

# **Religious Freedom of Minorities: Theory and Practice**

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## **Abstract**

*The right to religious freedom is a universally accepted fundamental human right, which has been protected by many national and international legal documents. Despite recognising Islam as the state religion, the Constitution of Pakistan protects religious freedoms of all and does not limit this right to Muslims only. This paper will be exploring the right to religious freedom to see to what extent it is protected within Pakistan and compare this protection with other jurisdictions. Moreover, it will be noted that despite constitutional protection of religious freedom, certain practices have developed in Pakistan which can be defined as persecutory towards non-Muslims and result in serious violations of their religious freedoms. This paper will also be looking at two such practices: the forcible conversion of non-Muslim women to Islam and the misuse of blasphemy laws, to highlight these issues and recommend viable reforms.*

## Introduction

The right of religious freedom is the right of a person to entertain such religion or religious views as may appeal to his individual conscience, without dictation or interference by any person or power (Government).<sup>1</sup> It is difficult to give the term 'Religion' a comprehensive and uniform definition. Simply put, it means a strong belief in a supernatural power or powers (God and Gods) that control human destiny.<sup>2</sup> Undoubtedly, a religion has its basis in a system of beliefs which are regarded as true by those who believe that religion, but it may not be correct to say that religion is nothing else but a belief. A religion may not only set up a code, principles or rules for its followers, it might also determine rituals, ceremonies and modes of worship which are regarded as integral parts of religion, and it may even be extended to matters of food and a dress code.

Nowadays, the United Nations and other intergovernmental organizations acknowledge that minority rights are essential and have, therefore, created obligations on their member states to protect them and to take appropriate measures to develop and promote the rights of persons belonging to minorities.<sup>3</sup> Pakistan, as a member

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<sup>1</sup> Justice Munir, *The Constitution of Pakistan* (1<sup>st</sup> edn, OUP 1962) 153.

<sup>2</sup> M. Mahmood, *The Constitution of the Islamic Republic of Pakistan*, 1973 (OUP 2012) 382.

<sup>3</sup> At the United Nations, a declaration on minority rights was under discussion for over a decade before the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) in 1992. The Minorities Declaration contains progressive language, including as regards minority participation in the political and economic life of the State. In addition, the preamble recognises that protecting minority rights will 'contribute to the political and social stability of States in which they live' and, in turn, 'contribute to the strengthening of friendship and cooperation among peoples and States'.

state of United Nations has a duty to protect its own minorities. The word minority is defined as a group of people within a community or country, differing from the main population in race, religion, language, or political persuasion.<sup>4</sup> In simple words, anyone who is not the majority is a minority. Pakistan's religious minorities constitute just 3.7% of its population, and include Christians, Hindu, Sikh, Parsi, Ahmadiyya, Buddhist, and others.<sup>5</sup>

Right to religious freedom in a Muslim majority country like Pakistan may not be perceived as important for the majority, but it is very important for the minority. The constitution of Pakistan protects it by Article 20 which provides that every citizen has the right to religious liberty. Even though Islam is recognised to be the state religion in Pakistan,<sup>6</sup> the constitution protects the freedom of all (both Muslims and non-Muslims) to practice their religion. Research conducted in the United States has suggested Pakistan not to be a safe country for religious minorities,<sup>7</sup> despite the fact that there are several provisions in the constitution which protect the minorities' religious liberties. This paves the way to question the enforcement of the constitution in the country and also signals the need for specific legislation for the protection of minorities' religious liberties.

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<sup>4</sup> English Oxford Living Dictionaries, (*Oxford Dictionaries*) <[www.oxforddictionaries.com/definition/minority](http://www.oxforddictionaries.com/definition/minority)> accessed 16 May 2018.

<sup>5</sup> Pakistan Bureau of Statistics, 'Population by Religion' (*Government of Pakistan*), <[www.pbs.gov.pk/content/population-religion](http://www.pbs.gov.pk/content/population-religion)> accessed 16 May 2018.

<sup>6</sup> Constitution of Pakistan 1973, art 20. (Hereinafter 'the Constitution')

<sup>7</sup> United States Commission on International Religious Freedom, *2018 Annual Report* (2018) 70 <[http://www.uscirf.gov/sites/default/files/2018\\_USCIRFAR.pdf](http://www.uscirf.gov/sites/default/files/2018_USCIRFAR.pdf)> accessed 31 August 2018; Open Doors USA, *World Watch List 2018 - The 50 countries where it's most dangerous to follow Jesus*, (2018) <[www.opendoorsusa.org/wp-content/uploads/2018/01/WWL2018-BookletNew.pdf](http://www.opendoorsusa.org/wp-content/uploads/2018/01/WWL2018-BookletNew.pdf)> accessed 16 May 2018.

