



**SUBMISSIONS ON PROPOSED PROCEDURAL
AMENDMENTS TO CHECK THE MISUSE OF
BLASPHEMY LAW IN PAKISTAN**

**BEFORE THE FUNCTIONAL COMMITTEE ON
HUMAN RIGHTS,**

THE SENATE OF PAKISTAN

**From:
THE OFFICE OF THE CHAIRMAN
NATIONAL COMMISSION FOR HUMAN RIGHTS
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Islamabad 9th August, 2016

The Honourable Members,
Functional Committee on Human Rights,
The Senate of Pakistan.

Assalam-o-alikum!

May I have the honour and privilege of responding through this report on agenda item # II: Proposed procedural amendments to check the misuse of blasphemy laws in Pakistan before the Functional Committee on Human Rights, the Senate of Pakistan for its session dated 16th August 2016.

Provisions of Pakistan Penal Code (“PPC”) on offences against religion are viewed incompatible with Pakistan’s obligations under the international law, including the guarantees to freedom of expression; freedom of thought, conscience and religion; and equal protection of the law. Considering the threat of violent reprisals against advocates, war against terrorism and fraught political conditions, repeal or substantial amendment in blasphemy laws to bring them in line with Pakistan’s international legal obligations may not be immediately feasible. However, the procedural safeguards should be developed to prevent misapplication or misuse of the law regarding the offence of blasphemy.

The Commission once again expresses its gratitude to the Senate of Pakistan for providing this opportunity and always takes pride in assisting the Honourable Parliament for the promotion and protection of human rights in Pakistan.

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Chairman.
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Introduction:

National Commission for Human Rights (“NCHR”) is newly established body created through an Act of Parliament known as the National Commission for Human Rights Act (“NCHR Act”), 2012. The Commission became operational in May, 2015 with the appointment of its Chairperson and Members. Section 9 of the NCHR Act, 2012 stipulates a broad and overarching mandate for the promotion, protection and fulfilment of human rights, as provided for in Pakistan’s Constitution and international treaties. Despite dearth of staff, technical expertise, adequate finances and logistics and other teething problems, the Commission is performing its statutory functions by investigating heinous human rights violations, providing relief to the victims, reviewing existed and proposed legislation from human rights perspective and contributing in obligatory reports at national and international levels.

The Commission sends its respects and gratitude to the Honorable Members of the Functional Committee on Human Rights, the Senate of Pakistan for debating an important issue of blasphemy, its misuse and ways and means to prevent its misapplication. As part of its statutory functions, the Commission is honored to assist and apprise the Functional Committee on Human Rights, the Senate of Pakistan on proposed procedural amendments to check the misuse of blasphemy laws in Pakistan.

We have extensively analyzed and relied upon national and international laws, important case law and reports of reputed international organizations on the subject and recommended some essential procedural amendments to prevent misuse and misapplication of blasphemy laws in Pakistan considering 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, given the threat of violent reprisals against advocates, war against terrorism and fraught political conditions.

Herewith are our brief submissions on the subject for consideration of the Honourable Members of the Senate and for apprising them of the essential data relevant to proposed agenda for the meeting of the Functional Committee on Human Rights, the Senate of Pakistan. The Commission once again expresses its gratitude to the Senate of Pakistan for providing this opportunity and always takes pride in assisting the Honourable Parliament for the promotion and protection of human rights in Pakistan.

The Definition of Blasphemy:

1. Section 295-C of Pakistan Penal Code 1860 (“PPC”) defines blasphemy vaguely. Therefore difference of opinion exists on what constitute blasphemy? The Honourable Supreme Court of Pakistan in *Malik Mumtaz Qadri v. The State* (Criminal Appeals No. 210 and 211 of 2015) observed as follows;

