.

It is worth noting that 1973 Constitution of Pakistan safeguards both political (right to speech) and personal (life) securities of the citizens in the country with certain conditions. Within the non-traditional security framework, this discussion may be placed. In Pakistan, the misuse of political right (right to speech) is turned into an existential threat to the life (personal security) of the person involved in expressing derogatory words against the religious dignitaries, or Holy Books or fundamentals of Islam. The people being audience generally perceive this threat to life of the accuser is an existential threat in the society. And in this case the functional actor is the inappropriate use of the right to speech. In addition, it becomes the responsibility of the government of Pakistan responsibility to bring to the violator, and to enforce Constitutional provisions and laws regulating freedom of speech (Figure-2).

**Figure-2** Freedom of Speech, and Personal-cum-Political Security: From Speech Act Theory Perspective



### Brief Evolution of Blasphemy Laws in Pakistan

From a legal point of view, judges and lawyers are normally confronted with some ambiguities while dealing with cases of blasphemy. The same

ambiguity is hidden in the legal system of Pakistan. Section 295 (C) of Pakistan Penal Code says:

“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 (PBUH) shall be punished with death and shall also be liable to fine.”

This legal provision does not provide proper explanation or the proper status of this offence in Sharia –whether it is *Hadd*, *Ta’azir*. Other procedural issues including the requirement of evidence, the religion of the accused, the acceptability of repentance, and a grant of pardon, flowing directly from the nature of the offence also remain unsolved in the language of the law. These issues are briefly discussed.

In the pre-colonial Sub-Continent, Sharia was the supreme law for criminal and civil disputes. The Code of *Fatawa-e-Alamgiri* and various other books enshrined the laws to regulate the offences of blasphemy and apostasy during the Mughal era. During the rule of Emperor Akbar, the penalty for blasphemy was death (Ahmad, 2006: 26). The law was repealed in 1860 with the fall of the Mughal Empire in the Sub-Continent (Najjar, 1972). The Britons introduced new Codes based on the principles of Civil law and Common law. The Indian Penal Code of 1860 was the first code of criminal law. Lord Macaulay’s Commission drafted this Code dealing with treason, sedition, and spreading hate among the citizens. However, it was silent about blasphemy or religious hatred. In 1889, a new Code was introduced to replace the previous one, which was still in place in the emerging self-governing states of Pakistan and India. Section 153-A of the new Code had a provision regarding offences related to religion, race, language etc.<sup>1</sup>

Under this new penal provision, many cases were filed for blaspheming the Prophet Muhammad (S.A.W). The most renowned in the series of these prosecutions was the case of Raj Pal – the writer of “*Rangeela Rasool*”, who was held to be blasphemous. During the trial, the presiding judge of the High Court Justice Dilip Singh commented that Section 153-A of the Penal Code did not give protection to the honour of religious leaders, so one could not be convicted under this law for insulting such religious personalities irrespective of the degree of insult (*Raj Paul v. Emperor*, 1927: 250). This acquittal outraged Muslims and resulted in popular demonstrations across

India against the government. After the acquittal, a Muslim youth named Ghazi Alam Din killed Raj Pal. Such events compelled the government of British India to amend the law and insert a provision regarding blasphemous libel of religious personalities (Qureshi, 2004: 332-333). For this purpose, a new provision was inserted to the Code in 1927 as section 295-A:

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects by words, either spoken or written, or by signs or by visible representations or otherwise, 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 a fine, or with both.

In the post-independence era, Pakistan inherited all existing laws. In 1956, Section 296-A was amended to the extent that for the words "His Majesty's", "citizens of Pakistan" were inserted. This law more or less remained the same until the process known as "the Islamisation of laws" in the 1980's during the regime of General Zia ulHaq, which deepened obscurantism, intolerance and fanaticism in society.

