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THE DILEMMA OF “BLASPHEMY LAWS” IN PAKISTAN – SYMPTOMATIC OF UNSOLVED PROBLEMS IN THE POST-COLONIAL PERIOD?

ABSTRACT By all accounts, the Islamic Republic of Pakistan has the strictest “blasphemy laws” among countries with a majority Muslim population. The controversial amendments to the provisions of the Pakistan Penal Code on “offences relating to religion” go back to General Zia ul-Haq’s top-down policies of Islamization. Despite their flaws, doubtful legitimacy, and negative repercussions, the “blasphemy laws” have neither been reformed nor abolished under subsequent governments. This contribution will shed light on the complex political, economic, and social factors that have led to both the emergence of the laws and to the continuous escalation of the situation in terms of increased sectarian and religiously-motivated violence that the ongoing debate about the “blasphemy laws” has engendered. It may be asked, to what extent the controversy on the laws can be taken as indicative of problems with which the country was confronted since its formation, and to what extent shifts and transformations in the socio-political structure of Pakistan, the inability or unwillingness of the authorities to deal with the challenges in a systematic way, and also external factors have exacerbated these deep-rooted problems.

Key words: Pakistani “blasphemy laws”, flaws and misuse, state-sponsored discrimination, sectarianism/sectarianization

1. PAKISTANI “BLASPHEMY LAWS” – A CONTROVERSIAL AND COMPLEX ISSUE

By all accounts, the Islamic Republic of Pakistan has the strictest “blasphemy laws”¹, not only among countries with a majority Muslim population, but also worldwide.² Domestic and international criticism notwithstanding, the laws remain in force and continue to cause misuse, violence, and miscarriages of justice, and stimulate highly divisive forces of intolerance and fanaticism. As a result, these controversial laws go on to create an atmosphere of fear, mistrust, intimidation, legal uncertainty, and lawlessness. The mere threat of a complaint for blasphemy has become a powerful weapon in Pakistani society. However, as a number of cases show, among them high-profile cases, the accusation of blasphemy is routinely used for matters entirely unrelated to blasphemy.

Three recent incidents³ may illustrate the dilemma caused by the “blasphemy laws” (henceforth “BL”) and may convey an impression of the complexity of the issue in the socio-political context of Pakistan.

- In mid-April 2017, a 23-year-old Muslim student of journalism at a north-western university (named Mashal Khan), was assaulted in his dorm room, severely beaten, and ultimately shot dead by several aggressors.⁴ The so-called “mob” was – reportedly – infuriated by the accusations and rumors that Khan had offended Islam. It is worth mentioning that before his death, the student, known for his outspokenness against injustice and corruption⁵, had criticized the university administration for its poor management on local television. The brutal murder which was recorded on mobile phones and posted online led to rare protests across Pakistan

¹ The statutes are usually referred to as “blasphemy laws” or “anti-blasphemy laws” although the word “blasphemy” does not appear in the original document. In contrast to other “Islamic laws” promulgated under Zia ul-Haq and after (cf. Ordinances on Hudud, Zakat and ‘Ushr, Shahadat, etc.), none of the Urdu (or Arabic, Persian) words commonly used to refer to “blasphemy” (e.g. *tawhin-e risalat* or *sabb al-nabi*, both referring to insulting, dishonoring the Prophet of Islam) are mentioned. For a study of the terminology in Urdu and its understandings, based on a variety of documents and interviews, cf. S. Ashraf, *Honor, Purity and Transgression: Understanding the Concept and Practice of Blasphemy in Punjab, Pakistan* (Master Thesis, Central European University), Budapest 2014, pp. 29ff. and passim, at <http://www.etd.ceu.hu/2014/ashraf_sana.pdf>, 15 October 2017.

² For a comparative analysis cf. J. Temperman, “Blasphemy, Defamation of Religions and Human Rights Law”, *Netherlands Quarterly of Human Rights*, vol. 26, no. 4 (2008), pp. 519-522 (predominantly Christian states, e.g. England and Greece), pp. 522-526 (predominantly Muslim states, e.g. Pakistan and Iran).

³ For the recent development in the “Asia Bibi case” which received worldwide attention, cf. note 38. For other recent cases see, e.g., Human Rights Commission of Pakistan/HRCP (ed.), *State of Human Rights in 2017*, Lahore 2018, pp. 81-93 (on the discrimination and persecution of religious minorities, incl. Shiites and Sufis), esp. 85-90 (Ahmadis and Christians), 93-95 (blasphemy).

⁴ On this incident see, inter alia, “Student’s Lynching Sparks Rare Uproar in Pakistan over Blasphemy Killings”, *The Guardian*, 26 April 2017; “Men, Women Protest Lynching, Law Wreaths on Mashal’s Grave”, *Dawn*, 17 April 2017.

⁵ It seems that the student was of a leftist (Marxist?) orientation but was considered a ‘true Muslim’.

condemning such extra-judicial killings due to alleged “blasphemy” and calling for justice. A joint investigation and the official report concluded that the baseless accusations had been a conspiracy by some students and university staff. In February 2018, the verdict was announced: one person was sentenced to death, five others were punished to life imprisonment and 25 others to three years in prison.⁶ The incident can be seen as one of the well-known cases of vigilante justice, demonstrating how perceived disrespect for Islam is able to ignite violent anger. But it can also be regarded as a mere act of bloody revenge (for questioning established structures, and/or out of a personal rivalry⁷).