“17. When specifically questioned by us in that respect the learned counsel for the appellant has maintained that it is not just defiling the sacred name of the Holy Prophet Muhammad (peace be upon him) which constitutes blasphemy but criticizing the law regarding blasphemy is also blasphemous. We may record in this context that for canvassing such a point of view the learned counsel for the appellant has not placed reliance upon any scripture of divine origin but has referred to some scholastic interpretations of human origin. In our country the offence of blasphemy has been defined in section 295-C, PPC and by dictate of the oath of our office we are bound to decide matters in accordance with the Constitution and the law and, thus, we have found it difficult to act in this case on the basis of a definition of blasphemy advanced by the learned counsel for the appellant which definition travels beyond the scope of the statutory definition of the same in the law of the land....”¹

2. Section 295-C of PPC defines blasphemy as follows:

“Use of derogatory remarks, etc., in respect of the Holy Prophet:

Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine”.²

Brief History of Blasphemy Laws in Pakistan:

3. In the case of *Muhammad Mahboob alias Booba v. The State (PLD 2002 Lahore 587)* the Honourable Division Bench of the Lahore High Court, Lahore observed that the blasphemy is pre-Islamic concept and traced out its origin in Christianity. The relevant text of the judgment is reproduced here;

“14. Blasphemy, according to the book "Words and Phrases" legally defined by Butterworths, Volume 1, is considered here and is as follows: Blasphemy is a, misdemeanor at common law punishable by fine and imprisonment. It consists in (1) scoffingly or irreverently ridiculing or impugning the doctrines of the Christian faith; or (2) in uttering or

¹ Mumtaz Qadri v. The State (PLD 2016 SC 17)

² Section 295-c of PPC 1860.

publishing contumelious reproaches of Jesus Christ; or (3) in profane scoffing at the Holy Scriptures or exposing any part thereof to contempt or ridicule. It is not blasphemy with due gravity and propriety to contend that the Christian religion or any part of its doctrine, or the whole or any part of the Holy Scriptures, is untrue.

The offence of avowing blasphemous and impious opinions contrary to the doctrines and principles of the Christian religion on the part of a person who has been educated in or has at any time made profession of the Christian religion consists in law of asserting or maintaining that there are more gods than one or denying the Christian religion to be true or the Holy Scriptures to be of divine authority, by writing, printing, teaching or advised speaking."³

4. The Honourable Court further observed that;

“15. Historically speaking the Blasphemy Law was enacted by the British to protect the religious sentiments of the Muslim minorities in the Sub-Continent before partition against the Hindu majority. After the creation of the Pakistan, the Muslims themselves were in majority. Section 295-A of the Pakistan Penal Code was enacted in 1927. In 1980, section 295-A was added to the P.P.C. In 1982, section 295-B was introduced. While in 1986, section 295-C was legislated. Initially life imprisonment was the sentence prescribed. However, in 1991 this was replaced with mandatory death penalty.”⁴

National Legal Framework:

5. Sections 295 to 298 (Chapter XV) of PPC deals with offences relating to religion. The summary of these offences is produced in the table below.⁵

³ Muhammad Mahboob v. State, (2002) 54 P.L.D. 587, 597 (Lahore)

⁴ Ibid

⁵ This table is taken from the report of International Commission of Jurists, (2014), “On Trial: The Implementation of Pakistan’s Blasphemy Laws, Geneva

Sec. of Penal Code	Offence	Sentence	Year	Bailable and cognizable?
295	Injuring or defiling place of worship, with intent to insult the religion of any	Up to two years imprisonment, rigorous or simple,	1860	Bailable and cognizable
295-A	Deliberate and malicious acts intended to outrage religious feelings of any class by	Up to ten years imprisonment, rigorous or simple, fine, or both	1927	Non-bailable and non-cognizable
295-B	Defiling the Holy Quran	Mandatory imprisonment for life	1982	Non-bailable and cognizable
295-C	Use of derogatory remarks, etc., in respect of the Holy Prophet	Mandatory Death sentence	1986	Non-bailable and cognizable
296	Disturbing religious assembly	Up to one year imprisonment, or fine, or both	1860	Bailable and cognizable
297	Trespassing on burial places, etc.	Up to 1 year imprisonment, rigorous or simple,		Bailable and cognizable
298	Uttering words, etc., with deliberate intent to wound religious	Up to 1 year imprisonment, rigorous or simple,	1860	Bailable and non-cognizable
298-A	Use of derogatory remarks in respect of holy personages	Up to 3 years imprisonment, fine, or both	1980	Bailable and cognizable
298-B	Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places	Up to 3 years and fine	1984	Non-bailable and cognizable
298-C	“Person of Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name)” who	Up to 3 years imprisonment, rigorous or simple, and fine	1984	Non-bailable and cognizable