## A. Minority Rights as Fundamental Human Rights

Minority rights as human rights,<sup>8</sup> are standard entitlements and liberties that belong to every person in the world. These basic rights are based on cherished principles like dignity, equality, fairness, respect and independence. They apply without discrimination of where you are from, what you believe, your religion or how you prefer to live your life. Thus, these rights cannot be taken away on the basis of religion, caste and creed etc., although, they can sometimes be restricted or regulated. Rules like positive law may restrict or specify the way such principles are practiced. The need to restrict fundamental rights also stems from the fact that every society is different and it may interpret, uphold and apply these rights differently, by tailoring them to its own requirements.<sup>9</sup>

In today's world, the most important human rights are summarized in the Universal Declaration of Human Rights 1948<sup>10</sup> as well as the International Covenant on Civil and Political Rights 1966,<sup>11</sup> which are the most important documents on human rights which claim universal applicability. As confirmed by its own ministry of Human Rights, Pakistan is a signatory to both the UDHR and the ICCPR and is therefore bound to enforce and uphold these rights.<sup>12</sup> Most of them are protected in Pakistan by part II, chapter 1

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<sup>8</sup> United Nations Office of the High Commissioner, *Promoting and Protecting Minority Rights - A Guide for Advocates*, (United Nations, 2012) <[www.ohchr.org/Documents/Publications/HR-PUB-12-07\\_en.pdf](http://www.ohchr.org/Documents/Publications/HR-PUB-12-07_en.pdf)> accessed 28 May 2018.

<sup>9</sup> Anja Mihr, 'Minority Participation - A Challenge for Human Rights' (2006) 5 JSSE 44, 45.

<sup>10</sup> Hereinafter 'UDHR'.

<sup>11</sup> Hereinafter 'ICCPR'.

<sup>12</sup> Ministry of Human Rights Government of Pakistan, Action Plan for Human Rights, February 2016, Preamble, 'The Constitution of Islamic

of the Constitution. The Supreme Court of Pakistan has also invoked international human rights norms, which shows that courts in Pakistan are also eager to uphold Pakistan's international obligations.<sup>13</sup>

## **B. Right to Religious Freedom in International Law**

### 1. Elements of Right to Religious Freedom

While the right to religious freedom has been interpreted internationally in a multitude of ways, the majority of approaches divide this right up into two parts: freedom to believe and freedom to practice a religion of one's own choice.<sup>14</sup>

Freedom to believe means the right to have or adopt a religion and this includes the right to change or replace one's existing religion<sup>15</sup> or belief with another, or also the right to leave current religion as well as the right to retain one's religion or belief. This is an absolute, unconditional right with which a State cannot

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Republic of Pakistan obligates the state of Pakistan to protect and promote human rights of all its citizens without any discrimination. Furthermore, Pakistan being a responsible member of the international community honours its obligations'. Available online, <<http://mohr.gov.pk/userfiles/APBL.pdf>> accessed 28 May 2018.

<sup>13</sup> *AlJehad Trust v Federation of Pakistan* PLD 1997 SC 84; *Sardar Farooq Ahmed Khan Leghari v Federation of Pakistan* PLD 1999 SC 57 at page 191.

<sup>14</sup> The clearest of these distinctions lies within the system devised by the European Court of Human Rights for the enforcement and protection of religious freedoms under the European Convention of Human Rights.

<sup>15</sup> ICCPR, General Comment number 18, paragraph 8.

interfere, for instance by dictating what a citizen should believe or taking coercive steps to make him change his beliefs or religion.<sup>16</sup> This also includes a complete prohibition on discrimination in favour of the state religion in terms of employment and economic privileges.<sup>17</sup>

Freedom to practice a religion encompasses all forms of manifestation of a belief or religion. The right to manifest, practice or propagate one's beliefs is not absolute and it may be regulated or restricted by a country.<sup>18</sup> Such limitations have largely been attributed to the fact that the manifestation by one person of one's religious beliefs may have an impact on others. Religious expression as a practice might not be accepted by others or be outrightly incompatible with the prevalent social norms in a country.<sup>19</sup> These considerations have paved the way for the restriction of this element of religious freedom in many jurisdictions. Limitations are commonly placed on the public manifestation of this right as usually, the private freedom to practice a religion or belief is not subject to any restrictions as long as it does not touch upon the freedom and sphere of privacy of others.<sup>20</sup> States have generally

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<sup>16</sup> *Ivanova v Bulgaria*, 52435/99, Council of Europe: European Court of Human Rights, 12 April 2006.

<sup>17</sup> ICCPR, General Comment number 18, paragraph 9.

<sup>18</sup> The French and Belgian bans on the Muslim face veil and the Swiss ban on the construction of minarets are good examples of this.

<sup>19</sup> The Islamic veil was argued to be incompatible with the French concept of *laïcité* (the country's commitment to a secular society). See 'French 'burqa ban' violates human rights, rules UN committee' (*DW News*, 23 October 2018), <<https://www.dw.com/en/french-burqa-ban-violates-human-rights-rules-un-committee/a-46007469>> accessed 25 October 2018.

<sup>20</sup> In application of Article 18(3) of the ICCPR.

allowed only those restrictions which are prescribed by law and are necessary in a democratic society.<sup>21</sup>

## 2. Right to Religious Freedom in the United Nation's Instruments

Article 18 of the UDHR provides that every person has a right of freedom of religion which includes freedom to change, practice, or manifest religion, either alone or in a community with others, in both, public or private. Religious teaching and institutions dedicated to this are also covered by this right.