The first Constituent Assembly passed the Objective Resolution in 1949. It enumerated the principles of democracy, freedom, equality and social justice and the Divine concept of Sovereignty and delegated it to the State of Pakistan through its elected people to be exercised as a sacred trust (Rehman, 2002: 63-4). The 1973 Constitution brings all laws into conformity with the teachings of the Quran and Sunnah. However, General Zia ulHaq took practical steps in the late 80's (Patel, 1986: 36) by establishing a Federal Shariat court, promulgating *Hudud* Ordinance 1979 and the Evidence Act of 1870. According to Article 203-D, the Federal Shariat court has the power to strike down any law repugnant to the Quran and Sunnah. Since then, this court has given its verdict on many laws. This wave of Islamisation affected laws pertaining to blasphemous insult, as well by adding five sections to the Penal Code.<sup>2</sup> Section 295-B and 298-B were added to the Penal Code<sup>3</sup> which a senior lawyer Ismael Qureshi challenged through a petition filed against the government in Federal Shariat Court on the ground that these Sections were un-Islamic and the current blasphemy laws did not cover blasphemy against the Prophet Muhammad (S.A.W). Thence during the proceedings of case, the Parliament enacted a new law as section 295-C in 1984, according to which:

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

The petitioners (Ismael Qureshi Advocate and others) were not happy with the second part of the penal clause of the enactment that provided life imprisonment. Their contention was that, under Sharia, blasphemy of the Prophet (S.A.W) is punishable with death and no other punishment. On this ground, they filed another petition in the Federal Shariat Court and prayed that this part of the enactment be stricken down (Qureshi, 2004: 41-44). The Court accepted the petition and held that according to Sharia, the only punishment provided for the blasphemy of the Prophet (S.A.W) is death and no other sentence.<sup>4</sup>This enactment acted as bedrock personal security issues by putting circumstantial evidence and situation to dust and navigating this offence to hadd which is against the basic tenant of Sharia among scholars.

### **(1)Hadd, Ta'azir and Siyasaḥ under the Penal System of Pakistan**

The Penal Code and other criminal laws categorise offences into *Hadd*, *Ta'azir* and *Qisas* but do not mention the offence of *Siyasaḥ*. It does not mean that the latter does not exist. In fact, the majority of the offences are covered by this category; the difference being that of terminology. The word *Ta'azir* used in the Penal Code denotes only the notion of crime or offence, as understood in secular laws. Section 40 of the Pakistan Penal Code defines offence as "a thing made punishable by this Code". Section 4(O) of the Criminal Procedure Code says: "Offence means any act or omission made punishable by any law for the time being in force."

In modern law, the terms "crime" and "offence" are normally used synonymously, though a slight difference exists between the two.<sup>5</sup> Crime is considered as an act or omission that has a particularly harmful effect on the public. The state is regarded as the defender of public rights (Smith and Hogan, 2002: 17). This is the main difference between a civil wrong and an offence – the former one being an individual wrong. As a logical consequence, it is the state that initiates proceedings against the offender or accused (though, in many instances the victim may also join as a party). The state

remains a party to proceedings – having the right to withdraw from the prosecution and to grant a pardon. Being public wrongs or wrongs done to the rights of society; the state has the authority to act as defender of these rights. For practical reasons, all crimes pertain to the rights of the state in modern law. The rights of the individual could be a tort or civil wrong, but not a crime, though an individual might have been wronged during the course of it.

While enacting the Indian Penal Code, which is now there in the form of the Pakistan one. The framers of the Penal Code produced it as a model in modern sense instead of evaluating it from Islamic point of view. Because secular elements drafted The Pakistan Penal Code and Islamic scholars had no role to play its formulation.. Every citizen has the duty to comply with the existing laws, obey and respect these laws. In an Islamic state, same duty towards state is expected, and negligence in this duty leads to offence against the state, and ultimately entails punishment. It is therefore worth to note that in Islamic law, offence pertaining to this right of state against its citizens is called *Siyasah* and not *Ta'azir*. The controversy could be solved to a larger extent, when a substantive part of this Code is taken to be *Siyasah* offences. It does not mean that we can straight away replace the word *Ta'azir* by *Siyasah*, because the Code also recognises *Ta'azir* offences as enunciated by *Sharia*. In the process of Islamisation of laws, certain provisions were inserted into the Penal Code, known as *Ta'azir*. In the true sense of *Sharia*, they are *Ta'azir* offences, as well. One such provision is Section 302 (b) of the PPC. It reads: Whoever commits *Qatl-e-Amd* (murder) shall, subject to the provisions of this Chapter be:

- a. Punished with death as *Qisas*
- b. Punished with death or imprisonment for life as *ta'zir* having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available; or
- c. Punished with imprisonment of either description for a term which may extend to twenty five years, where according to the Injunctions of Islam the punishment of *qisas* is not applicable.