International Legal Framework:

6. Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2010. The ICCPR provides the principal legal framework for Pakistan's international human rights treaty obligations in relation to the protection of freedom of thought, conscience and religion or belief (Article 18); freedom of opinion and expression (Article 19); equality before the law and the prohibition of discrimination (Articles 2, 26 and 27); and fair trial (Article 14). All branches of the State are required, both under the ICCPR and under general international law, to give domestic effect to its provisions and to bring domestic laws in line with the ICCPR. Provisions of PPC on offences against religion, particularly section 295-C of the Pakistan Penal Code which criminalizes words, representations, imputations, innuendos, or insinuations, which directly or indirectly, defile "the sacred name of the Holy Prophet", are fundamentally incompatible with Pakistan's obligations under international law, including to guarantee freedom of expression; freedom of thought, conscience and religion; and equal protection of the law.⁶
7. The NCHR is aware that repeal or substantial amendment in blasphemy laws to bring them in line with Pakistan's international legal obligations may not be immediately feasible, given the threat of violent reprisals against advocates, war against terrorism and fraught political conditions. However, the procedural safeguards should be developed to prevent misapplication or misuse of the law regarding the offence of blasphemy.

Procedure relating to blasphemy offenses in Pakistan:

1. Firstly, the Code of Criminal Procedure ("CrPC"), 1898, provides certain conditions for the institution of criminal proceedings for "offences against the State". Section 196 of the CrPC provides that no court shall take cognizance of any offence punishable under 295-A (deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs) of the Pakistan Penal Code unless a complaint is made by, or under authority from, the Federal Government or the concerned Provincial Government. If prior permission (referred to as "sanction") is not obtained, a judge cannot take cognizance of a private complaint

⁶ International Commission of Jurists (ICJ), (2014), "On Trial: The Implementation of Pakistan's Blasphemy Laws, Geneva

under section 295-A. In many cases, this has served as a protection mechanism against frivolous or malicious complaints.⁷

2. Secondly, the CrPC provides that any officer in charge of a police station may, without the order of a Magistrate, investigate any case on complaint of a cognizable offence. For non-cognizable offences, police officers may only launch an investigation after obtaining a warrant by a Magistrate of first or second-class having power to try such cases. In 2004, ostensibly as a measure to ensure low-ranked police officers are not coerced into conducting biased investigations, the Parliament introduced an amendment to the CrPC. The newly inserted provision, section 156-A, provides that for complaints under section 295-C, no officer below the rank of a Superintendent of Police shall investigate the complaint. However, this provision is rarely implemented.⁸
3. Additionally, Schedule II of the CrPC provides that only a Muslim Presiding judge shall hear cases registered under section 295-C of the Penal Code in the court of first instance (Sessions Court).⁹
4. Furthermore, the Anti-Terrorism Act, 1997, includes section 295-A of the PPC (deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs) as one of the scheduled offences that may be tried by special anti-terrorism courts established under the Act.¹⁰

Problems in the proceedings of blasphemy cases:

5. In the case of *Muhammad Mahboob alias Booba v. The State* the Honourable Division Bench of the Lahore High Court, Lahore had not only taken judicial notice of the rampant misuse of that law by unscrupulous people trying to settle their personal scores but had also pointed out the hazards of investigation of such cases by untrained and poorly advised investigating officers. The relevant text of the judgment is reproduced below:

“16. It appears that ever since the law became more stringent¹¹, there has been an increase in the number of registration of the blasphemy cases. A report from the Daily Dawn of 18th July, 2002, says that between 1948

⁷ Section 196 of CrPC and supra note 6.

⁸ Section 196-A of CrPC and supra note 6.

⁹ Schedule II of CrPC and supra note 6.