The right of minorities was specifically excluded from the UDHR. This matter was reopened by the Soviet Union on the floor of the United Nations General Assembly<sup>22</sup> purposing a supplementary article on the right of minorities, which failed.<sup>23</sup> However, it led to the approval of a resolution by the UNGA stating that the United Nations could not remain indifferent to minorities and thus requested the Economic and Social Council to ask the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to conduct a study and present some recommendations.<sup>24</sup> This resulted in the ICCPR which was based on the rights of minorities. While the

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<sup>21</sup> These are the requirements of legally restricting the right to religious freedom as per legal documents like the ICCPR and the ECHR. This can also be seen in the decisions of the European Court of Human Rights such as *Eweida and Others v the United Kingdom*, (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10).

<sup>22</sup> Hereinafter called 'UNGA'.

<sup>23</sup> The amendment was rejected by 34 votes to 8 with 14 abstentions, *see* 3(1) UNGA Annexes 545 UN Document A/784 (1948).

<sup>24</sup> 3(1) UNGA Plenary Meetings (183d meeting) at 930 (1948).



UDHR is ‘soft law’,<sup>25</sup> the ICCPR is one of the very few international, judicially enforceable instruments that explicitly deals with the rights and liberties of religious minorities.<sup>26</sup>

### 3. Right to Religious Freedom in European Union Legislation

The codified law on Europe’s position on human rights is contained in the European Convention on Human Rights.<sup>27</sup> This legally binding document protects religious freedoms under its article 9. It includes in the right to religious freedom, the freedom to change religion and the freedom from discrimination based on religion. Religious minority’s rights to freedom of religion and belief, in Europe, are in many cases qualified to the effect that States may limit or regulate the behaviour of religious associations for the protection of public order and safety, health or morals, or rights and liberties or freedoms of others.<sup>28</sup>

The guarantees for the right to religious freedom provided by regional documents like the ECHR are similar to those provided by international law. This sets international law as the benchmark for the protection of religious freedom. Not only should this encourage Pakistan to double its efforts to comply with its international obligations but also to align its protection of religious freedom with the likes of the ICCPR, which will allow the Pakistani legal system

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<sup>25</sup> It is a non-legal declaration.

<sup>26</sup> Through its art 18.

<sup>27</sup> Hereinafter called ‘ECHR’.

<sup>28</sup> ECHR, art. 9(2); The protections and restrictions of this article are similar to those provided by ICCPR and the UDHR.

to receive some much needed inspiration<sup>29</sup> from liberal views on the protection of religious freedom.

### **C. The Legal Right to Religious Freedom in the Constitution of Pakistan**

As mentioned above, the main provision which protects the freedom of religion in Pakistan is article 20 of the Constitution. According to article 20, any citizen who belongs to any religion has the right to worship in a mosque, a temple, a church or any other place reserved for worship. To protect religious freedom, it confers three rights on its subjects: the right to profess, the right to practice and the right to propagate religion. Similar to the protections offered by international law to the right to religious freedom, article 20 provides, ‘subject to law, public order and morality’, the right to profess religion, both privately and publicly and to propagate one’s religion to others. It permits setting up and running religious institutions. Apparently, this article’s words are at variance with the international and regional law documents referred to above, and they settle the position of the right to religious freedom in Pakistan as not being absolute. This is reflected in A. K. Brohi’s contention that this Article only protects religious freedom from administrative action.<sup>30</sup> This interpretation, which was likely to result in protection for such acts of the legislature which could be violative of religious freedom, was rejected by the Supreme Court of Pakistan in *Jibendra Kishera*

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<sup>29</sup> As discussed later.

<sup>30</sup> A.K. Brohi, *Fundamental law of Pakistan* (1<sup>st</sup> edn, OUP 1958) 386.

*and others v The Province of East Pakistan*<sup>31</sup>. In other words, freedom to public religious practice can only be restricted by way of legislation, not through administrative action.

This point was further elaborated by the Court in the *Zaheeruddin*<sup>32</sup> case where Justice Shafiur Rehman observed that the terms ‘subject to law’ used in article 20 of the Constitution of Pakistan, can be interpreted in three different ways: ‘laws’ means provisions of constitution or laws enacted by the legislature; or it may be both. In the interpretation of this clause the observations of superior courts have varied from case to case. One may take the position that constitutionally enshrined fundamental rights, cannot be subjected to lower forms of legislations.<sup>33</sup> On the other hand, Article 8 of constitution has also prohibited the legislature from enacting legislation which is against fundamental rights. This makes it seem like a tricky exchange of words as it is contradictory to say that religious freedom is a fundamental right, subject to the will of the legislature.<sup>34</sup> Even if these observations are accepted, there are several discriminatory provisions within the Constitution which may be used for legitimizing limitations on Article 20. In the *D.G. Khan Cement case*<sup>35</sup> the Lahore High Court observed that laws could limit human rights, only to protect the rights of other persons or to protect

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<sup>31</sup> *Jibendra Kishore and others v the Province of East Pakistan*, PLD (1957) SC 9.

<sup>32</sup> *Zaheeruddin and Others v The State and Others*, 1993 SCMR 1718.