- At the beginning of June 2017, a 30-year-old Shiite Muslim (named Taimoor Raza) was the first person sentenced to death by an anti-terrorism court (ATC) in Bahawalpur for allegedly committing blasphemy on Facebook. According to his defense attorney, the accused was initially charged with *derogatory remarks about other religious personalities* (to be sentenced for up to three years)⁸, and only later was he charged with *derogatory acts against the Prophet Muhammad*, for which the death penalty is mandatory.⁹ As in the above-mentioned case, this verdict demonstrates the fact and the extent to which social media has become a new battleground for accusations of blasphemy as a result of the controversial Prevention of Electronic Crime Act passed by the National Assembly in 2016¹⁰, and the authorities’ appeal to Twitter and Facebook in mid-March 2017 to help identify Pakistani users sharing

⁶ “Mashal Khan: Death Sentence for Pakistan Blasphemy Murder”, *The Guardian*, 7 February 2018.

⁷ As in other cases, the exact background of the incident is not absolutely clear; the media provide different and sometimes contradictory information.

⁸ Cf. below under 2. (Section 298-A of the PPC, the first of Zia ul-Haq’s additions to the BL). Although no group is mentioned in the article in contrast with the 1984 anti-Ahmadi Ordinance, it is quite obvious that the law was implicitly directed against the Shiite ritual revilement of members of the Prophet’s family and some of his companions venerated by the Sunnites. On the multiple historical, religious, socio-economic and political reasons for the discrimination of Shiites see, for instance, M.Q. Zaman, *Islam in Pakistan. A History*, Princeton 2018, pp. 178-193. Radicals like the *Sipah-e Sahaba* (banned in 2002, but re-appeared under other names in the following years) wanted the Shiites like the Ahmadis were to be declared non-Muslims. Many among the traditionalist religious scholars also consider Shiites to be unbelievers, esp. because of their conception of the Imamate.

⁹ Cf. “Pakistan: Man Sentenced to Death for Blasphemy on Facebook”, *The Guardian*, 11 June 2017. – The ATCs were created under the Anti-Terrorism Act (ATA) of 1997. On the amendments to the ATA in 2002, 2004, 2009, and 2013 and further regulations concerning the anti-terrorism legislation cf. N. Ahmed, “Pakistan’s Counterterrorism Strategy: A Critical Overview”, in J. Syed et al. (eds.), *Faith-Based Violence and Deobandi Militancy in Pakistan*, London 2016, p. 516f. According to Ahmed (ibid. 517), this legislation *has yet to prove its effectiveness*. In the same volume, T.K. Gugler (“Islamization and Barelvis in Pakistan”, in J. Syed et al. (eds.), *Faith-Based Violence...*, p. 386) mentions that Prime Minister Nawaz Sharif ended the moratorium on the death penalty in terror-related cases after the massacre at the Army Public School in Rawalpindi (Dec. 2014), adding that *the vast majority of the 300 executions ... have been for crimes unrelated to terrorism*. Cf. A. Ul Mustafa (“Proposed Procedural Amendments to Check Misuse of Blasphemy Laws in Pakistan”, *SSRN*, 4 July 2016, pp. 4, 7) for section 295-A (see below) of the Pakistani Penal Code as a part of scheduled offenses under the 1997 ATA.

¹⁰ For the Act see, at <http://www.na.gov.pk/uploads/documents/1470910659_707.pdf>, 17 February 2018. It contains an article on “hate speech”.

blasphemous material. At the same time, Pakistanis were encouraged to report fellow citizens by text messages.¹¹ The case may be considered as one of the frequent anti-Shiite attacks and discriminations, but also as part of a wider crackdown on perceived political dissent on social media.

- At the end of November 2017, the law minister, Zahid Hamid, resigned after three-week long protests organized by the little-known Islamist group “Tahrik-e Labbaik Ya Rasul Allah”¹² which started in Islamabad and then spread to other cities across Pakistan.¹³ The demonstrators demanded the removal of the law minister whom they accused of blasphemy because they made him responsible for a revised version of the oath of elected representatives.¹⁴ The minister first pointed to the fact that the amendment was included in the Election Act of 2017 which was formulated by a parliamentary committee comprising representatives of all political parties. Amidst criticism from the opposition the Bill was approved by the Senate and National Assembly. However, the minister later apologized for what he called an error. Concerned about his and his family’s safety, he released a video message on YouTube to assure that he is a devout Muslim and not a follower of Ahmadis. Regarding the protests, it is noteworthy that the High Court of Islamabad declared the protesters’ blocking of a highway

¹¹ Cf. “Pakistan Asks Facebook and Twitter to Help Identify Blasphemers”, *The Guardian*, 17 March 2017.

¹² The name of the organization can be translated as “Movement of the followers of the Messenger of God”; *Labbaik*, “Here I am to do Thy Bidding, my Lord”, is the declaration made by pilgrims during the Hajj, i.e. addresses God). The religious pressure group was founded in 2016 (other sources have 2015) after the hanging of the murderer of the former governor of Punjab (cf. below). Its political wing (the TLP, Tahrik-e Labbaik Pakistan) was registered as a political party in July 2017 by the Election Commission of Pakistan, despite its radical views (praising a murderer, etc.). Cf. I. Mukhtar, “Mystery Clouds Govt’s Silence on TLP”, *The Nation*, 28 September 2017. Already in December 2017, the movement faced internal rifts (cf. “Factionalism Hits Tehreek-i-Labbai at the Outset”, *Dawn*, 1 December 2017). Nevertheless, the party took part in the July 2018 General Elections with considerable success. The party received more than 2.2 million votes (4.21%) but failed to gain a seat in the National Assembly. On its major role in the Oct.-Nov. 2018 protests cf. note 38.