¹⁰ See Section 6 of Anti-Terrorism Act, 1997 and supra note 6.

¹¹ Since 1980s after insertion of amended section 295 and mandatory death penalty in 1991.

and 1979, 11 cases of blasphemy were registered. Three cases were reported between the period 1979 and 1986. Forty four cases were registered between 1987 and 1999. In 2000 fifty two cases were registered and strangely, 43 cases had been registered against the Muslims while 9 cases were registered against the non-Muslims. The report further states that this shows that the law was being abused more blatantly by the Muslims against the Muslims to settle their scores. Because the police would readily register such a case and without checking the veracity of the facts and without taking proper guidance from any well-known and unbiased religious scholar, would proceed to arrest an accused. That an Assistant Sub-Inspector or a Moharrir was academically not competent to adjudge whether or not the circumstances constitute act of blasphemy.

18. In this case we have observed that the investigation of this case which involves a death sentence and where the allegations were of blasphemy, was entrusted to an official of the rank of an Assistant Sub-Inspector who has himself admitted about his own level of education in his statement, the portions of which have been reproduced above. The D.S.P. (Legal) was never produced to state who guided him in proposing that a case of blasphemy was made out against the appellant. The most preposterous fact of the case is brought on the file by the statement of Adalat Khan (P. W.2), according to which pencils and markers, ordinarily obtainable from the market and purchased by someone other than the appellant, and secured through memo. Exh.P.A., were used as an incriminating evidence against the appellant/convict.

23. Needless to say that when the case of the prosecution was per se infirm going into a debate pertaining to Fiqah at the end of the trial Court was totally unnecessary, particularly when the learned trial Court had taken no help from any jurisconsult or any Islamic Scholar having known credentials. The nature of the accusations overwhelmed the trial Court to such an extent that it became oblivious of the fact that the standard of proof for establishing such an accusation and as required, was missing. Mere accusation should not create a prejudice or a bias and the duty of the Judge and as has also been ordained by our Holy Prophet (s.a.w.), is to ascertain the facts and the circumstances and look for the truth with all the perseverance at his command.

30. As we have seen in the recent past cases of such-like nature are on the increase and we have also observed element of mischief involved. This calls for extra care at the end of the Investigating Officers. Whereas, we have seen the failure, inefficiency and incompetence of the Investigating Officer in handling the present case with all its consequences. Therefore, we direct the Inspector-General of Police, Punjab, Lahore, to ensure that whenever such a case is registered, it be entrusted for purposes of investigation to a team of at least two gazetted Investigating Officers preferably those conversant with the Islamic Jurisprudence and in case they themselves are not conversant with Islamic Law, a scholar of known reputation and integrity may be added to the team and this team should then investigate whether an offence is committed or not and if it comes to

the conclusion that the offence is committed, the police may only then proceed further in the matter.

31. In view of the sensitivities involved and the rise in the accusations of this type which can be easily made besides what is proposed on the investigational side, we further propose that the trial in such-like case be held by a Court presided over by a Judicial Officer who himself is not less than the rank of a District and Sessions Judge.”¹²

6. The Honourable Supreme Court in *Malik Mumtaz Qadri case 2015* observed that;

“It is an unfortunate fact which cannot be disputed that in many cases registered in respect of the offence of blasphemy false allegations are leveled for extraneous purposes and in the absence of adequate safeguards against misapplication or misuse of such law by motivated persons the persons falsely accused of commission of that offence suffer beyond proportion or repair.

The majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community.”¹³

7. The International Commission of Jurist in its report “On Trial: the Implementation of Pakistan’s Blasphemy Laws”¹⁴ analyzed numerous blasphemy cases, discussed and highlighted various defects in the proceedings of blasphemy cases during trial which are summarized here;

- Intimidation and harassment of judges and lawyers that impede on the independence of the judiciary and the right to a defense;
- Demonstrable bias and prejudice against defendants by judges during the course of blasphemy proceedings and in judgments;
- Violations of the right to effective assistance of counsel;
- Rejection of bail and prolonged pre-trial detention;
- Incompetent investigation and prosecution that do not meet due diligence requirements under the law;

¹² Supra note 3.