Subsequent provisions of the Code (Sec. 309 and 310) explain the waiver of *Qisas* punishment. These are all the characteristics of *Ta'azir offences*. Being the right of the individual; it can be waived by him or he can accept blood

money for it. To sum up the controversy of *Ta'azir* and *Siyasah* in the Penal Code, the following points could be gathered:

- a. The Penal Code is generally regarded as the code of *Ta'azir* offences, which is not true. It has both *Ta'azir* and *Siyasah* offences.
- b. There have been some offences in the Code right from the beginning, though not specifically termed as *Ta'azir* offences, have all the characteristics of *Ta'azir*. They include offences affecting the human body and defamation.
- c. There are some offences that are *Ta'azir* offences, and the Code has also specifically termed them as such e.g. 302 (b) and offences regarding bodily hurt.
- d. The rest of the offences are, in fact, *Siyasah* offences, though the term *Siyasah* cannot be found in the Code.

*Siyasah* offences relate to the rights of the state and not the individual or Allah. The Code mentions a variety of offences like conspiracy, offences against the State, offences against public tranquillity, offences by or relating to public servants, offences relating to elections, false evidence and offences against public justice, offences against coins and government stamps, weights and measures, public decency and morals and so on. All these offences do not involve the right of the individual. In modern law they could be termed as public wrongs or simply crimes, while, in Islamic law, they are public wrongs, but come squarely under the category of *Siyasah*. *Siyasah* can be established even by circumstantial evidence. So offences mentioned in the *Hudud* Ordinances under the category of *Ta'azir* are in fact *Siyasah* offences.

### **Various Case Studies, Freedom of Speech and Blasphemy Laws**

This section is a short critical appraisal of the implementation of blasphemy laws in connection with the freedom of speech based upon some case studies. These laws are being used against minorities and deliberation is needed to ensure their proper implementation. The misuse of blasphemy laws has not been minority specific. Naeem Shakir, a Pakistani lawyer involved as a defence lawyer in high profile cases about blasphemy, criticises the present state of affairs:

The minorities in Pakistan have already suffered seriously on account of sectarian legislation and thrown non-Muslim citizens out of the mainstream of national life... The claim of the minorities as equal citizens is at stake. The life and property of people in minority community is no longer safe. A sense

of insecurity is growing fast among the minorities. The Christians are being roped in false cases under the blasphemy law (Shakir, 1999).

One example is Chand Barkat, a Christian bangle vendor in Karachi, who was charged with blasphemy by a co-bangle vendor because of professional jealousy. It was alleged that he used derogatory language against the Prophet Muhammad (S.A.W) and his mother. The Sessions Court acquitted Chand Barkat for lack of evidence.

Another example is the case of Gull Masih of Faisalabad, who was charged under section 295-C for using profane language against the Prophet (S.A.W) and his wives in 1991. This case emerged from an alleged quarrel over the repair of a street water tap. Masih was tried under the blasphemy law and sentenced to death by the trial Court. The conviction was set aside and he was ultimately acquitted by the High Court. After his release, he felt threatened, as religious fundamentalists had warned of dire consequences. He was kept under tight security and later, took asylum in Germany.

