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APOSTASY AND BLASPHEMY IN PAKISTAN

by David F. Forte*

If you change your past and work together in a spirit that everyone of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make.

— Muhammad Ali Jinnah (1947)

Intolerance is becoming holy, a distinguishing badge of devotion to Islam.

— Human Rights Commission of Pakistan (1993)

Pakistan has come a long way since its founder, Muhammad Ali Jinnah, proclaimed tolerance for all religions in 1947. These days, in the eyes of many, active persecution of minority religions is afoot, and previous governmental policy has let loose private acts of vengeance against Ahmadis, Christians, Hindus, pagans and minority Muslim sects. The ancient prohibition of apostasy in the Shari'a — though never specifical-

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3. The Shari'a (sometimes spelled Shari'ah or Shariat) is the classical law of Islam, formulated and developed over a number of centuries after Muhammad's death in 632, and crystallized within four variant schools in Sunni Islam (Maliki, Hanafi, Shafi'i, and Hanbali) by around the year 1200 A.D. The dominant Shia school is Jafari. Shia Islam separated early in Islamic history from Sunni Islam over the question of who should be the legitimate successor to Muhammad and caliph of the Islamic Empire. See ALFRED GUILLAUME, ISLAM 115-25 (1954).
ly included in the law of Pakistan — is nonetheless now being effectuated by Pakistan’s law against blasphemy, a more flexible and potent weapon. Iran’s “sentence” against Salman Rushdie for blasphemy and Bangladesh’s prosecution of Taslima Nasreen may have gained wider international notoriety. Nevertheless, Pakistan’s application of its law against blasphemy has so outraged human rights observers and so roiled its own internal politics that the current government of Benazir Bhutto had considered measures to limit its effect. Though wary of the influence of the mullahs, the government has not proposed to repeal the blasphemy law.

Blasphemy, of course, has long been an element in the religion, law, and politics of the West. Though mostly in desuetude, the instinct to punish blasphemy may be evidenced in the West today by the orthodoxy of political correctness and by hate speech laws. In Islam, however, laws directly criminalizing apostasy and blasphemy are reaching a crescendo of support among certain Muslim segments in many countries, to the dismay of many other Muslims, and to the detriment of minority religions.

This article analyzes how the law against blasphemy has become a weapon against religious minorities in Pakistan. It begins with a brief overview of the constitutional struggle between the forces for religious tolerance and that element of Pakistani society seeking a particularized Islamization of Pakistan’s law and culture. The second section of the article explains the manner in which classical Islamic law (the Shari‘a) treated apostasy and blasphemy, and how it permitted private acts of religious vengeance to be immune from legal liability. In the final section, I describe how the current law on blasphemy imposes a harsh regime on religious minorities, allows private acts of vengeance to go unpunished and mimics the classical prohibition against apostasy to work against dissenting Muslims as well.

7. Necessarily, this essay does not analyze the entire range of the place of minorities in Pakistani law, including the nearly unrelenting suppression of the Ahmadi sect. Instead, I concentrate on the particular problem of the application of the law against blasphemy and its effects. For a more complete treatment of the subject of the treatment of religious minorities, the reader is referred to the forthcoming essay by my colleague, Professor Tayyab Mahmud, “Religious Minorities in Islam: The Law and Politics of Identity and Rights.”
I. Pakistan's Constitution and Religious Tolerance

Over the last few years, human rights groups around the world and within Pakistan have uniformly condemned practices that are directed against minority religions within Pakistan. The irony is that during British imperial rule, Muslim intellectuals of British India, such as Sir Sayyid Ahmad Khan and Amir Ali, were in the forefront of Islamic reform, tolerance and an expected Islamic renaissance in learning, culture and the law.

Muhammad Iqbal, one of the greatest poets of the subcontinent, president of the Muslim League, and spiritual father of Pakistan, spawned an entire generation of Muslim scholars dedicated to freeing Islamic law from the confines of the Shari' a. Drawing on earlier Islamic modernists such as al-Afghani and Muhammad 'Abduh, Iqbal taught that the provisions of the Shari' a were limited to the time, conditions and traditions of the Arab peoples a thousand years ago and could not legitimately bind future generations. Instead, he called for applying the values of Islam


10. See generally MUHAMMAD IQBAL, RECONSTRUCTION OF RELIGIOUS THOUGHT IN ISLAM 145 (1934).

11. Report of the Constitutional Commission (1961), art. 193, in SAFDAR MAHMOOD, CONSTITUTIONAL FOUNDATIONS OF PAKISTAN, 395, 516 (2d rev. ed. 1990). Mahmood is a collection of the fundamental constitutional documents of the state of Pakistan. Iqbal was reiterating the doctrine of an earlier Islamic thinker, Shah Waliullah, who held that the criminal penalties of Islamic criminal law were specific to the Arabs, "and since their observance is not an end in itself they cannot be strictly enforced in the case of future generations." REHMAN, supra note 9, at 137. For a description of the thought of al-Afghani and Muhammad 'Abduh, see AZIZ AL-AZMEH, ISLAMS AND MODERNITIES 43-57 (1993). See also the earlier work, AMIR ALI, THE SPIRIT OF ISLAM (1974), passionately arguing that Islam enshrines tolerance more than any other religion, and compare with SAYYID ABUL A'LA
as a religion, not a legal code, to the construction of a modern Islamic society, which would be open and tolerant to all religious traditions. Despite the current intolerance displayed towards religious minorities, the anniversary of his death is still a national holiday in Pakistan. Iqbal's views met much hostility. The tension between the Islamic purists, or more accurately, the defenders of the ancient Shari'a in all its positivistic details, and the Islamic reformers was present at the founding of Pakistan and has been a cardinal element of its politics and law ever since.\textsuperscript{12}

