

**United Nations Human Rights Council
Universal Periodic Review
Pakistan**

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.

United Nations Human Rights Council Universal Periodic Review of Member-State Pakistan

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Pakistan as a contribution to the Universal Period Review of UNHRC member-state Pakistan.

1. Legal Framework

1.1. Constitutional Guarantees of Religious Freedom

The preamble of the constitution provides that “adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures.” Additionally, Article 20 makes these guarantees more explicit:

“Subject to law, public order and morality:- (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”

While this passage acknowledges the free expression of religion and the free association of religious communities, non-citizens are not guaranteed these freedoms. The education sector is also protected against obligatory religious instruction and religious discrimination in public schools.¹

1.2. Islamic Foundation of Pakistan

Although the Constitution of Pakistan makes several guarantees for the religious freedom of non-Muslims, the advantaged legal treatment given to Muslim citizens over their non-Muslim co-patriots presents a major impediment to the human right of religious liberty.

The Constitution states that “Pakistan would be a democratic State based on Islamic principles of social justice.”² According to Article 2, Islam is the official state religion of

¹ Article 22: “(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own. (2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation. (3) Subject to law: (a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and (b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth. (4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

² Preamble.

Pakistan.³ Thus, not only must the president be a Muslim but he must also swear “that [he] will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.”⁴ Ten seats are reserved in the 342-seat Parliament for non-Muslims; however, they may be disqualified if they do not have a “good moral reputation.”⁵ Islamic theology is the foundation of Pakistan’s government.

1.3. Repugnancy Clause

Article 227 of the Constitution of Pakistan states:

“All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.”⁶

In order to ensure that the “Injunctions of Islam” are maintained, the Constitution establishes an Islamic Council, meant to serve as an Islamic think-tank for Parliament and the Provincial Assemblies, and a Federal Shariat Court, which decides whether a law is repugnant to the injunctions of Islam.⁷ Such constitutional principles further favour Muslim citizens and impose Islamic religious law upon non-Muslims who do not subscribe to Islamic theology.

1.4. Penal Code

The Pakistan Penal Code, originally instituted under British rule, sought to maintain a interreligious harmony by prohibiting actions such as defiling places of worship, disturbing a religious assembly, trespassing upon burial places, and injuring religious feelings with malicious statements.⁸ Although this final statute risks the protection of

³ An official state religion is not inherently contradictory to the principles of religious liberty but its influence on the freedom of expression and speech often depends on the implementation of its official status.

⁴ When the Prime Minister of Pakistan (along with most high-ranking government officials) is sworn into office, he swears “that [he] will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.” See Article 91 (4): Oath of Office for Prime Minister, Constitution of Pakistan.

⁵ If a delegate is a Muslim, he must not be known as one who violates Islamic Injunctions and must have adequate knowledge of Islamic teachings and practice obligatory duties prescribed by Islam as well as abstain from major sins. If he is a non-Muslim, he must still have a good moral reputation. See Article 62, Constitution of Pakistan.

⁶ Article 227 (1)

⁷ Article 230: (1) “The functions of the Islamic Council shall be, (a) to make recommendations to [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah.” Article 203D (1) “The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.”

⁸ Article 295. Injuring or defiling place of worship, with Intent to insult the religion of any class: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with

subjective emotions rather than the objective speech of the speaker, at least these statutes were applied equally to all religions.

However, after independence, during the 1980s under the military rule of General Zia, these sections were amended in order to bring them more explicitly in line with Sharia law.⁹ Section 295 now includes a punishment of ten years in prison for the aggravation of religious feelings of others, life imprisonment for the defiling of the Holy Quran, and death or life imprisonment for the defamation of the Holy Prophet. Section 298 also includes a punishment of three years in prison for a person of the Qadiani (Ahmadi) group claiming to be a Muslim.¹⁰

Hudood Ordinance

Also enacted during General Zia's Islamization of Pakistan, the Hudood Ordinance instituting the punishment of death by stoning for the offense of adultery by a woman further integrates civil law with Shari'a law. Such laws erode the few guarantees for religious liberty that may exist.

2. Implementation

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

Article 296. Disturbing religious assembly : Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Article 297. Trespassing on burial places, etc.: Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a, depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Article 298. Uttering words, etc., with deliberate intent to wound religious feelings: Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

⁹ Farooq Hassan, "Religious Liberty in Pakistan: Law, Reality, and Perception." *BYU Law Review* 283. 2002

¹⁰ The 2nd Amendment to the Pakistan Constitution officially outlawed the Qadiani (Ahmadi) religion. Also, in order to vote, Muslim citizens "must swear to believe that Mohammad is the final prophet and denounce the Ahmadiyya movement's founder as a false prophet and his followers as non-Muslims." (U.S. State Department Report IRF: Pakistan 2007) Robust theological debates are a healthy part of an open and free society, but the question of whether the Ahmadi faith is Islamic should not be decided by the State. Freedom of conscience and religion require the ability peacefully to practice beliefs and rituals. Here, not only does the State prohibit Ahmadiyyas from calling themselves Muslims, the State also prohibits Ahmadiyyas from practicing according to their conscience at all.

Pakistan's legal restrictions on religious freedom present serious human rights concerns because of their overbreadth, their normative social effects, and their potential effects on international norms.