¹³ On this incident cf., e.g., “Law Minister Zahid Hamid Resigns as Analysts Predict Defections in PML-N”, *The Express Tribune*, 27 November 2017; “Pakistan Law Minister Resigns, Islamists Celebrate Victory”, *AP*, 27 November 2017; “Islamabad Protests: Pakistan ‘Won’t Use Force’ to Clear Islamists”, BBC News, 26 November 2017, at <<http://www.bbc.com/news/world-asia-42127752>>, 27 November 2017.

¹⁴ The change (replacing the phrase *I solemnly swear* by *I declare*) related to the “Khatam-e Nabuwwat” (finality of prophethood by Islam) – a theological issue which in history was interpreted in various ways. The issue gained prominence in anti-Ahmadiyya movements. (Cf. A. Qadir, “When Heterodoxy Becomes Heresy: Using Bourdieu’s Concept of Doxa to Describe State-Sanctioned Exclusion in Pakistan”, *Sociology of Religion*, vol. 76, no. 2 (2015), pp. 8-9, 12-15. Following the protests, the National Assembly claiming the change as a *clerical error* did restore the original oath in Oct. 2017. As it seems, the issue was used by diverse actors as a pretense to pushing ahead with their specific objectives. Cf. U.S. Commission on International Religious Freedom/USCIRF (ed.), *Report 2018: Pakistan*, [p. 5], at <https://www.uscifr.gov/sites/default/files/Tier1_PAKISTAN.pdf>, 26 November 2018; on speculations about the actors: D.S. Chandran, “The TLY Paralyzes Islamabad and Rawalpindi: Rise of the Right, or the Use of It?”, *Pakistan Reader*, 12 November 2017, at <http://www.pakistan-reader.org/view_articles.php?url=Weekly%20Review%2004&recordNo=68>, 26 November 2018.

illegal, but the government did not react until two weeks later by sending riot police to disperse the sit-ins – an action that was said to have been miserably planned and poorly executed. When the violent crackdown triggered solidarity protests by Islamists in other cities, the Prime Minister and (after an intervention by) the army chief decided to avoid a further escalation by restarting negotiations with the Islamist leaders and finally signed an agreement with the rally organizers caving in to their demands. The protesters celebrated their victory. The incident could be regarded as a further example for the power of Islamist groups to mobilize street protests¹⁵ or as the “retreat” and “paralysis”¹⁶ of the state authorities. Perhaps it also indicates the calculated unwillingness of the authorities to deal with the root of the problem?

In the following, I will look first at the emergence and development of the “BL”, then turning to their main features, shortcomings, and detrimental effects. Finally, I will shed light on the socio-political context in order to find an explanation for the state authorities’ inability to amend or repeal the laws. In the course of this depiction, the question of whether the “BL” can be taken as indicative of problems with which the country was confronted since its formation, will also be dealt with.

2. THE EMERGENCE AND SUCCESSIVE TIGHTENING OF THE “BLASPHEMY LAWS”

The Pakistan Penal Code (PPC) dates from the British colonial period.¹⁷ The Indian Penal Code of 1860, adopted by Pakistan as its PC in 1947, originally comprised three clauses (295, 296, 298) which were contained in Chapter XV entitled *Of Offences Relating to Religion*. As a result of communal tensions between Hindus and Muslims before the partition, the British rulers had incorporated further sections in 1927 (295-A, 297). During the military regime of General Zia ul-Haq five harsher clauses were added to Chapter XV as a part of his top-down policies of Islamization.¹⁸ In 1980, section 298-A on the *use of derogatory remarks, etc., in respect of holy personages*, which shall be punished with up to three years imprisonment or a fine or both, was inserted. In 1982, clause 295-B on *defiling, etc. a copy of the Holy Quran* was introduced, punishable with

¹⁵ Cf. A.I. Butt, “Street Power: Friday Prayers, Islamist Protests, and Islamization in Pakistan”, *Politics and Religion*, vol. 9, no. 1 (2016), pp. 1-28, esp. 18f. (anti-Ahmadi agitation), 20-22 (with regard to “blasphemy”).

¹⁶ Cf. the comment by Z. Hussain, “The Flames of Bigotry”, *Dawn*, 22 November 2017.

¹⁷ For the PPC see, at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>, 20 October 2017.

¹⁸ For an overview of the “BL” cf. Q. Julius, “The Experience of Minorities Under Pakistan’s Blasphemy Laws”, *Islam and Christian-Muslim Relations*, vol. 27, no. 1 (2016), pp. 95f., 101; B. Hayee, “Blasphemy Laws and Pakistan’s Human Rights Obligations”, *University of Notre Dame Australia Law Review*, vol. 14 (2012), pp. 29-32; N. Shakir, “Islamic Shariah and Blasphemy Laws in Pakistan”, *The Round Table*, vol. 104, no. 3 (2015), pp. 308-311; Center for Research & Security Studies, *Blasphemy Laws in Pakistan: A Historical Overview*, 14 June 2013, at <<http://crss.pk/story/blasphemy-laws-in-pakistan-a-historical-overview/>>, 28 November 2017.

imprisonment for life. The 1984 additions (298-B/-C) deal exclusively with the Ahmadis, and prescribe sentences of up to three years imprisonment for offenders. Finally, in 1986, the most controversial clause 295-C was inserted: on the *use of derogatory remarks, etc. in respect of the Holy Prophet*, punishable with death, or imprisonment for life, and also liable to a fine. It is noteworthy that among the additional offenses, only section 298-A is bailable.