Pakistan was formed in 1947 as a state for Muslims, but not necessarily an Islamic state, or at least one admitting of the varied and rich traditions within Islam.\textsuperscript{13} It was the religion preached by Muhammad, and not necessarily the law of the Shari'a, that was "the very raison d'\textit{etre} of Pakistan."\textsuperscript{14} From the beginning, constitutional drafting was bedeviled by the problem of the place of Islam in the new constitutional and legal structure and how non-Islamic elements would be accommodated.\textsuperscript{15} The "Objectives Resolution," passed in March 1949 and designed to guide the constitutional drafting process, illuminated the pluralism both within Islam and among non-Islamic religions.

Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran [sic] and Sunna,\textsuperscript{16} . . . [and that] adequate provision shall be made for

\begin{footnotesize}
\begin{enumerate}
\item Maududi, The Islamic Law and Constitution (Khurshid Ahmad trans., 7th ed. 1980), who rhetorically criticized both the liberal West and the conservative ulama, but whose party, Jama'at-e-Islam, supported a radicalized form of Islamization, including a program detrimental to religious minorities. Maududi favored a one-year probationary period following the inauguration of the Islamic state during which time Muslims would be allowed to renounce their faith. Following that period, any Muslim would be subject to death if he, by word or action, apostasized from the faith. S.A. Rahman, The Punishment of Apostasy in Islam 5-6 (1972) (citing Sayyid Abul A'la Maududi, Murtadd Ka 'Imami Qanun Men 75-76).

\item Iqbal, supra note 10; Khalid B. Sayeed, Pakistan: The Formative Phase, 1857-1948, 104-05 (2d ed. 1968).

\item See generally Istiaq Ahmed, The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan (1987) (discussing alternative models of an Islamic state and the degree to which the divine will, enshrined in the Shari'a, should be incorporated).

\item See generally Khalid B. Sayeed, Pakistan: The Formative Phase, 1857-1948 (2d ed. 1968). Ninety-seven percent of Pakistan’s 125 million people is Muslim. Id.

\item Norman Anderson, Law Reform in the Muslim World 174 (1976).

\item A. Mahmood, supra note 11, at 10.

\item According to Islam, the Qur'an (alternatively transliterated as Koran) is the collection of divinely inspired utterances proclaimed by the Prophet Muhammad to his followers. Tradition holds that parts of the Qur'an, some noted down and others committed to memory during Muhammad's life, were written down, collected and organized within thirty years of Muhammad's death, when an
\end{enumerate}
\end{footnotesize}
the minorities freely to profess and practise their religion's [sic] and develop their cultures . . . . 17

Both aspirational objectives made it into the preamble of Pakistan's first constitution when promulgated in 1956 and have been maintained in the nation's subsequent constitutions. 18 Nonetheless, each of Pakistan's constitutions was formulated in the context of coups, martial law, executive rule, democratic reaction, and religious frictions, and they all have come to bear the marks of that political conflict. In addition to the distribution of power between parliament and the president and the division of powers between the center and the provinces, the institutional position of Islam has been in the center of the political and legal contest. 19

Throughout Pakistan's constitutional and political history, the ulama — composed of the learned Islamic elite and a class of less well educated authoritative canon was declared and variant versions destroyed. FAZLUROHMAN, ISLAM 40 (2d. ed. 1979).

The Sunna (sometimes spelled Sunnah or Sunnat), or "pathway," is the customary way in which legal cases were decided in Arabia before Muhammad, and by rulers of the Islamic empire after Muhammad's death. Its content, however, was debated, developed, and later concretized by reference to actions attributed to Muhammad himself. The Sunna, therefore, came to be defined only by the Traditions of the Prophet (hadith, pl. ahadith). They are an assemblage of recollections put together some centuries after the death of Muhammad, purporting to describe what the Prophet said, did, or permitted to be done. The six authoritative collections of ahadith are al-Bukhari, Muslim, Abu Dawud, al-Nasai, al-Tirmidhi, and Ibn Maja. The Sunna is regarded, with the Qur'an, as an authoritative source of divine legislation. The historical authenticity of the Sunna, however, is debated, given the political contest surrounding its emergence and compilation. See JOSEPH SCHACHT, THE ORIGINS OF MUHAMMADAN JURISPRUDENCE (1953) (1st ed., 3d prtg. 1959) (tracing the manner in which traditions developed early in the Islamic empire independent of Muhammad were later ascribed to the Prophet); David F. Forte, Islamic Law: The Impact of Joseph Schacht, 1 LOY. L.A. INT'L & COMP. L.J. 1 (1978).

Traditionally, the Qur'an and the Sunna provide two of the four sources of Islamic law, the other two being ijma, or consensus of the scholars, and qiyas, or analogical reasoning. RAHMAN supra, at 68-78.

17. Objectives Resolution (1949), in MAHMOOD, supra note 11, at 46. The Objectives Resolution was "founded on the political equality of all religious groups." SHAIKH, supra note 9, at 47.