¹³ Supra Note 1.

¹⁴ Supra Note 6.

- Non-registration of criminal cases in frivolous and false complaints of blasphemy
- The prosecution and detention of people living with mental disabilities;
- Inhumane conditions of detention and imprisonment, including prolonged solitary confinement.

Proposed Amendments to the Procedure Relating to Blasphemy Offenses:

The NCHR recommends following procedural amendments to the Parliament in blasphemy law to prevent its misuse and misapplication;

1. Amend section 156-A of CrPC which reads “*Investigation of offence under section 295 C, Pakistan Penal Code. Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295 C of the Pakistan Penal Code, 1860 (Act XLV of 1860)*” to include all blasphemy-related offences, including in particular sections 295-B, 298-A, 298-B and 298-C of the PPC, 1860, with a view to decreasing prosecutions based on false and malicious complaints.
2. Ensure the effective implementation of section 156-A of CrPC, which provides that for complaints under section 295-C, no officer below the rank of a Superintendent of Police shall investigate the complaint.
3. Ensure that prosecuting and investigating agencies discharge their functions independently and impartially, in a manner that respects and protects human rights without discrimination, and that prosecutorial discretion be exercised to ensure that only *bona fide* complaints of recognizable criminal conduct are registered and pursued.
4. Register criminal cases where courts have concluded or there are reasonable grounds to believe that complainant and/or the witnesses in blasphemy cases have committed perjury.
5. Cases of Blasphemy be tried by the District and Sessions Judge.
6. As a short-term, temporary measure, until wider reform of the blasphemy laws and measures to address the flaws in their implementation is accomplished, amend section

196 of the CrPC to ensure no court can take cognizance of any blasphemy-related offence, particularly under sections 295-B and 295-C of the PPC, without intervention from the provincial or federal governments. While the NCHR remains generally opposed to the requirement of sanction for the commencement of legal proceedings, given the specific issues raised in the report about the flaws in the prosecution and investigation in blasphemy cases, this additional temporary safeguard may act as an effective deterrent against malicious or frivolous prosecution.

7. Amend Schedule II of the CrPC, 1898, to make all blasphemy related offences (sections 295 to 298-C of PPC, 1860) bailable, and ensure bail is only denied where there is substantial risk of flight, harm to others, or interference with the investigation that cannot be allayed by other means.
8. Remove section 295-A of PPC, 1860 from the list of scheduled offences under the Anti-Terrorism Act, 1997.
9. Awareness, training and regularization of Imam, investigation, prosecution, judges and lawyers on the blasphemy laws be conducted.
10. District peace / interfaith committees and local scholars of known credibility should be involved in blasphemy cases at initial stage of institution of proceedings.
11. In the substantive law, the aspect of repentance is missing. Whereas, forgiveness was allowed by the Prophet (PBUH) to those who repented.

CHAPTER XV

OF OFFENCES RELATING TO RELIGION Pakistan Penal Code (Act XLV of 1860)

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 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.

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 6[ten years], or with fine, or with both.

295-B. Defiling etc. of copy of Holy Qur'an.

Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.

295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet.

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

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.

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.

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.

298-A. Use of derogatory remarks, etc., in respect of holy personages.

Whoever by words, either spoken or written, or by visible representation, or by an imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (Peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet (Peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any person of the Quadiani group or the Lahori group (who call themselves Ahmadi's or by any other name) who by words, either spoken or written, or by visible representation;

(a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (Peace be upon him), as Ameer-ul-Mummineen, Khalifa-tul-Mummineen, Khalifatul-Muslimeen, Sahaabi or Razi Allah Anho;

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (Peace be upon him), as Ummul-Mummineen;

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (Peace be upon him), as Ahle-bait; or

(d) refers to, or names, or calls, his place of worship as Masjid;

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani group or Lahori group (who call themselves Ahmadis or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as Azan, or refers Azan, as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

298-C. Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith.

Any person of the Qadiani group or the Lahori group (who call themselves Ahmadis^c or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either written or spoken, or by visible representation, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.