One of the most decisive steps towards the Islamization of the legal system was the creation of a parallel judicial apparatus, comprising separate religious courts at the appellate level – the Federal Shariat Court (FSC) and the Shariat Appellate Bench (SAB) of the Supreme Court (SC). The composition of both consolidated the formalized role of the Islamic religious scholars. In the long run, the establishment of the Shariat courts was to result in confusion, and a turf war and competition between these and the non-Shariat courts.¹⁹

In the post-Zia period, the “BL” have neither been abolished nor modified, but rather tightened. In 1991, the government increased the punishment for *deliberate and malicious acts intended to outrage religious feelings* (section 295-A) from two to ten years. The 1990 decision of the FSC to make the death penalty mandatory for the *use of derogatory remarks in respect of the Holy Prophet* was particularly problematic. With the approval of the SC the option of life sentence was deleted (1991). The FSC judgment followed the petition submitted to the FSC by a member of the fundamentalist “Jama’at-e Islami”.²⁰ As “blasphemy” is not mentioned as such as an offense in the Quran²¹, the FSC had to base its judgement mainly on the Sunnah of the Prophet. Theologically and legally, this is a highly problematic decision, not only because of the uncertain authenticity of the Prophetic traditions, but above all, because it raises the question of why the Sunnah should have priority over the Holy Quran, particularly with regard to capital punishment.²² Moreover, the judges of the FSC tried to categorize blasphemy as a form of apostasy in order to subsume it under the harsher Hudud crimes (“transgression of God’s limits”), ignoring the fact that many scholars did not and do not consider apostasy as a proper Hudud offense.²³

¹⁹ M.H. Cheema, “Beyond Beliefs: Deconstructing the Dominant Narratives of the Islamization of Pakistan’s Laws”, *American Journal of Comparative Law*, vol. 60, no. 4 (2012), pp. 879-882, 892f., 900-902, 916.

²⁰ Cf., e.g. N. Shakir, “Islamic Shariah...”, p. 310. – The party (JI), founded by A.A. Maududi in 1941, had always propagated an Islamic state based on Shariah. In free elections, it never gained more than a low percentage of the votes. Under Zia ul-Haq, it received for the first time a great influence on the political decision-making process. For a short information on the JI, cf. K. Mielke, C. Schetter, *Pakistan – Land der Extreme*, Munich 2013, p. 64.

²¹ Consequently, some scholars, including the Pakistani Javed Ahmed Ghamidi, disagree with the FSC decision (cf. N. Shakir, “Islamic Shariah...”, p. 314).

²² In addition, the FSC had come to quite a different conclusion in its very first case, when it decided – contrary to Zia ul-Haq’s Ordinance – that the punishment of stoning for adultery was un-Islamic. The government reacted with the removal of the judges who had formed the majority of the decision. (Cf. M.H. Cheema, “Beyond Beliefs...”, p. 881)

²³ On apostasy cf. K. Viktor, *Between God and the Sultan. A History of Islamic Law*, London 2005, pp. 291-299, esp. 292f., 294f., see also pp. 47-52 (contradictions between Quran and Sunnah), and 282-287

An appeal to the 1991 verdict was filed in 2001, but it was only after 28 years, in 2009, that the appeal was dismissed and the FSC judgment became final.²⁴

2.1. Main Features of the “Blasphemy laws” of the 1980s

Leaving aside their doubtful legitimacy, the “BL” of the 1980s are characterized by major flaws, both in terms of structure and applications. These shortcomings may be summarized as follows:

- With the promulgation of the “BL”, the state authorities reserved the right to define what is the true religion, and what belief and unbelief are, although there are no objective criteria for doing so, and in Islamic history, the respective definitions varied considerably between the legal schools.²⁵
- Like other Islamization measures with regard to the legal system, Zia ul-Haq’s “BL” were first introduced by ordinance or act under martial law, and only later received a pseudo-legalization by the Eighth Amendment to the 1973 Constitution which was passed by an unelected parliament, in haste, without any debate.²⁶
- In contrast to the 1927 additions, Zia’s ordinances were not directly caused by communal riots and intra-faith violence. They were rather influenced by Islamist ideology, and anti-Ahmadiyya as well as anti-Shia sentiments. Zia adapted the rhetoric of the anti-Bhutto religious parties’ coalition (PNA) in order to justify the dictatorial authority, he had arrogated to himself.
- In contrast to the previous “BL” which addressed all religious beliefs, protecting all religions not only one, Zia ul-Haq’s amendments pertain specifically to a particular understanding or reading of Islamic law and jurisprudence. Moreover, sections 298-B and 298-C are explicitly directed against the Ahmadiyya (*Qadiani/Lahore group*). The Ahmadi community-specific provisions prohibit their inclusion under

(Hudud); for reformist approaches to the issue, cf. R. Badry, “Das Instrument der Verketzerung, seine Politisierung und der Bedarf nach einer Neubeurteilung der ‘Scharia’ und der Apostasiefrage im Islam”, in T.G. Schneiders (ed.), *Islamverherrlichung. Wenn die Kritik zum Tabu wird*, Wiesbaden 2010, pp. 125-127. – It is noteworthy that the terms for blasphemy, apostasy, and unbelief are sometimes used interchangeably, especially in the Islamist discourse. Cf. C. Adang et al. (eds.), *Accusations of Unbelief in Islam. A Diachronic Perspective on Takfir*, Leiden–Boston 2016, p. 9 and passim.