<sup>33</sup> *Hakim Khan v Government of Pakistan* PLD 1992 SC 595; *Kaneez Fatima v Wali Muhammad* PLD 1993 SC 901.

<sup>34</sup> *Jibendra Kishore and others v the Province of East Pakistan*, PLD (1957) SC 9, C.J. Muhammad Munir held that ‘the rights guaranteed by the Constitution cannot be taken away by the law and it is not only technically inartistic but a fraud on the citizens for the makers of a constitution to say that a right is fundamental but it may be taken away by law’.

<sup>35</sup> *D.G. Khan Cement Company Ltd. v Federation of Pakistan through Secretary Ministry of Law and 3 Others*, PLD 2013 Lahore 693.

community interests, but such restrictions must not only be constitutionally valid, but must also be proportional and necessary for promotion and advancement of fundamental rights. The views of the court here mirror the position international law has taken on the restriction of fundamental rights like the freedom of religion.

But this does not mean that article 20 has been officially amended to include the conclusions of the court which leaves article 20 with much to be desired. The parliament of Pakistan needs to reconsider the article to include progress made by judicial jurisprudence in the area. Not only would this clarify the position of the right in the country but also solidify it against the discriminatory restrictions which the legislature currently seems to possess the right to enact. An example of a clearer version of article 20 can be seen by referring to article 25 of the Indian Constitution which deals with freedom of religion as well but it does not employ terminology which limits and restricts the freedom to profess and practice religion in broad terms. Instead, restrictions ‘by law’ have been expressly stated in the provision,<sup>36</sup> which, unlike article 20 of the Constitution of Pakistan, are clear and unambiguous.

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<sup>36</sup> The Constitution of India 1949, art 25, ‘Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and

It can be argued that the discretion of the legislature allowed for by the words of article 20 is impeded by article 36 of Constitution of Pakistan. According to this article, the state is bound to protect the legitimate rights and interests of minorities.<sup>37</sup> Perusal of article 36 shows that it is quite unambiguous and clear in its language, but the problem with this article is that it is part of the principles of policy, which are to be regarded as fundamentals in the governance of the state but are not legally enforceable by any Court in Pakistan.<sup>38</sup> This makes this article unlikely to be of any help in furthering religious freedoms of minorities in Pakistan.

### **D. Challenges Faced by Religious Minorities in Pakistan**

It is a citizen's inalienable right to enjoy the protection of the law and be protected from all acts which are detrimental to his/her 'life, liberty, body, reputation or property'.<sup>39</sup> The legislatures (including provincial assemblies) are also precluded from enacting

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the reference to Hindu religious institutions shall be construed accordingly.'

<sup>37</sup> Constitution 1973, art. 36.

<sup>38</sup> Muhammad Haleem, C. J in *Benazir Bhutto v Federation of Pakistan And Others* PLD 1988 SC 416.

<sup>39</sup> *Commissioner of Income Tax v Eli Lilly Pakistan* 2009 SCMR 1279. In this case, the Supreme Court observed that: 'It is the duty and obligation of the State on account of the various provisions of the Constitution to provide the atmosphere based on honesty by providing equal protection of law. Every citizen must be treated equally, dignity of human being life should be maintained, and liberty of life and honour must be guaranteed as envisaged in the Articles 9, 14 and 25 of the Constitution.'

laws which violate fundamental rights as provided in the constitution.<sup>40</sup> But it is unfortunate that minorities in Pakistan face religious discrimination and are deprived of their basic rights by subordinate law, and even sometimes by misuse of the provisions of the constitution. Two specific examples of this will be looked at here -instances of forced marriages and forced conversions to Islam and the misuse of the laws criminalising blasphemy.

### 1. Forced Marriages and Forced Conversions to Islam

Abductions, force marriage and forced conversions are an issue faced by all religious minorities in Pakistan, especially by Hindu and Christian women.<sup>41</sup> Non-Muslim women are kidnapped, forcibly converted to Islam and then forcibly married off to Muslims.

The legal avenues involved are of no help to the victims in this process. The victim's family files a First Information Report<sup>42</sup> for the abduction at the local police station. The abductor files a counter FIR on behalf on the victim, accusing the victim's family of harassing the victim and of conspiring to convert the girl back to her original religion. The victim is then asked to testify in court whether she willingly married and converted to Islam or was abducted and coerced. In most cases, during the judicial proceedings the women remain in the custody of the abductor and are thus coerced to testify in the abductor's favour which prevents the courts from intervening

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<sup>40</sup> Constitution 1973, art 8.

<sup>41</sup> Hindu American Foundation, *Hindus in South Asia and the Diaspora - A Survey of Human Rights 2017*, p 57, <[www.hafsite.org/sites/default/files/HAF-HinduHumanRightsReport2017.pdf](http://www.hafsite.org/sites/default/files/HAF-HinduHumanRightsReport2017.pdf)>.