18. Constitutional stability has not been the hallmark of the Pakistani state. Technically, Pakistan has had three constitutions — 1956, 1962, and 1973. See MAHMOOD, supra note 11. In addition, however, there have been periods of executive rule legitimated by organic decrees having quasi-constitutional status, an interim constitution of 1972, and extensive amendments to the 1962 and 1973 constitutions. See generally Tayyab Mahmud, Praetorianism and Common Law in Post-Colonial Settings: Judicial Responses to Constitutional Breakdowns in Pakistan, 1993 UTAH L. REV. 1225, 1273 n.228 (discussing the jurisdiction of various courts in interpreting the Objectives Resolution as it relates to laws or provisions in conflict with Islam).

19. William L. Richter, The Political Dynamics of Islamic Resurgence in Pakistan, 29 ASIAN SURV. 547 (1979). The contest between the more populous province of East Bengal and the more politically powerful West Pakistan was never resolved until the independence of Bangladesh in 1971. Id. at 549-50.
mullahs or Muslim clerics — has vigorously pressed for a mechanism by which the positive law of Pakistan would always be in compliance with the Shari‘a.\textsuperscript{20} At the same time, however, political liberals and Islamic reformers sought a declaration of fundamental rights for all persons of whatever religion.\textsuperscript{21}

The debate focussed on the legal implications of Pakistan’s Muslim identity. For Muslims to be “enabled” to live their lives “in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunna,” the requirements of the Qur’an and the Sunna had to be elucidated. One option, favored by the ulama, was the recognition of the primacy of the Shari‘a, as based on the Qur’an and the Sunna, to which all positive law must be aligned. The alternative, developed by such thinkers as Fazlur Rahman, recognized the diverse sects and schools of law within Islam, as well as the place of non-Islamic minorities in the society. These modernist Muslims opted to keep Pakistan’s legal framework free of the (often conflicting) strictures of the developed Shari‘a and to look to the Qur’an and the Sunna as the source of generic values, not specific rules, that the society as a whole could share, and which were themselves prior to and superior to the Shari‘a itself.\textsuperscript{22}

As finally adopted, the Constitution of 1956 tried to finesse the conflict between minority rights and the Islamization of the society.\textsuperscript{23} The Constitution did declare that the state would be “based on Islamic principles of social justice,”\textsuperscript{24} and concentrated on educational provisions

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  \item \textsuperscript{20} See Report of the Basic Principles Committee, \textit{in MAHMOOD, supra note 11,} at 84, 88-89, in which a complex procedure was required to assure that no legislation “repugnant to the Holy Quran and the Sunnah” would become law. When the Constituent Assembly adopted the Report on October 6, 1954, however, the Islamicization provisions were much diluted. \textit{Id.} at 157.
  
  \item \textsuperscript{21} Two drafts of the Fundamental Rights of Citizens of Pakistan were formulated. In 1950, the first draft contained extensive protections for religious minorities as well as other rights. In 1954, a far more truncated Declaration was passed with far fewer protections for religious minorities. Compare Report of the Committee on the Fundamental Rights of Citizens of Pakistan and on Matters Relating to Minorities, Oct. 6, 1950, \textit{in MAHMOOD, supra note 11,} at 239-42, and Report of the Committee on the Fundamental Rights of Citizens of Pakistan and on Matters Relating to Minorities, Sept. 7, 1954, \textit{in MAHMOOD, supra note 11,} at 243-45. But the final draft of the 1956 Constitution utilized the earlier Report with its greater protections for minorities. \textit{PAK. CONST.} (1956), \textit{in MAHMOOD, supra note 11, at 247.}
  
  
  \item \textsuperscript{23} \textit{PAK. CONST.} of 1956, \textit{in MAHMOOD, supra note 11,} at 247. For a thorough discussion of the early constitutional debates and religious and political jousting, see LEONARD BINDER, \textit{RELIGION AND POLITICS IN PAKISTAN} (1963).
  
  \item \textsuperscript{24} \textit{PAK. CONST.} of 1956, pmbl., \textit{in MAHMOOD, supra note 11,} at 247.
\end{itemize}
that would enable the Muslims of Pakistan "individually and collectively to order their lives in accordance with the Holy Quran and the Sunnah." It also declared that "[n]o law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah . . . ," but no mechanism was provided for enforcing that provision. In fact, the Constitution of 1956 significantly reduced the initial gains of the ulama in the preparatory documents on Islamization of the law, putting off that issue pending a report by a Presidential Commission. Final authority for incorporating any of the findings of the commission was left to National and Provincial Assemblies.

More importantly, the Constitution of 1956 emphasized the principle that "adequate provision should be made for the minorities freely to profess and practise their religions . . . ." An extensive listing of fundamental rights was included, protecting each citizen's right to "profess, practise and propagate any religion," and affirming that "every religious denomination and every sect thereof has the right to establish, maintain and manage its religious institutions," including educational institutions. Significantly, the Constitution also prohibited discrimination in taxation against religious minorities, for under the Shari'a, non-Muslims gained protected status only by payment of a special, and usually higher, tax.