²⁴ M. Bohlander, “‘There is No Compulsion in Religion’: Freedom of Religion, Responsibility to Protect (R2P) and Crimes against Humanity at the Example of the Islamic Blasphemy Laws of Pakistan”, *Journal of Islamic State Practices in International Law*, vol. 8, no. 1 (2012), p. 52.

²⁵ Cf. the contributions to C. Adang et al., *Accusations of Unbelief...* – For the following shortcomings cf., above all, O. Siddique, Z. Hayat, “Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects and Free Speech Implications”, *Minnesota Journal of International Law*, vol. 17, no. 2 (2008), pp. 305-385; Center for Research & Security Studies, *Blasphemy Laws...*, pp. 35-40 and passim.

²⁶ On the appointed Majlis-e shura see R. Badry, *Die zeitgenössische Diskussion um den islamischen Beratungsgedanken (šūrā) unter dem besonderen Aspekt ideengeschichtlicher Kontinuitäten und Diskontinuitäten*, Stuttgart 1998, pp. 573-579. On the main content of the Eighth Amendment see R.M. Ali Saleem, *Pakistan and Turkey. State, Nationalism, and Islamization. Historical Analysis of Turkey and Pakistan*, Cham 2017, p. 58f.

the definition of Muslims. Their right to profess and practice their religion is curtailed. This is a form of state-sanctioned, institutionalized discrimination and exclusion of Ahmadis²⁷ who were considered Muslims until a constitutional amendment in 1974 declared them non-Muslims.²⁸

- Consequently, these laws are inherently unjust and discriminatory. In addition, they are flawed in their form and design which means that the abusive potential of the laws already exists in their textual loopholes – even independently of the social context of increasing religious intolerance fomented by various groups and parties of the wide fundamentalist, ultra-conservative or traditionalist spectrum.²⁹ On a procedural level, the laws are problematic because no hard evidence beyond the word of anyone claiming to be a witness is required, and the accused is arrested and imprisoned immediately, and left to await trial in jail. Even if the right to bail exists, in practice it is often refused by the courts either under the threat of militant groups or because of the judges' own mindset. The judgments by trial courts demonstrate that the administration of justice has frequently been subjected to sectarian affiliations. The absence of an intent requirement in sections 295-B, 295-C, and 298-A has made it possible for blasphemy charges to produce lengthy trials continuing to the appellate level.
- A major factor exacerbating the absence of an intent requirement³⁰ in the "BL", especially in sections 295-B and 295-C, is their lack of specificity, making the ambit virtually limitless: *defiles the sacred name of the Holy Prophet* is open to most diverse interpretations, and lends itself to a high degree of subjectivity; types of behavior that can constitute 'defilement' are not elucidated in the articles. This lack of clarity or range of interpretations is even more true for section 295-C, since the manner of *derogatory remarks* can constitute *imputation, innuendo, or insinuation*, either direct or indirect. As a result, diverse human acts and utterances were taken as blasphemous, not because of speech or action matters, but how it is received.³¹ Section 298-C even goes a step further by declaring, among others, that any Ahmadi who *in any manner whatsoever* outrages the religious feelings of Muslims is liable to conviction under this clause. It is worth noting that a *vague statute may be potentially unconstitutional* if it does not provide *sufficient warning* as to

²⁷ Cf. F.Z. Rahman, "Pakistan: A Conducive Setting for Islamist Violence Against Ahmadis", in J. Syed et al. (eds.), *Faith-Based Violence...*, pp. 209-230, esp. 216-227. For the history of the anti-Ahmadi movement, esp. since 1953, and the religious and political reasons for the discrimination, cf. M.Q. Zaman, *Islam in Pakistan...*, pp. 165-178 (p. 193: for the problematic decision of the Supreme Court in 1993 which explicitly characterized some of the writings of the founder of the Ahmadiyya as blasphemous and implicitly condoned vigilante action against the Ahmadis).

²⁸ For an analysis of the recently declassified transcript of parliamentary proceedings resulting in the constitutional amendment in 1974, see A. Qadir, "When Heterodoxy..."

²⁹ See esp. O. Siddique, Z. Hayat, "Unholy Speech...", p. 305 and passim.

³⁰ On the absence of the intent requirement see esp. *ibid.*, pp. 340-348; on the lacking specificity: *ibid.*, pp. 351f.

³¹ *Ibid.*, pp. 374, 377f.

which action is illegal by common understanding. Accordingly, a law can be held void when it is found to be so vague that it enables ‘arbitrary and discriminatory’ enforcement.³² This is especially true in the case of section 295-C, which carries the capital punishment. Since the decision of both the FSC and the SC, the death penalty to a blasphemer charged under 295-C is mandatory – irrespective of his intent, mental health, religion, gender, age and willingness to repent. This – even in comparison to classical Islamic jurisprudence – is an unusually draconian regulation.