<sup>42</sup> Hereinafter 'FIR'.

in the matter.<sup>43</sup> Many of these girls are well below the minimum age (16-years) required for marriage in Pakistan.<sup>44</sup>

Contrary to whatever beliefs may encourage such actions, Islamic injunctions do not permit or encourage forcible conversions to Islam. In fact, the religion allows non-Muslims complete freedom to retain their own religion and to not be compelled to embrace Islam. This freedom is found in both the Holy *Quran* and the *Hadith*. Allah addresses the Prophet Muhammad (PBUH) in the holy Quran by stating that no person should be compelled to believe in Islam against his or her free will.<sup>45</sup> Islam criminalises forced conversions and is therefore in no way, in support of such acts. Pakistani criminal laws also penalize abduction, kidnapping and forced marriage. This coupled with the religious freedoms guaranteed by the ICCPR<sup>46</sup> and the freedom to choose partners in marriage by the Convention on the Elimination of Discrimination against Women<sup>47</sup>, there seems to be no legal backing for such acts. Yet they continue to happen within Pakistan. The fault then seems to

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<sup>43</sup> HRCR, *Status of Human Rights in 2016*, pp 94-95 <<http://hrcp-web.org/hrcpweb/wpcontent/uploads/2017/05/State-of-Human-Rights-in-2016.pdf>>; Survey of Human Rights 2017 (n 41).

<sup>44</sup> Movement for Solidarity and Peace, *Forced Marriages & Forced Conversions in the Christian Community of Pakistan*, (MSP Inc, 2014) pp 2

<[https://d3n8a8pro7vhmx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP\\_Report\\_Forced\\_Marriages\\_and\\_Conversions\\_of\\_Christian\\_Women\\_in\\_Pakistan.pdf?1396724215](https://d3n8a8pro7vhmx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP_Report_Forced_Marriages_and_Conversions_of_Christian_Women_in_Pakistan.pdf?1396724215)>; Survey of Human Rights 2017 (n 41).

<sup>45</sup> Holy Quran (2:256) 'Let there be no compulsion in religion...'

<sup>46</sup> UNOHCHR, *International Covenant on Civil and Political Rights*, p. 12 <<https://appgfreedomofreligionorbelief.org/media/APPG-Pakistan-Inquiry-Full-Report-March-2016.pdf>> accessed 29 May 2018.

<sup>47</sup> Article 16. Hereinafter 'CEDAW'. To which Pakistan is a signatory although reservations have been made by the Government upon ratification.

lie within the social perceptions of Muslims who think that such acts are acceptable. The sheer impunity they face owing to victim testimony helps further encourage such beliefs.

Legal countermeasures to such acts have also been taken. The Sindh Criminal Law (Protection of Minorities) Bill is perhaps the most progressive and clear legislative action against forced conversions to Islam in Pakistan. It mandates that children under the age of 18 cannot change their religion and it also appoints a 21-day waiting period before adults lawfully can change religions. These provisions are meant to prevent forced marriages and conversions that happen overnight.

But the ambit of this legislation is limited to the province of Sindh which leaves victims of forced marriages and conversion in other provinces without redress. In addition to this, while the bill has been passed by the Sindh Assembly, it has yet to be confirmed by the governor of Sindh and to be enacted as law. The bill has also received a lot of opposition by Islamic groups in Sindh including the Council of Islamic Ideology, members of which met with Dr. Abdul Qayyum Soomro, the special assistant of the chief minister on religious affairs and termed the bill against the basic principles of Islam.<sup>48</sup> Some religious parties threatened to blockade the Sindh Assembly, if the legislature did not repeal the bill, and to launch a campaign against the bill in order to pressurize the Sindh government into repealing it. The mandatory waiting period of 21 days faced specific criticism as being against Islamic principles as it allows the person who has allegedly been a victim of forced conversion to educate herself with regards to Islam, before being

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<sup>48</sup> Zia Ur Rehman, 'Sindh government slammed for backtracking on promise to protect minorities', (*The News*, 21 June 2017) <<https://www.thenews.com.pk/print/211914-Sindh-govt-slammed-for-backtracking-on-promise-to-protect-minorities>> accessed 28 May 2018.



allowed to convert.<sup>49</sup> Jamaat-I-Islami and Maulana Tahir Ashrafi,<sup>50</sup> of the Council of Islamic Ideology opposed the idea of age limits on conversions by stating that there could be no age limit on people converting to Islam.<sup>51</sup>

Therefore, there needs to be an acceptance of the provisions of this legislation, not only by all four provinces of Pakistan but by prominent members of the Muslim community, especially scholars. Majority in Pakistan tend to not categorize crimes committed in the name of Islam against religious minorities, as crimes per se. Therefore, a more specific approach, such as the one taken by this bill in Sindh needs to be adopted. Concerns of provisions such as the 21-day waiting period before conversion need to be explained along the lines of necessity owing to the crimes committed against minorities in Pakistan, to settle objections raised by Muslim scholars. This indirect approach is likely to encourage a more educated dialogue regarding the need to protect minorities in Pakistan, which tends to be forgotten in heated exchanges where any challenge to the current system in the name of religion seems to translate into a violation of Islamic principles.