It was significant that both the preparatory documents and the Constitution of 1956 were crafted to avoid references to the Shari'a as the authoritative source for Islamic law. The allusion to the "Holy Quran and Sunnah" was designed to go behind the intricate provisions of the Shari'a as formulated by the schools of law, and to seek a "new ijtihad," a new jurisprudence, based on original Islamic sources and adapted to modern conditions. It was part of the legacy of Muhammad Iqbal. The authori-
tative source of the "new ijtihad" was to be, not the ulama, but the parliament and the courts.\textsuperscript{35} In this way, the drafters of Pakistan's constitution hoped to avoid a contradiction between the dominant place of Islam in the culture and the protection of other religions, since it was obvious to everyone that many of the constitutional provisions protecting minority religions would have been at odds with the classical Shari'a.\textsuperscript{36}

The 1956 Constitution represented a substantial victory for the legal protections of religious minorities. Although that constitution was short-lived, its liberal attitude toward minorities continued under the martial rule of General Muhammad Ayub Khan who came to power in a coup in 1958.\textsuperscript{37} In 1961, Khan further secularized the law by promulgating the Muslim Family Laws Ordinance which dissolved much of the traditional Muslim family law that had been left by the British.\textsuperscript{38}

A new constitution was formulated and proclaimed and civilian rule reintroduced in 1962. That document established an Advisory Council of Islamic Ideology and an Islamic Research Institute, neither of which were given any real power over legislation.\textsuperscript{39} In fact, the 1962 constitution had fewer references to Pakistan as an Islamic state than did the 1956 constitution. Both the repugnancy clause and the "Holy Qur'an and Sunnah" phrasing of the 1956 constitution were deleted. Soon, however, pressure from the partisans of Islamization forced major amendments to the constitution in 1964. A significant change was the reinsertion of the repugnancy clause: "[N]o law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah, and all existing laws shall be brought into conformity therewith."\textsuperscript{40}

More importantly, the foundations of an enforcement structure were laid, as the Advisory Council of Islamic Ideology was directed "to examine all laws in force immediately . . . with a view to bringing them into conformity" with Islamic law.\textsuperscript{41} Nevertheless, Ayub Khan intentionally

\textsuperscript{35} Salah-Ud-Din Ahmad, \textit{ijtihad}, reprinted in 32 ALL PAK. LEGAL DECISIONS, JOURNAL 1, 1 (1980).
\textsuperscript{36} For a description of how minority religions fared under the Shari'a, see Forte, supra note 33, at 209.
\textsuperscript{38} Collins, supra note 9, at 556-57.
\textsuperscript{40} FIRST AMEND., ACT I of 1964 (amending PAK. CONST. of 1962), in MAHMOOD, supra note 11, at 628, 634; see also WHEELER, supra note 22, at 106-08.
\textsuperscript{41} MAHMOOD, supra note 11, at 635.
staffed the Advisory Council and the Islamic Research Institute with persons who shared Muhammad Iqbal's vision of a new *ijtihad*.

As the subsequent political history of Pakistan oscillated between coup and election, the influence of the ulama grew and the program for the legal Islamization of the society found its way into the constitution and the laws. Nearly all of the movement towards imposition of the Shari'a occurred during martial rule. The mullahs and their political allies were always soundly defeated in every electoral contest. The religious parties never gained more than eighteen seats in Parliament, and in the most recent election, won only nine out of 204 Muslim seats. Dictatorships have been more amenable to their dictatorial aims. Nonetheless, even the democratically elected regimes of the socialist Zulfikar Ali Bhutto in the 1970s and the nationalist Mian Mohammed Nawaz Sharif in the early 1990s courted their power and even advanced their program.

The political power of the religious radicals comes from their ability to mobilize the passions of the lower middle classes in the cities by conjoining the ideology of nationalism with the xenophobia and legalistic positivism of militant Islam. Fear of violent disruption has gained the attention of those in power. As one commentator put it, "[A]ll kinds of politicians have been trying to bolster their weak regimes by giving concessions to the clerics and compromising on democratic norms and the ideals of the freedom movement. And most of this at the cost of minorities' rights and interests."

Martial law was reimposed in 1969, and General Muhammad Yahya Khan assumed control. Following civil war and separation of Bangladesh from Pakistan in 1971, a new constitution and civilian government was put into place in 1973. The 1973 constitution reflected the growing

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45. See AL-AZMEH, supra note 11, at 60-74.


influence of fundamentalist and legalistic form of Islam in the political structure. The constitution formally established Islam as the state religion. It continued the 1962 Constitution's requirement that "all existing laws shall be brought into conformity with the Injunctions of Islam" but went further to establish a Council of Islamic Ideology to advise parliament on the compatibility of past or proposed laws with Islamic law.

Under the acquiescence of Zulfikar Ali Bhutto (who also banned alcohol and changed the day of rest from Sunday to Friday), laws affirmatively directed against minority religions soon began in earnest. Following serious riots, the constitution was amended in 1974 to deprive the Ahmadis of the status of Muslims. The three million Ahmadis consider themselves Muslims and follow a prophet whom they believe to have been the Mahdi. Many Pakistanis think them heretics or unbelievers (kafir), which, under the Shari'a, would not have a right to exist in an Islamic state. The Ahmadis had long been harassed, but this new law began a long period of direct persecution. In addition to the constraints placed on the Ahmadis, Christian schools were nationalized in the general legal disenfranchisement of private schools in the 1970s, and, despite protests, have yet to be returned to the churches.

In 1977, another coup displaced the civilian government of Zulfikar Ali Bhutto (who was later hanged), and Pakistan's new leader, General Zia ul-Haq, made the Islamization of the laws a primary objective. The Shari'a partisans made the most of their opportunity. Zia ordered the establishment of Shariat benches within the superior courts, a reform soon incorporated into the constitution by amendment. In 1980, the

48. PAK. CONST. of 1973, art. 2, in MAHMOOD, supra note 11, at 842.
53. COUNTRY REPORTS FOR 1992, supra note 8, at 1168.
57. MAHMOOD, supra note 11, at 936 n.1.
Shariat benches within the superior courts were displaced, and a separate and stronger Federal Shariat Court was created, having jurisdiction "notwithstanding anything in the Constitution" to examine whether any law was repugnant to Islam. The name was of the court was significant. Its standards were not to be the "new ijtihad" promised at the founding of the country, but the classical Shari'a. If the Shariat Court found a law to be in conflict with the injunctions of Islam, the invalid portion of the law was voided, and the President directed to take steps to assure that the law was brought into conformity with the injunctions of Islam. By 1986, the Shariat Court had found portions of fifty-five federal laws and 212 provincial laws to be contrary to Islamic law. Only the constitution itself remained outside of the jurisdiction of the Shariat Court.