These provisions obviously violate the fundamental rights included in the 1973 Pakistan Constitution (e.g. Article 19 and 20), among them the right to free speech and expression and to the profession and practice of religion.³³

1.2. Effects of the “Blasphemy Laws”

The “BL” had and continue to have detrimental effects on the cohesion of Pakistani society, as they have fueled hatred, mistrust, violence and intolerance. It may suffice here to point to the major effects:

- “Blasphemy”-related cases have increased significantly since the 1980s, in particular after the promulgation of the 1986 amendment and the 1991 judgment of the FSC/SC. Non-Muslims, above all Christians and Ahmadis³⁴, are disproportionately affected although they constitute only 3-4% of the total population. It is conspicuous that the most marginalized in society were often among those victimized. Among the Muslim minorities, Shiites (Twelver Shiites and Ismailis) were those most frequently targeted.³⁵ In all, there have been more than 4,000 registered cases, out of which almost two-thirds are registered in the Punjab alone; Lahore and Faisalabad are the cities with the highest number of registered cases.³⁶

³² Ibid., pp. 359f.

³³ M. Bohlander, “‘There is No Compulsion...’”, pp. 57-59; cf. O. Siddique, Z. Hayat, “‘Unholy Speech...’”, pp. 373-379. For the inconsistencies with legally binding human rights’ obligations of Pakistan cf. B. Hayee, “Blasphemy Laws...”, pp. 38-51.

³⁴ Cf. the following articles in J. Syed et al. (eds.), *Faith-Based Violence...: E. Pio, J. Syed, “Marked by the Cross: The Persecution of Christians in Pakistan”, esp. pp. 188f., 193-204, and F.Z. Rahman, “Pakistan...”, esp. pp. 210, 216f., 218-222.*

³⁵ Cf. the following article in J. Syed et al. (eds.), *Faith-Based Violence...: A. Zaidi, “The Shias of Pakistan: Mapping an Altruistic Genocide”, pp. 273-312, esp. 281-298. On the effects cf. also N. Shakir, “Islamic Shariah...”, pp. 311-315; M. Bohlander, “‘There is No Compulsion...’”, pp. 53, 61, 63 and passim; O. Siddique, Z. Hayat, “‘Unholy Speech...’”, pp. 322-335; F. Ispahani, *Purifying the Land of the Pure. A History of Pakistan’s Religious Minorities*, New York 2017, pp. 6f., 133, 142f., 142-147; M. Hoffman, “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*, vol. 13, no. 2 (2014), pp. 383-386.*

³⁶ Numbers as given by N. Shakir, “Islamic Shariah...”, p. 311; see also S. Ashraf, *Honor...”, pp. 7f., 9, 11f.; Q. Julius, “The Experience...”, pp. 99f. Cf. Human Rights Commission of Pakistan/HRCPP (ed.), *State of Human Rights...”, p. 93. According to official sources, there were 189 blasphemy cases between January and November 2017, most of them in the Punjab.**

- Most cases involved false allegations made for religious persecution, in pursuance of professional rivalry, to favor a business transaction or to settle personal scores. The blatant misuse of the laws is evident given that lower court decisions have often been overturned by superior courts on the grounds that the accusations had been fabricated. However, as false accusations have generally gone unpunished, “blasphemy” allegations based on personal grudges or in hope of financial gain have rather been encouraged than curbed.
- The social and political pressures (by militant, polarizing organizations) that impede the objective and fair adjudication of “blasphemy” cases and the vulnerability of the accused, especially if they belong to an ethnic, religious or political minority, further confound and aggravate the situation.
- Extra-judicial killings started in 1991. Until 2015, 62 persons accused of “blasphemy” have been killed by vigilante justice.³⁷ Senior clerics of mosques, even members of the judiciary and former ministers have encouraged people to take the law into their own hands. What is even more outrageous, the perpetrators are often praised for their crime. As sectarian violence has become a routine incident and even before the court decides whether the accusations are true or false, not only the person accused of blasphemy may suffer, but also the entire community of which they are a part.
- Extreme advocates of the “BL” who even consider a discussion about them to be “blasphemous” resort to violence and intimidation, in order to coerce the police, the politicians, the courts and even the victims.
- As a rule, the appeal process is complex and lengthy, and it can take years to prove the accused’s innocence in courts.³⁸ It is true that until now no one has ever been executed on the indictment of “blasphemy”, because the prosecution or complainant could not prove the case beyond a reasonable doubt, or because there was no conclusive proof for the conviction. However, this should not allow one to forget the fact that a person has to wait for years to prove his or her innocence, and may be the victim of assaults or torture (by fellow inmates, or security agencies).

³⁷ N. Shakir, “Islamic Shariah...”

³⁸ The most prominent case is that of Asiya Nurin, commonly known as “Asia Bibi”, a Christian mother and field laborer, who was arrested in 2009, and sentenced to death one year later. The first appeal was only heard in 2014, but the death penalty was upheld. Finally, on 31 October 2018, the Supreme Court acquitted her of blasphemy charges and ordered her release due to the lack of credible and sufficient evidence. The decision sparked nationwide protests headed by the TLP demanding Asia Bibi’s public execution. The party’s co-founder even called for the death of the three Supreme Court judges who ruled to acquit her, although they did not question the “BL” as such. Two days later, the government yielded to the pressure of the street and agreed to review the verdict and not to allow Asia Bibi to leave the country until the final review into her case. Rumors that she has already left the country ignited further protests. On 23 November 2018, the police arrested the TLP’s leader and several of his supporters who led the protests against the Supreme Courts’ decision. Cf. R. Gupta, “Asia Bibi Case Shows the Dangers of Courting Religious Extremists”, *CNN*, 13 November 2018; “Pakistan Blasphemy Case: Supporters of Hard-Line Cleric Detained”, *BBC*, 24 November 2018. For equally unique circumstances of another case cf. M. Hoffman, “Modern Blasphemy...”, esp. pp. 372, 386-389.