## 2. Blasphemy Laws

A debate surrounding the laws on blasphemy in Pakistan encourages for the deregulation of the crime of blasphemy, given that its invocation results in illegal and perilous consequences for those accused. This paper will not be dealing with this debate. What

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<sup>49</sup> Hafeez Tunio, 'Five Months on, bill against forced conversion gathers dust' (*Dawn*, 28 April 2017) <<https://tribune.com.pk/story/1395255/five-months-bill-forced-conversion-gathers-dust/>> accessed 28 May 2018.

<sup>50</sup> Prominent members of the Islamic community in Pakistan.

<sup>51</sup> Sameen Khan, 'Forced Conversion, Marriage and the Endless cycle of Misogyny', *Herald*, 17 March 2017, <<https://herald.dawn.com/news/1153698>> accessed 27 May 2018.

it will be looking at instead is the problems in the application of the current provisions, which have allowed this law to be weaponised against religious minorities in Pakistan.

Besides forced conversions, perhaps the biggest, most potent source of violations of minority rights, especially religious freedom comes from the blasphemy laws in Pakistan, contained in the Pakistan Penal Code.<sup>52</sup> The vague language of the legislation has allowed for the misuse of Sections 295-298 PPC and has resulted in the persecution of minorities. The abuse of the legislation has allowed for the law which was intended to protect religious beliefs to be the primary instrument of promoting intolerance.

The blasphemy laws in Pakistan are descendants of the provisions of the Indian Penal Code of British India. Pakistan inherited this code at independence and made many amendments in this code relating to religious offences. But the main changes in provisions regarding blasphemy were brought under General Zia's regime where stricter penalties including life imprisonment and the death penalty were introduced.<sup>53</sup> This was followed by confirmation of such penalties as the version preferred by the religious elite in Pakistan as in 1990, the Federal Shariat Court held that 'the penalty for contempt of the Holy Prophet is death and nothing else'.<sup>54</sup> The final provisions which sealed the fate of the direction blasphemy laws in Pakistan were to take came in 1992, when Nawaz Sharif's government in Pakistan removed the option of a life imprisonment from section 295-C and imposed a mandatory death sentence.<sup>55</sup>

These provisions on blasphemy in Pakistan have led to many being sentenced to death and life imprisonment. According to the

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<sup>52</sup> Hereinafter 'PPC'.

<sup>53</sup> Pakistan Penal Code 1860, section 295-B, 295-C.

<sup>54</sup> *Ismail Qureshi v the Government of Pakistan*, PLD 1991FSC 10.

<sup>55</sup> The Criminal Law (Third Amendment) Bill 1991.

Human Rights Commission of Pakistan in 2014, 725 individuals were victims of blasphemy charges. The police registered 12 new cases under blasphemy laws during the year and the courts sentenced three individuals to death, six individuals to life imprisonment, and three individuals to two-years of imprisonment for blasphemy.<sup>56</sup> In 2017, there were 135 blasphemy cases in the Punjab, 41 in Sindh, 11 in Khyber Pakhtunkhwa, and 2 in Baluchistan. The problem with majority of accusations of blasphemy is that they are based on false allegations, encouraged by personal vendetta and rarely ever are they actual instances of blasphemy.<sup>57</sup> This transforms blasphemy laws into a weapon in the hands of those who wish to abuse others, especially those from a religious minority.<sup>58</sup>

However, despite multiple convictions under the blasphemy law, the government did not carry out any executions for blasphemy

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<sup>56</sup> Human Rights Commission of Pakistan, 'Summary: Offences Relating to Religion', <[http://hrqp-web.org/hrqpweb/wp-content/uploads/2015/09/Blasp\\_hemy-2014.pdf](http://hrqp-web.org/hrqpweb/wp-content/uploads/2015/09/Blasp_hemy-2014.pdf)> accessed 26 May 2018; Human Rights Commission of Pakistan, AGHS Legal Aid Cell, Catholic Commission for Justice and Peace (CCJP), Simorgh, Faiz Foundation Trust, Centre for Civic Education (CCE), 'Discrimination Against Religious Minorities in Pakistan: An analysis of Federal and Provincial Laws' <<https://freedomdeclared.org/inparliament/pakistan-report/>> accessed 26 May 2018.

<sup>57</sup> Human Rights Commission of Pakistan, *State of Human Rights in 2017*, pg 93, <<http://hrqp-web.org/publication/wp-content/uploads/2018/04/State-of-Human-Rights-in-2017.pdf>> accessed 30 May 2018.

<sup>58</sup> The most recent example of this was seen in the case of Criminal Appeal No. 39-L Of 2015 (*Mst. Asia Bibi v. The State* etc.) where a Christian female was awarded the death penalty after being convicted for Blasphemy. The Supreme Court of Pakistan overturned this conviction as it found the case to have been based on a story concocted by those who had accused the convict.

during 2014.<sup>59</sup> Instead, at least 65 people have been murdered in Pakistan over unproven allegations of blasphemy since 1995. People accused of blasphemy have been murdered before their trials came to an end, and sometimes even after being cleared or acquitted by the court. The trend in the recent past has been to kill rather than take matters to the police or to court. The allegations alone are enough to put someone's life in danger. The most recent example of this was Mashal Khan's lynching by a mob at Abdul Wali Khan University in April of 2017.<sup>60</sup> Although the perpetrators in Mashal's case were tried, convicted and handed death sentences and life term imprisonments, this was a very rare occurrence for cases of this nature.