The ulama now possessed constitutional legitimacy and a religious court to enforce their program, subject, of course, to the political realities of executive enforcement and parliamentary acquiescence. General Zia enfranchised the power of a class of relatively uneducated mullahs. The ulama were given enormous ideological leverage over government television, setting requirements for university courses, gaining valuable government owned property to build mosques, and utilizing the loudspeakers on the minarets of thousands of mosques to incite Muslim passions. The Islamic reformers had been politically and constitutionally eclipsed, and enforced Islamization of the nation went forward.

In 1979, the Hudood Ordinances went into effect, enforcing the hadd penalties for the offenses of drinking intoxicants (including drugs), theft (including robbery), adultery, and false imprecation of adultery. The

58. Originally, such a case could be brought only by motion of a citizen, the federal government or a provincial government. In 1982, an amendment was passed allowing the court to roam freely and take up any law on its own motion. PAK. CONST. of 1973, art. 203D (amended 1982), in MAHMOOD, supra note 11, at 940 n.4.


60. Khan, supra note 55, at 264-65.


Hadd crimes of the Shari'a are those purportedly derived from the Qur'an, whose penalties are fixed and from which no judicial deviation is allowed. The brake on the application of the Hudood Ordinances has been that they must be tried before the ordinary courts, no qadi courts yet having been established, and the judges retain the option of trying the offense under the secular penal code.63

Most schools of law in Islam also regard apostasy as a hadd offense, but the Hudood Ordinances of 1979 omitted it.64 The law against blasphemy would soon cover much of the same ground. In addition to the establishment of the hadd offenses, the rules regarding the imposition of the Islamic punishment of whipping were enunciated, as well as the enforcement of the fast of Ramadan and the obligation of Muslims to pay the religious tax, or zakat.65 At the same time, the government announced that the rules of the Hanafi school of Sunni Islam would be enforced, raising the ire of the substantial Shi'ite minority.66

During the 1980s, Islamization continued apace in the midst of continuing political turmoil. The Federal Shariat Court was granted additional constitutional powers to review, sua sponte, any decisions or procedures by any other court enforcing hadd crimes and, if necessary, "enhance the

The Hudood Ordinances regarding adultery and false accusation of adultery raised the ire of women's groups in Pakistan. To convict a man accused of rape, a woman must present four Muslim witnesses of good character to the act. One Woman Raped Every Three Hours in Pakistan, REUTERS, May 20, 1994, available in LEXIS, News Library, CURNWS File. If a woman accused a man of rape and the man was acquitted, the woman was automatically liable for the offense of false accusation of adultery. Such a case did occur in which a woman was sentenced to three years imprisonment, 15 lashes in public and fine when the man she accused of rape was acquitted. In response to the uproar, the Federal Shariat Court transferred the case to itself and rescinded the sentence. WASEEM, supra note 42, at 394-95; Rubya Mehdi, The Offence of Rape in the Islamic Law of Pakistan, 18 INT'L J. SOC. L. 19, 24-26 (1990).


64. As early as 1963, however, Pakistan had reinstated the prohibition against inheritance by an apostate. DAVID PEARL, A TEXTBOOK ON MUSLIM PERSONAL LAW 211 (2d. ed. 1987). Another crime often included as a hadd offense is rebellion, but not all jurists agree. See ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 108 (1990). In any event, that crime was obviously already prohibited within the law of Pakistan. PAK. CONST. of 1973, art. 6, in MAHMOOD, supra note 11, at 842.


sentence.” In 1984, Pakistan passed the Qadiani ordinance, directed at the Ahmadis and forbidding them to call themselves Muslims, to use forms of Muslim worship, to call to worship, or to use prayers and salutations that are Muslim. By the end of 1992, 2,000 criminal cases had been brought against Ahmadis for violating the ordinance. In 1985, a constitutional definition of “Muslim” excluded the Ahmadis, and separate electoral rolls were established for non-Muslims, with minority religions allocated ten out of the 217 seats in the federal parliament.

The same year, the final objective of the Islamic partisans came within reach. Under the Shari'a, there is no human authority to legislate. God is the only legislator. Rulers may only administer God’s law as articulated through the Shari'a. Where there are gaps, the ruler may pass ordinances (qanun) designed to supplement, but not contradict the Shari'a. No human law, or ruler, or assembly, or constitution, can have authority over the Shari'a. That fundamental principle was placed into the constitution by two amendments. The first, inserted by presidential ordinance, declared that the Objectives Resolution was no longer merely preambular, but a substantive part of the constitution. This meant that the clause stating that “Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah” was now a legally obligatory part of the basic law. The second amendment, passed by parliament, declared that “the injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the Parliament and provincial assemblies, and for policy making by the Government.”