- In general, courts (and other state institutions) have done little to mitigate the negative effects of the use of "BL" by various political actors and their arbitrary, discriminatory and oppressive application.

3. THE "BLASPHEMY LAWS" IN THE SOCIO-POLITICAL CONTEXT OF PAKISTAN

Without a doubt, the "BL" and other "Islamization" measures have contributed to the escalation of religious conflict and violence. Although the grievances are well known and also at times officially acknowledged, no profound change is in sight. As outlined above, the case of Pakistan suggests that the political / military decision-makers had and still have a hand in the intensification of inter- and intra-religious tensions. Thus, we may speak of state-sponsored sectarianism or sectarianization, i.e. the systematic and deliberate use of and mobilization around sectarian identities.

General Zia ul-Haq's recourse to religion in the interests of political expediency was not unprecedented; this can already be seen in the independence movement and the early years of Pakistan. However, his opportunistic use of religion to legitimize *realpolitik* and his adoption of a fundamentalist rhetoric and agenda for clearly self-serving power interests seem to have become a role model for subsequent rulers, both military and civilian.

It goes without saying that despite Zia's proclivities, the increased Islamization of the state and society would not have been possible without the Afghanistan conflict. The millions of dollars provided by the US and Saudi Arabia, both of them worried about the growing Soviet and Iranian-Shiite influence in the region, allowed the Pakistani Army and its Intelligence Service to train the *mujahidin*, and develop to a *state within the state*.³⁹ The interconnection and interplay between domestic and external factors⁴⁰ is of course also true for the following decades as the dramatic increase in sectarianism in the Middle East and East Asia over the past decades cannot be explained without taking contemporary geopolitical shifts (the rivalry between Saudi Arabia and Iran, etc.) into consideration. However, in order to answer the question, why none of the subsequent governments or rulers was able to abolish or reform the "BL" implemented illegally by Zia ul-Haq, we have to go back to the very establishment of Pakistan.

It is well known that Pakistan was originally created as a homeland for Muslims in South Asia, not as an Islamic State where Islamic fundamentalists or religious scholars

³⁹ K. Mielke, C. Schetter, *Pakistan...*, p. 111.

⁴⁰ For a detailed discussion of the diverse internal and external (regional and international) factors, cf. V. Nasr, "International Politics, Domestic Imperatives, and Identity Mobilization: Sectarianization in Pakistan, 1979-1998", in N. Hashemi, and D. Postel (eds.), *Sectarianization: Mapping the New Politics of the Middle East*, London 2017, esp. pp. 81ff. (rise of Sunnite militancy) and 86ff. (Afghan war). K. Mielke, C. Schetter, *Pakistan...*, pp. 111-123, 201-230. On "Petrodollar Islam", cf., e.g., the article by P. Hoodbhoy, "Could Pakistan Have Remained Pluralistic?", in J. Syed et al. (eds.), *Faith-Based Violence...*, pp. 57-60.

define the role of religion in society. The definition of the relation between religion and politics was a bone of contention from the beginning, and hardliners (JI, etc.)⁴¹ tried to mobilize street protests for their demand for implementation of Islamic law, but an important turning point came in the 1970s, parallel to the regional trend of politicizing Islam. At that time, the Pakistani elite decided that increasing the contribution of Islam to state nationalism was the remedy for avoiding another Bangladesh. The change in state politics started in a subtle way when the Legal Framework Order (LFO), issued by the military government in 1970, claimed that *Islamic ideology* was the basis for the creation of Pakistan. In the 1972 Interim Constitution, *striving to preserve the Islamic ideology* became part of the oath that important state officials had to take. The subtle change that had started with the LFO in 1970 matured in the 1973 constitution, when Islam's influence became more than symbolic and Pakistan became a *confessional state*.⁴²

During Z. Bhutto's rule, Islamization had been one of the key demands of the leading opposition parties (PNA). The alliance between these opposition parties and Zia ul-Haq led to state-sponsored Islamization.

In the post-Zia era, the piecemeal inclusion of "Shariah" continued to be sponsored by Pakistani governments (apart from the above-mentioned amendments, cf. the "Qisas and Diyat" Laws, etc. of 1990/91). By the late 1990s, the efforts of militant Islamists (of Salafi/Wahhabi provenience) to push for further Islamization of the law seemed to be of no avail, at least at the national level.

Early in his tenure, General Pervez Musharraf described his policies as "enlightened moderation" and often promised reforms; for instance, he declared his intention to change the procedure for initiating criminal proceedings under "BL", making it difficult to file false charges.⁴³ However, the announcement fell far short of expectations – after the pressure exerted by Islamist groups and religious lobbies.⁴⁴ In order to counter the opposition from mainstream democratic parties, Musharraf later allied with the religious parties, and his initial appeal to moderation was overshadowed by his desire to retain power.

Attempts by other political leaders or institutions to reform the "BL" were also given up almost as soon as they were proposed due to the threatening gestures by religious-political stakeholders.⁴⁵

⁴¹ Cf. T. Kamran, "Pakistan: A Failed State?", *History Today*, vol. 67 (September 2017), esp. pp. 27, 29, 30.

⁴² R.M. Ali Saleem, *Pakistan and Turkey...*, p. 57; on the impact of the LFO cf. *ibid.*, pp. 55ff., on the constitutional development *ibid.*, pp. 50-65.