Similarly, Salamat Masih, Manzoor Masih and Rehamat Masih, were charged with writing sacrilegious remarks against the Prophet (S.A.W) on the wall of the mosque in their village. The court, on the request of defendants, provided police guards to escort the accused to and from the court. Naeem Shakir's advocate says that, on June 5, 1994 these three accused were brought back by the police guards to his office, and after staying for about half an hour they left. After a few moments, armed religious militants with guns attacked them. Manzoor Masih died on the spot, while the other two and their escort sustained grievous injuries. The Sessions Court convicted the remaining two and awarded them death. The High Court acquitted them declaring that there was no evidence. One of the senior judges of the Division Bench was later assassinated by religious extremists, which is now widely thought to be a consequence of acquitting the two Christians "blasphemers" (*Dawn*, December 2, 2010).

Another case involved Naimat Ahmar, who was a Christian teacher and a poet who was murdered by Farooq Ahmad. Ahmad killed him because the deceased had reportedly used highly insulting remarks against Islam and the Prophet Mohammed (S.A.W). Nevertheless, no case of blasphemy was registered against him. Farooq Ahmad was charged with murder, made a

confession before the court and was sentenced to fourteen years' imprisonment (Shakir, 1999).

The most famous and high profile case of blasphemy in Pakistan, which has ever been registered, is that of Ayub Masih. He was charged under 295-C of Pakistan Penal Code in 1996, for using derogatory language against the Prophet (S.A.W). It was alleged that he said Muslims should read Salman Rushdie's *Satanic Verses* to see his reality and the reality of their religion; charges that Ayub Masih has always denied. He and the Christian community residing in that area alleged the charges as the outcome of a land dispute. During the trial court proceedings, Masih was shot and injured by the complainant party. The Court of Session later convicted and awarded the murderer as death penalty.. The High Court upheld the judgement and his sentence. On August 15, 2002, a three member bench of the Supreme Court acquitted Ayub Masih of blasphemy charges and ordered his immediate release (BBC, 15<sup>th</sup> August, 2002).

Masih's case attracted international attention. On October 8, 2001, the Commission on Human Rights Working Group on Arbitrary Detention submitted a petition to the United Nations alleging that his "arrest, trial, incarceration, and death sentence violate fundamental rights and freedoms guaranteed to Mr. Masih under international law". In July 2002, 12 U.S. Senators sent a letter to the President of Pakistan urging him to use his constitutional powers to grant pardon to Ayub Masih.<sup>6</sup>Jubilee Campaign, a British human rights group also helped support his case (Faith under Fire, 15<sup>th</sup> August 2002). In the above-mentioned petition, filed by the Human Rights Working Group, it was urged:

Even if arresting, convicting, and sentencing Mr. Masih was carried out in accordance with section 295-C, the Government of Pakistan still violated Article 18 because the law itself is incompatible with the Universal Declaration... (Saying) "everyone has the right to freedom of thought, conscience, and religion; this right includes... either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance". Section 295-C only prohibits the blaspheming of the Holy Prophet (PBUH). It does not protect other faiths... such legislation should not be discriminatory and should not give rise to abuse.<sup>7</sup>

The study of the above cases is one side of the story. However, even if we presume that all these cases were false and malicious, they were the outcome of personal grievances and those who were accused therein were innocent. In strict terms, it has not been the law that was misused, but the society or some individuals, who took the law in their own hands. The judges and the law enforcing agencies might have been pressured and threatened, but despite all that none of the accused has been ultimately punished. Some of them have been acquitted at the trial stage, while others by the appellate courts. In all cases, the accused have claimed to be innocent, and the same has been decreed by the courts of law. If someone has lost his life or sustained injuries, it is not because of the law. In fact, the loss of life has been a violation of the law. If the law of blasphemy would not have been there, the results might have been worse. In a highly emotional issue like this one, prompt arrest of the accused and his detention for some time gives a sort of relief to those who are outraged. According to one report, in the sixteen years since the blasphemy law has been written, no more than fifteen cases of blasphemy have been registered against Christians or other minorities, and no one has been convicted (Qureshi, 2004: 403).