2.1. Penal Code and Hudood Ordinance

Pakistani authorities routinely use the penal code and Hudood Ordinance to harass religious minorities and reformers and to settle their own personal grievances against competitors or enemies.¹¹ The suppression of free speech and free expression is not limited to any particular group.¹²

The stories of police torture and forced conversions are too many to recount. In March 2007, Amanat Masih – a Christian – was attacked by a Muslim mob for allegedly desecrating the Quran only to be arrested soon after by the police for blasphemy. When Walter Fazal Khan – an 84-year-old Christian – entered a business deal that went sour, the Muslim businessmen allegedly arranged for his arrest on charges of blasphemy. Meanwhile, religious leaders forced Khan's 86-year-old wife to convert to Islam.¹³

The treatment of the Ahmadiyyah community in Pakistan is certainly the most oppressive of the persecution in Pakistan. The 2nd Amendment to the Pakistan Constitution officially outlaws the Qadiani (Ahmadi) religion. Police consistently arrest Ahmadis on charges of blasphemy and for "posing as Muslims." According to the Ahmadi community, authorities arrested 28 Ahmadis on criminal charges related to their religious beliefs within one year's reporting cycle in 2006-07.¹⁴ Not only are Ahmadis not allowed to preach their beliefs, but they are also forbidden to use the standard Muslim greeting or to name their children Mohammed.¹⁵

2.2. Normative Effects of Oppressive Religious Laws

¹¹ The use of these harsh and overbroad measures in order to settle personal grievances is limited to no specific religious group. Blasphemy laws, facially directed at religious dissidents, are commonly applied to suppress dissent. Munawar Moshin Ali, letters page editor of the English-language daily Frontier Post was convicted for publishing a letter to the Editor regarding Muslim-Jewish relations that authorities deemed offensive to Islam. He served nearly four years in a Peshawar jail before the High Court suspended his life sentence and acquitted him of blasphemy charges in 2004. Ali resorted to the defense not of a free press, but that he had not known the contents of the letter in question. The High Court decided the prosecutor had failed to demonstrate the intentionality element of the crime. (Reporters Without Borders Press Release: "Frontier Post staffer released from prison," 22 November 2004; RWB Press Release: "Journalist gets life sentence for 'blasphemy,'" 10 July 2003)

¹² 25 Ahmadis, 10 Christians, and 6 Muslims were arrested on blasphemy charges within a year. However, the undocumented incidents of persecution as a result of blasphemy doctrine may be much higher. U.S. State Department Report, IRF Pakistan 2007. Reporting period spanned parts of 2006-07.

¹³ U.S. State Department Report, IRF Pakistan 2007.

¹⁴ U.S. State Department Report, IRF Pakistan 2007.

¹⁵ Since 1984, 756 Ahmadis have been arrested for using the standard Muslim greeting "Kalima", i.e. "There is none worthy of worship except Allah, Mohammad is the Messenger of Allah", according to the Ahmadiyyah community. <http://www.thepersecution.org/facts/summary.html>

The greatest threat to the state of religious freedom in Pakistan is the normative effects these laws have on society. A legal environment that excludes dissenting opinions from the public square places power completely in the hands of the majority – a monopoly that facilitates corruption and the neglect of the persecution of minorities.

In a society where militant Islam is prevalent the forced conversions of Christians and Hindus are extremely common. In February 2007, a Muslim kidnapped two of his employees who were Christian. After they refused to convert to Islam, he tortured them for a month. In 2006, after Kenneth Gill, a 15-year-old Christian, was forced to convert to Islam, he later recanted only to be declared an apostate by religious leaders who facilitated his ensuing arrest.

2.3. International Influence of Anti-Blasphemy Laws

Since 1999, Pakistan has been the leader in the advancement of religious defamation measures in international law. Through proposed resolutions at the United Nations on the “defamation of religion” and the rallying of OIC and African Group member-states on the issue, Pakistan continues to keep religious defamation at the forefront of the Human Rights Council despite the dangerous precedents it sets for international religious freedom. Religious defamation measures, like anti-blasphemy laws, protect the subjective sentiments of the hearer rather than the peaceful speech of the speaker. Worse, they are routinely applied only against religious minorities and dissenters within majority faiths, belying their purported purpose of protecting the vulnerable. The establishment of international legal precedents in favor of “anti-defamation laws” will only further support the proliferation of blasphemy laws around the world.

3. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Pakistan. We respectfully recommend that the UNHRC not only base its evaluation of Pakistan on constitutional assurances of religious freedom, but also on the use of legal doctrines to oppress minorities and to suppress dissent.

The UNHRC should also evaluate the Pakistan government’s failures to address the pernicious effects of anti-blasphemy laws. We encourage the UNHRC to study the effects of these laws on the fundamental freedoms of religion and expression, especially as they have begun to affect international resolutions within the UNHRC body.

In light of the October 2007 declaration of emergency rule and the dissolution of the Supreme Court, Pakistan is facing a crisis in its ability to assure the rule of law – one of the cornerstones of a society capable of protecting the human rights of its citizens and of a functioning democracy.¹⁶ The UNHRC should pay particular attention to the protection

¹⁶ Rule of law and religious freedom are central to the establishment of a functioning liberal democracy. Rule of law ensures that victims of persecution can seek justice; religious freedom acts as the cornerstone for the essential freedoms of thought, conscience, speech, expression, and association.



of an independent judiciary and free press, which has the greatest possible moderating influence in a country where extreme Islamist parties have a strong voice.¹⁷

Finally, we encourage the Pakistan government to protect human rights workers within its own borders. Human rights defenders, like native Pakistani Asma Jahangir, provide a roadmap towards a more stable and free Pakistan.

¹⁷ In May 2007, the Muttahida Majlis-i-Amal coalition of Islamist parties tabled a bill known as the Apostasy Act 2006, which calls for severe punishments for those who convert away from Islam. The Apostasy Act proposes death for all male converts and life in prison “until penitence” for female converts. Convictions may be obtained either by the accused’s own confession, or by the testimony of two adult witnesses, which is consistent with Islamic law. Should it pass, it would override all laws on the topic currently in place.