⁴³ But in this context, one has to recall the simultaneous efforts of Pakistan to extend domestic "BL" into the international arena. From 1999 to 2010, Pakistan annually proposed a resolution *combating defamation of religions*, in particular against Islamophobia, at the UN (and the UNHRC in Geneva where it was finally rejected in 2011). Cf. B. Hayee, "Blasphemy Laws...", pp. 37f.; T.K. Gugler, "Islamization...", p. 389; on the *Counter-Defamation Discourse* in general, J. Temperman, "Blasphemy...", pp. 530-533.

⁴⁴ On the Musharraf initiative cf. P. Hoodbhoy, "Could Pakistan...", pp. 52-54; M.H. Cheema, "Beyond Beliefs...", pp. 883f.; F. Ispahani, *Purifying...*, pp. 163f.

⁴⁵ Cf. attempts by B. Bhutto (F. Ispahani, *Purifying...*, pp. 147-149), or by the *Council of Islamic Ideology* in Sept. 2013 (Q. Julius, "The Experience...", p. 108).

At present, many politicians either support the laws or refuse to propose changing them out of fear of losing political power, or worse, their lives, being well aware of what happened to Salman Taseer, the late governor of the Punjab province, and Minorities' Minister Shahbaz Bhatti in early 2011 who publicly voiced their opposition to the "BL" and worked to reform them.⁴⁶ Popular support⁴⁷ and pressure comes from a vocal and active portion of the population. Resistance to changes in the "BL" across both military and civilian governments reveals that issues directly related to religion are regarded as a convenient political instrument, even by nominally secular politicians.⁴⁸

To some extent, the confused, if not absurd situation looks like a kind of tacit agreement or division of labor between the governing elite whose interconnections have intensified in the new millennium⁴⁹ and religious-political pressure groups who feel empowered by the extensive political territory that have ceded to them: the authorities leave the influence on everyday religious issues to them. As long as these groups do not threaten the major political decisions (the military's control over the country's foreign and security policy, etc.) and as long as such policies do not curb privileges, power, and influence of the ruling elite, they can be quite efficient for the control and surveillance of the wider public. If and when the religious groups are no longer useful, the main stakeholders can apply coercive measures, among others by using the already tried and tested rule-and-divide strategies. What is more, the "BL" are a handy and simple tool to silence debate and dissent. Pakistan's citizenry – in particular its vulnerable segments – remains besieged by "BL". 'Blasphemia' detracts from the real problems (the widening gap between the rich and poor, between well-educated and illiterates or the half-educated⁵⁰, and widespread corruption, to mention just a few areas), but keeps the Islamists and those marginalized preoccupied.

The 'Islamization' of the PPC has in fact intensified the structural problems Pakistan is confronted with since 1947. Moreover, it has offered the state and the powerful social elites new channels of coercion and harassment. This is perhaps the main reason why the decision-makers are neither interested in changing, let alone repealing the "BL"⁵¹,

⁴⁶ On both cases cf. J. Syed et al. (eds.), *Faith-Based Violence...*, Index.

⁴⁷ Cf. PEW poll results as mentioned by A. Qadir, "When Heterodoxy...", p. 14, note 9. – On the "political culture" cf. K. Mielke, K. Schetter, *Pakistan...*, pp. 123-138, and passim for additional domestic factors which have further eroded state power (demographic changes; fragility of state institutions; intense competition between political parties and actors; terrorist attacks, etc.).

⁴⁸ A.I. Butt, "Street Power...", pp. 21f.

⁴⁹ The economic, political-administrative and military sections of the elite most of whom think in terms of hierarchy and status are increasingly interconnected, although alliances may shift according to circumstances. Cf. K. Mielke, K. Schetter, *Pakistan...*, pp. 131, 134f.

⁵⁰ Apart from the well-known problems of the public education system, it is worth remembering that the Islamization of the curricula and textbooks under Zia ul-Haq as well as the promotion and proliferation of *madaris* (religious schools) had a great impact on the then increasing religious intolerance and polarization.

⁵¹ It is striking that the latest endeavor to reduce the misuse of the laws only proposed procedural changes – *given the fact that repeal or substantial amendment in blasphemy laws to bring them in line with Pakistan's international legal obligations may not be immediately feasible* (A. Ul Mustafa,

nor in reappraising the very existence of the laws in a meaningful manner which would come closer to M. A. Jinnah's call for an inclusive concept of citizenship.⁵²

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"Proposed...", p. 0). Following the above-mentioned incident of vigilante justice (Mashal Khan), *opposition political parties in parliament raised the issue of amending the blasphemy laws to criminalize false accusations*. However, *the government took no subsequent action* (U.S. Commission on International Religious Freedom (ed.), *Report 2018...*, [p. 4]). Despite governmental efforts and some positive developments in recent years, in sum the state has remained ineffective in guaranteeing security to its religious minorities, and thus fell far short to its obligations. What is more, it has failed to produce, bolster, and disseminate a counter-narrative to the hate speech and extremely reductionist reading of Islam propagated not only by extremists via schools, mosques, and media. Over the past decades, the religious-political landscape in Pakistan has undergone tremendous shifts and changes. Ultra-conservative and militant groups have become prevalent, reformist and modernist Islamic scholars and intellectuals have been pushed in the background, or have lost the patronage of the main decision makers, or have been silenced.

⁵² For Jinnah's inclusive vision cf. K. Mielke, K. Schetter, *Pakistan...*, p. 124; P. Hoodbhoy, "Could Pakistan...", pp. 48-50. – It is worth remembering that Jinnah was an Ismaili.

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