The fact cannot be denied that after the promulgation of these laws, fewer people have lost their lives because of blasphemy charges compared to the pre-promulgation era, not only after the creation of Pakistan, but also during British control of India. Raj Pal, Nathu Ram, the wife of one of the majors in the British army and many others lost their lives due to their involvement in blaspheming the Prophet (S.A.W) include. Even in the West, those who have blasphemed the Prophet (S.A.W) have paid a price, especially in recent years. Dutch filmmaker Theo van Gogh, who made a controversial film about Islamic culture, was stabbed and shot dead in Amsterdam.<sup>8</sup> Salman Rushdie is kept under tight security, and when the situation intensifies, he goes underground. It is also said that he has escaped many assassination attempts.<sup>9</sup> To blame the laws of Pakistan for extra judicial executions or threats is a hollow assertion, especially when no one has been awarded the death sentence under these laws to date. In fact, the blasphemy law has provided protection from such malformations of justice.

### **Conclusion**

The aforementioned discussion clearly manifests that although the law is not responsible for the loss of life, still it cannot escape the responsibility of curtailing liberties; as many people have been behind bars for a considerable

time before at last being acquitted. This prevailing issue of dilemma of freedom of speech, blasphemy, and personal security needs appropriate attention. The procedural anomalies in the legal system of Pakistan need overhauling. The process of investigation is still carried out in a traditional non-scientific manner. Corruption is rampant<sup>10</sup> in the justice system. Social and political pressure is still a vital player not only for police, but also sometimes in the courts. The courts are overburdened. Cases of a petty nature take years to settle. In a situation like this, one can expect widespread misuse of law, complicated, lengthy and costly procedures, suffering of ordinary citizens and a devastating law and order situation. Thus, it is not only in the area of blasphemy that the law is being misused; but also in other offences under different laws of the country. This paradoxical prevailing inter-relationship among political right to expression of speech, personal security of life, and blasphemy laws needs serious attention of academia, government, and general public on the country.

In nut shell, instead of repealing this law, there is need to educate the general masses of the society about their freedom of speech being a political right and about the law and its impact on their personal security.

## Notes

<sup>1</sup> According to it “promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony” was regarded as an offence punishable by up to two years of imprisonment and a fine.

(See <https://indiankanoon.org/doc/1569253>)

<sup>2</sup> These are Sections 295-B, 295-C, 298-A, 298-B, and 298-C: 295-B [President’s Order 1 of (1982) Ordinance (1 of 1982) dated 18.3.1982]; 295-C [Criminal Law (Amendment) Act, (111 of 1986), S. 2.]; 298-A [Pakistan Penal Code (Second Amendment) Ordinance (XLIV of 1980), S.2]; 298-B [(Prohibition and Punishment) Ordinance XX of 1984]; & 298-C [(Prohibition and Punishment) Ordinance XX of 1984]

<sup>3</sup> These provisions were inserted under Ordinance 1 of 1982 and Criminal Law (Amendment) Act (III of 1986)

<sup>4</sup> See Judgement of Federal Shariat Court in Petition 1/L of 1984 and 6/L Mohammad Ismael Qureshi v. Islamic Republic of Pakistan and others. PLD 1991 FSC 10.

<sup>5</sup> Minor and petty nature wrongs e.g. violation of traffic laws is never regarded as a crime, but offence. Offence is a general and wider term, while crime is more specific. Thus, all the crimes are offences, but not vice versa.

<sup>6</sup> Freedom Now: Freeing Prisoners of Conscience through Legal, Political and Public Relations Advocacy at <http://www.freedom-now.org/masih.php>.

<sup>7</sup> In *Mr. Habibullah and Others v. Government of Pakistan*, the Working Group found the conviction of members of the Ahmadi minority faith under § 295C to be a violation of the right to freedom of religion and conscience under Article 18 of the Universal Declaration. See E/CN.4/1997/4/Add.1, Decision No. 10/1996, Adopted 23 May 1996, at 5(e)

<sup>8</sup> Gunman kills Dutch film director at <http://news.bbc.co.uk/1/hi/world/europe/3974179.stm>.

<sup>9</sup> Source [www.absoluteastronomy.com/topics/Salman\\_Rushdie](http://www.absoluteastronomy.com/topics/Salman_Rushdie).

<sup>10</sup> See Transparency International's Report on [www.transparency.org.pk/](http://www.transparency.org.pk/).

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