69. According to an Ahmadi rights organization, there were at least 2,133 Ahmadis arrested on various religious charges by the end of 1992. Country Reports for 1993, supra note 8, at 1377. The Ahmadi Ordinance has been condemned by a number of United Nations agencies and the United State House of Representatives. Waseem, supra note 42, at 396. Also in 1984, testimonial evidence became regulated by the Shari'a, although the requirement that the testimony of two women count only as the equivalent of one man was later restricted to financial cases because of political protest. Id. at 395.
71. Y. Linant de Bellefonds, Kanun: Law, in 4 The Encyclopaedia of Islam 556 (E. Van Donzel et al. eds., 1978).
73. Ninth Amend., Bill § 2 of 1985 (amending Pak. Const. of 1973), in Mahmood, supra note 11, at 1065 (internal quotations omitted) (emphasis added); Rashida Patel, Islamisation of Laws in Pakistan? 22-23 (1986). The same amending act also mandated that tax, banking and in-
The amendments gave the Shariat Court constitutional warrant to examine all laws that might be contrary to the Shari'a. In a jurisprudential sense, the Shari'a became supreme even over the constitution, or as later cases presumed, it made the Shari'a "the supra-constitutional grundnorm of the polity," the "real and effective law," and "now the postive Law" of the Pakistani constitutional order. Under this interpretation of the classical theory of the Shari'a, Parliament no longer "made" laws. It could only "administer" the law as already laid down in or the Shari'a, or formulate "regulations" not in conflict with the Shari'a.

The President sought to enforce the new norm by promulgating the Enforcement of Shari'ah Ordinance in 1988. It is not surprising that in a country where the jurisprudential ideas of Hans Kelsen have long dominated legal thought, the authority of the Shari'a should be made directly in such terms: "Shari'ah shall be the supreme source of law in Pakistan and Grund Norm for guidance for policy and law-making by the State..." The melding of classical Islamic law and modern western positivism had taken place, and although the Enforcement of Shari'ah Ordinance lapsed after Zia's death, a far more extensive Enforcement of Shari'ah Act was passed by Parliament in 1991.

Meanwhile, the provision that would cause the most notoriety had been placed into the criminal code. Blasphemy became among the most serious of crimes. The new penal provision declared, "[W]hoever 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 (peace be upon him) shall be punished with death, or imprisonment, and shall also be liable to fine.\textsuperscript{80}

Unlike the Hudood Ordinances, however, the judge is not given the option of trying the offense under an alternative provision in the law. The prohibition against blasphemy had been written directly into the penal code.\textsuperscript{81}

As broad as the statute was, and as severe as the penalty prescribed, the Federal Shariat Court still found it too mild. The Shariat Court held that Islamic law required the death penalty for any act of blasphemy. The penalty of life imprisonment was voided.\textsuperscript{82} The decision was curious, in that under the Hanafi school, punishment for blasphemy could vary from flogging, imprisonment, or death according to the severity of the offense and the discretion of the judge.\textsuperscript{83}

The blasphemy ordinance was but one more criminal provision designed to protect and advance Islam. Older provisions dating from British rule protected places of worship and prohibited words or actions that with "deliberate and malicious intention" outrage "the religious feelings of any class of the citizens of Pakistan."\textsuperscript{84} During the Islamization program of General Zia, however, five additional provisions were added: the law against blasphemy; a law punishing the defiling of the Qur'an;\textsuperscript{85} a prohibition against insulting the wives, family, or companions of the Prophet;\textsuperscript{86} and two laws directed against the Ahmadis.\textsuperscript{87} The political and legal structure of the state was now in place for an offensive against dissenters.

The two religious groups the Pakistani government focussed on for suppression were and are the Ahmadis and the Christians, although there are threats against the Shi'ites, the Zikris, the Isma'ilis, and Hindus as well.\textsuperscript{88} The U.S. State Department reported that in May 1991, the advo-
cate general of Punjab asserted that "parents who raise their children as Ahmadi are inciting their children to apostasy" and have committed a capital crime. In July 1993, the Pakistani Supreme Court upheld the Qadiani ordinance against constitutional challenge, with one judge suggesting that if any Ahmadi proclaims that Muhammad is not the last prophet, they defame the Prophet contrary to the law against blasphemy and subject themselves to the death penalty. In other words, the affirmation of the central tenet of the Ahmadi would become a capital offense.

Political frictions in Pakistan only increased the pressure for Islamization. General Zia perished in a plane crash in August 1988, and in the following elections, the Pakistan People's Party, led by Benazir Bhutto, daughter of the former prime minister, won a plurality of seats. Bhutto became prime minister, but was unable or unwilling to turn back the Islamic momentum. She was dismissed by the President in 1990. The army-backed conservative Islamic Democratic Alliance, led by Mian Mohammed Nawaz Sharif, decisively won new elections.

Bhutto was charged with corruption, while Sharif pressed on with further Islamization. The government increased the penalty to ten years for anyone outraging "the religious feelings of any citizens of Pakistan." Under that law four Ahmadi were sentenced to eight years in prison for building a place of worship on their own land, and injuring the religious feelings of their neighbors. The government also sought to require identity cards identifying the religion of the bearer.

At present, proselytizing among Muslims is forbidden. Religious minorities are discriminated against in employment and education.