Although religious minorities, especially Christians, continue to suffer because of the misuse of the law, a number of Muslims are also in jail under blasphemy charges.<sup>61</sup> The role which the laws on blasphemy play here is to encourage violence against the accused. No care for facts or action of the courts is taken as all it takes is an accusation to convict a non-Muslim in the court of public opinion and this ends with mobs executing the victims. Religious scholars do not condemn or discourage such behaviour and most conversations regarding blasphemy laws are carried out rarely and carefully, as the fear that criticism of the law be interpreted as a criticism of religion itself is likely to materialise.

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<sup>59</sup> The six years-long moratorium on death penalty was lifted after the attack against the Army Public School in Peshawar on 16 December 2016.

<sup>60</sup> Sirajuddin, Yawar Abbas, Ali Akbar, 'Mashal Khan lynching: Shooter Imran Ali sentenced to death, 5 given life imprisonment' (Dawn, 7 February 2017) <<https://www.dawn.com/news/1387707>> accessed 26 May 2018.

<sup>61</sup> Human Rights Commission of Pakistan, 'HRCP praises law on conversions, urges enforcement' (*HRCP*, 30 November 2016) <<http://hrcp-web.org/hrcpweb/hrcp-praises-law-on-conversions-urges-enforcement/>> accessed 29 May 2018.

Any action remedying the abuse of blasphemy laws has yet to be seen by the Pakistani legislature. Sherry Rehman, a member of National assembly submitted a private members bill,<sup>62</sup> with the intention to clarify the law in order to avoid miscarriages of justice. In the proposed legislation, amendments included the requirement for the complainant to demonstrate premeditation or malicious intent by the accused. The proposed Bill re-drafted sections 295 and 298 of the PPC to include acts done ‘maliciously, deliberately and intentionally’ and tried to reduce penalties proportionately and remove the life sentence and death penalty completely. It also included an additional section 203A, as a preventive measure to deter false accusations and promote a just application of the laws criminalising blasphemy rather than open doors to religious persecution. Proposed section 203A ensured that anyone making false or frivolous accusations under the legislation was penalised as befitting the section under which the original claim was made. But the bill was disallowed by the government after violent protests demanded the bill be withdrawn.<sup>63</sup> Such is the tone of laws regarding blasphemy in Pakistan. While legislative action has yet to conquer much, an indirect approach focusing on human rights, supported by scholars of Islam is likely to help in creating a social climate where protection from the blasphemy laws for religious minorities in Pakistan can be entertained.

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<sup>62</sup> ‘Bill to amend blasphemy laws submitted in NA secretariat’ (*Express Tribune*, 26 November 2010) available at <<https://tribune.com.pk/story/82002/bill-to-amend-blasphemy-laws-submitted-in-na-secretariat/>> accessed 30 May 2018.

<sup>63</sup> ‘Blasphemy law amendment: Sherry Rehman to withdraw bill’ (*Express Tribune*, 3 February 2011) <<https://tribune.com.pk/story/113445/blasphemy-law-amendment-sherry-rehman-to-withdraw-bill-says-pm/>> accessed 30 May 2018.

### 3. Ahmadis and Qadianis

The case of Ahmedis is different from other minorities because they are not only discriminated against socially and politically, but also face legal discrimination as well. The Constitution of Pakistan that provides freedoms and protection to minorities has declared Ahmadis to be non-Muslim through its second<sup>64</sup> and third<sup>65</sup> amendments. Moreover, in patent violation of their fundamental rights, the state passed the Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance 1984 whereby which Sections 298 (B) and 298(C) were inserted in the PPC with criminal penalties for religious activities of these groups. The amendment clearly shows that the state has not only trampled on the religious freedom of the Ahmadis but has criminalised many of their acts. By deeming their religious views not to conform to the prescribed definition of a 'Muslim', Pakistan has interfered with the internal dimension of the fundamental right to religious freedom, which is not permitted by international law.<sup>66</sup> This is also a clear violation of article 8 of the Constitution as this amendment was made in violation of the fundamental rights protected under article 20 of Constitution. Unfortunately, the judiciary, in particular, the Federal Shariat Court, have not encouraged a rights-based approach to protecting religious freedoms of these groups. While the Supreme Court of Pakistan

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<sup>64</sup> Constitutional (2nd amendment) Act 1974, Act XLIX 1974.

<sup>65</sup> Constitution of Pakistan, 1973, Article 260(3), Substituted by Constitution (Third Amendment) Order 1985 (President Order No. 24 of 1985). 'A person who does not believe in the absolute and unqualified finality of prophet-hood of Muhammed (peace be upon him) the last of the prophets, in any sense of the word or of any description whatsoever, after Muhammed (peace be upon him), or recognises such a claimant as a prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law.'