89. COUNTRY REPORTS FOR 1991, supra note 8, at 1559-60.
94. COUNTRY REPORTS FOR 1992, supra note 8, at 1168.
95. Id. at 1167.
96. Id. at 1171.
Church permits for Christians are withheld by the government, and there are reports of riots against Christians and Ahmadis, and kidnappings, beatings, torture, and forced conversions of Ahmadis and Hindus.\textsuperscript{97} Amnesty International reports that “[s]cores of prisoners of conscience were held on account of their non-violent political activities or religious beliefs.”\textsuperscript{98} The Human Rights Commission of Pakistan declared that 1992 was “a traumatic year for non-Moslems in Pakistan.”\textsuperscript{99} The Islamization program also increased tensions between the Shi‘ites and Sunnis. Reportedly, scores of persons have been assassinated in conflicts between the two main wings of Islam.\textsuperscript{100}

The re-election of Benazir Bhutto as prime minister in 1993 gave some hope for relief from the harsher elements of Islamization, but reforms are tentative, and in view of Pakistan’s history of military coups, dangerous. Some constriction of the sweep of the blasphemy law has been suggested by her government.\textsuperscript{101} In the meantime, the law against blasphemy, passed by Parliament, stiffened by the Shariat Court, remains one of the most potent weapons of the Shari‘a partisans and is used as a surrogate for the classical prohibition against apostasy.

\section*{II. APOSTASY AND BLASPHEMY IN ISLAM}

Under the dominant strain of classical Islamic law, or Shari‘a, apostasy (\textit{ridda}) is a \textit{hadd} crime, that is, a crime for which the punishment is fixed and no deviation allowed.\textsuperscript{102} Most other offenses are enforced by discretionary (\textit{ta‘zir}) punishments, or in the case of homicide or battery, by retaliation (\textit{quisas}) after adjudication of the accused’s guilt.\textsuperscript{103} Apostasy is a capital offense and is particularly heinous under the Shari‘a. In

\begin{thebibliography}{99}
\bibitem{97} Id. at 1167-68. The Human Rights Commission of Pakistan has indicated that Muslim clerics are engaged in forced conversions of the Kalash tribe. \textit{One Woman Raped Every Three Hours in Pakistan}, supra note 62.
\end{thebibliography}
an era when the state and the religion were interwoven — a principle that remains fundamental to Islamic law — to change one's religion was tantamount to committing treason, and it was punished as such.\textsuperscript{104}

The Qur'an condemns the apostate to eternal damnation but imposes no earthly penalty.\textsuperscript{105} The death penalty apparently arose later in the law. It was the Traditions of the Prophet in the Sunna, developed and codified later during a drive for the Islamization of the early Islamic empire, that required putting the apostate to death.\textsuperscript{106} A primary Tradition relied upon for this view attributes to Muhammad the statement, "Whoever changed his Islamic religion, kill him."\textsuperscript{107}

Most Traditions, however, including the one just cited, inflict a death sentence because the apostate waged war on Islam.\textsuperscript{108} Indeed, the primary justification for the execution of the apostate is that in the early days of Islam apostasy and treason were, in fact, synonymous.\textsuperscript{109} It is reported, for example, that immediately after the death of Muhammad, many tribes apostatized, returned to paganism or turned to other prophets, and rebelled against Muslim rule.\textsuperscript{110} The first Caliph, Abu Bekr, ordered all such apostates to be killed.\textsuperscript{111} Majid Khadduri argues that the tradition that all apostates be killed had its origins during these wars of rebellion, and not during Muhammad's time.\textsuperscript{112} In one of the most exhaustive studies of the classical sources of Islamic law, S. A. Rahman, a Pakistani jurist of renown, argued that all references in the Qur'an and the Sunna to apostasy tied retaliation to rebellion, not merely a falling from faith. Further, Rahman argued, most other verses and traditions indicate an undeviating view that changes in belief were left to God to punish and that it

\textsuperscript{104} Id. at 49.
\textsuperscript{105} W. Heffening, \textit{Murtadd}, in 7 THE ENCYCLOPAEDIA OF ISLAM 635 (C.E. Bosworth et al. eds., 1992). In the thirteen verses of the Qur'an mentioning apostasy, no punishment in this life is prescribed. EL-AWA, \textit{supra} note 102, at 50-51.
\textsuperscript{106} Heffening, \textit{supra} note 105, at 635.
\textsuperscript{107} 9 THE TRANSLATION OF MEANINGS OF SAHIH AL-BUKHARI 45 (Muhammad Muhsin Khan trans., 2d rev. ed. 1979) [hereinafter 9 AL-BUKHARI].
\textsuperscript{108} 8 THE TRANSLATION OF MEANINGS OF SAHIH AL-BUKHARI 519-22 (Muhammad Muhsin Khan trans., 2d rev. ed. 1979) (those who apostatized, rebelled, and committed murder were put to death) [hereinafter 8 AL-BUKHARI]; 9 AL-BUKHARI, \textit{supra} note 107, at 155 ("Do not revert to disbelief after me by striking (cutting) the necks of one another"); IMAM MUSLIM, 1 SAHIH MUSLIM 43 (Abdul Hamid Siddigi trans., 7th ed. 1979); Slaughter, \textit{supra} note 5, at 180.
\textsuperscript{109} ASAF A.A. FYZEE, OUTLINES OF MUHAMMADAN LAW 169-70 (3d ed. 1964).
\textsuperscript{110} ABEKE BAKR, 1 THE ENCYCLOPAEDIA OF ISLAM 110 (1992).
\textsuperscript{111} SAMUEL M. ZWEMER, THE LAW OF APOSTASY IN ISLAM 35 (1924).
\textsuperscript{112} MAJID KHADDURI, THE ISLAMIC CONCEPTION OF JUSTICE 238 (1978).
was forbidden to compel any person to join or rejoin any religion, including Islam.\textsuperscript{113}