<sup>66</sup> *Supra*, Chapter B, 1.

affirmed the ordinance, in a dissenting judgment Justice Shafiur Rahman stated provisions of s. 298-C (c) & (d), to be ultra vires to articles 20 and 25 of constitution as they breached the fundamental rights of religious freedom, equality and of freedom of speech, in so far as they prohibit and penalise only the Ahmadis from preaching or propagating their religion.<sup>67</sup>

The problem with these provisions lies in their deviation from the popular Islamic beliefs in Pakistan, where any public profession of the Ahmadi religion would be considered to be a desecration of Islamic injunctions and of the prophet (PBUH). No discussions encouraging a tolerant approach to settling this issue can be safely held, as the mere hint of it may result in accusations of disrespecting the religion and the prophet (PBUH) being raised. This can and does result in widespread uproar in the country which makes preventative measures for such instances necessary. While the provisions of the PPC might be a harsh approach to dealing with this issue, this is what the legislature has decided to settle with, for now and for the foreseeable future. It is pertinent to note that it is not a crime to be an adherent of these groups, as only certain practices of these groups have been criminalised.

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<sup>67</sup> *Zaheer-ud-din case* (n 31).

### **E. The Need for Reform**

The issues identified above need specific, immediate, legislative address. Victims of such practices cannot be left to suffer due to the chaos which ensues on the first suggestion of reform. Carefully devised plans, which are wary of the sensitivities surrounding these issues can result in positive change.

Forced conversions is an issue which is the most likely to respond positively to specific legislation. Blasphemy laws and the predicament of the Qadianis and the Ahmedis are much more sensitive topics. The abuse of blasphemy laws can be inhibited by prudent judicial action in cases which are able to reach the courts. But a large part of the problem still lies with the social perception surrounding blasphemy which corresponds to the reaction it induces. Legislative change might not be the answer in this situation, as there is a stronger institutionalised ideology at play here, which is more likely to respond positively to social methods of change. Therefore, an indirect approach encouraging a valuable dialogue is recommended. The same is suggested for the discrimination suffered by Ahmedis and Qadianis.

### **Conclusion**

The three violations of religious freedom identified above have been sanctioned by the legal system in Pakistan. For all three, proposals of any effective remedies for the victims in these cases suffer the same fate. Their rationale is ignored and they are drowned in the calls for the protection of Islam, which are often led with heavy political impetus. Attempts to fight this have also been futile because no strong supportive voice has ever countered this narrative.



In a democratic state, religions develop best when human rights are respected and human rights develop when religions respect them. But it cannot be said that fundamental rights are actually protected just because they have been inserted in the constitution; having rights on paper does not mean that they are always protected in practice. Also, not all fundamental rights can be absolutely protected, enforced or implemented as they are qualified rights and not absolute and are subject to reasonable restrictions as are necessary for the protection of the state.

In states like Pakistan which frequently interfere in the religious matters or personal beliefs of their subjects, religious beliefs can often become politicised. This creates space for the misuse of legal provisions relevant to religion, as can be seen in the case of laws pertinent to blasphemy.

Therefore, Pakistan like any other country needs to find a balance between the norms acceptable to its majority and the fundamental rights of its minorities which receive constitutional protection. In reviewing the discussion above, one struggles to understand where the balance for Pakistan lies. Schools of thought are also divided on this. A liberal view on the matter is that Pakistan should be a secular state, and this view is based on the views of the founding father of Pakistan, expressed in his first address to the constituent assembly in which he expressly said that state should have nothing to do with the religion of its citizens.<sup>68</sup> With the current political climate, this is unlikely to be a viable solution. The

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<sup>68</sup> Constituent Assembly of Pakistan debates, Official Report, Government of Pakistan press, Karachi, 1947, vol.1, No.1, pp. 3-6. 'You are free; you are free to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion, caste or creed - that has nothing to do with the business of the state.'

conservative view on this matter is that Pakistan was based on the idea that it was to form a separate state for Muslims alone. Support for this view is found in Article 2 of the Constitution, which declares Islam as the state religion.<sup>69</sup> As stated above, Islam does not permit discrimination, prejudice and coercion.<sup>70</sup> But sole debates on religious injunctions concerning the treatment of non-Muslims are not likely to result in any alleviation for the abuses of the non-Muslims identified above. That is because prominent Muslim voices in the country have not stood as allies for non-Muslims in Pakistan.

What seems to be missing for Pakistan, to solidify religious protections for religious minorities, is a progressive, more liberal and tolerant understanding of the state religion. This, led by legal provisions catering to the needs of the victims identified above are likely to help enforce ideas of fundamental rights and their equal accordance to all. This would also combat perceived notions of Islam under which crimes against minorities are perpetrated and is likely to help deal with the life-threatening issues plaguing religious minorities. The solution might lie in courageous legal reform first, but those who might be able to facilitate such change are yet to be discovered.

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<sup>69</sup> There is also a provision which declares invalid any law which is incompatible with the injunctions of Islam (Constitution 1973, art 227(1)).

<sup>70</sup> The Holy Quran, Al-Baqarah 2:256; 'There is no compulsion in [acceptance of] the religion. The right course has become clear from the wrong'. And Al-Kahf 18:29; and say, 'The truth is from your Lord, so whoever wills – let him believe; and whoever wills – let him disbelieve.'

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