The paradigm of apostasy as rebellion\textsuperscript{114} gains credence in the Hanafi school (the dominant Islamic school of law in the subcontinent), which declares that women may not be executed for apostasy since infidel women were not to be killed in war.\textsuperscript{115} Instead, apostate women are to be imprisoned until convinced to recant.\textsuperscript{116} Some jurists in the Hanafi school prescribe beating apostate women while they are in prison.\textsuperscript{117}

Similar to seeing apostates as insurrectionists, most jurists also define apostasy as reversion into unbelief (\textit{kufr}).\textsuperscript{118} Unlike Jews, Christians, Zoroastrians, and other "people of the book" who were granted protection though subservient status in the Islamic empire, the Shari'\textquotesingle a gives unbelievers only the choice of Islam or death.\textsuperscript{119} An apostate, therefore, would deserve death either because of his act of rebellion or because he had become an unbeliever.

Whatever the paradigmatic source of the sentence for apostasy, most jurists of the Shari'\textquotesingle a came to regard the crime neither as one of rebellion or unbelief, but merely a falling away from Islam. No distinction was made between the apostate who converts to one of the protected religions and one who falls into polytheism or unbelief. All apostates were denominated as "unbelievers." No connection with rebellion was required. All that was needed was some evidence of disbelief, and unless recantation occurred relatively quickly, death was imposed.\textsuperscript{120} For the Maliki school, it was the act of falling away from the religion of Islam that mattered. The law had no regard for conversion from one non-Islamic

\begin{itemize}
\item \textsuperscript{113} See RAHMAN, supra note 11, at 9-86.
\item \textsuperscript{114} According to some jurists, rebellion is itself a separate \textit{hadd} offense requiring death. See, e.g., Henri Laoust, \textit{Le Précis de Droit D'Ibn Qudama} 269 (1950).
\item \textsuperscript{115} 2 THE HEDAYA 228 (Charles Hamilton trans. 1791, reprint 1985). The Hedaya, a translation of a Hanifite commentary of the Shari'\textquotesingle a, was used by the British in their administration over Muslims throughout the Indian Empire. It has, therefore, been of primary influence in the kind of Islamic law seen as authoritative in that area of the world.
\item \textsuperscript{116} Id. at 227; see also EL-AWA, supra note 102, at 53; ANN. E. MAYER, ISLAM AND HUMAN RIGHTS, TRADITION AND POLITICS 163 (1991).
\item \textsuperscript{117} 2 THE HEDAYA, supra note 115, at 228; JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 187 (1964). Some Islamic casuists opine that the apostate women should be beaten at the hours of prayer. ZWEMER, supra note 111, at 50-51.
\item \textsuperscript{118} KAFIR, 4 THE ENCYCLOPAEDIA OF ISLAM 408 (1992).
\item \textsuperscript{119} Such protected persons were denominated \textit{dhimmis}. See Forte, supra note 33, at 210.
\item \textsuperscript{120} See SIDI KHALIL, MALIKI LAW 325-27 (F.H. Ruxton trans., 1916, reprint 1980).
\end{itemize}
faith to another.\textsuperscript{121} For the more casuistical Shafi‘i school, any act of apostasy was fatal, even from, say, Judaism to Christianity.\textsuperscript{122}

Under the Shari‘a, the evidence for apostasy need only be circumstantial. Impious behavior, such as failing to pray or offending Islamic morals, can be taken as evidence of apostasy.\textsuperscript{123} Statements "in contradiction of the principles of Islam, or by giving forth opinions implying renunciation of those principles" also suffice.\textsuperscript{124} Conversion to another faith, through baptism for example, is dispositive.\textsuperscript{125} The only excuse a Muslim would have for accepting Christianity would be extreme duress. The degree of duress must be compulsion "under the threat of certain death."\textsuperscript{126}

As in other areas of Islamic law, probative evidence relies upon the bona fides of the witnesses, more than upon the substance of the acts that constitute apostasy. According to Nawawi, of the Shafi‘i school:

Witnesses need not recount in all their details the facts that constitute apostasy; they may confine themselves to affirming that the guilty person is an apostate. Other authorities are of the contrary opinion; but the majority go so far as to make no account of the mere denial of the accused, even where the assertions of the witnesses are made in general terms.\textsuperscript{127}

The punishment for apostasy is death, traditionally by beheading, although crucifixion and immolation have also been employed.\textsuperscript{128} For some jurists, the apostate must be given a period of time in which to recant and return to Islam. Most schools require that the apostate be "exhorted" to repent, but the Shi‘ites will not accept the recantation of an

\begin{thebibliography}{99}
\item 121. Id. at 327.
\item 122. Seppo Syrjänen, In Search of Meaning and Identity: Conversion to Christianity in Pakistani Muslim Culture 165-66 (1984).
\item 123. 9 Al-Buhkari, supra note 107, at 46-47; Muslim, supra note 108, at 48-49; Ibn Taymiyya, Public and Private Law in Islam 145-48 (Omar A. Farrukh trans., 1966).
\item 124. Khalil, supra note 120, at 325; Muslim, supra note 108, at 45 (unbelief shown by stating that the movement of stars created rainfall); Nagaty Sanad, The Theory of Crime and Criminal Responsibility in Islamic Law: Shari‘a 56 (1991).
\item 125. Khalil, supra note 120, at 325; Slaughter, supra note 5, at 178.
\item 126. Khalil, supra note 120, at 325.
\item 128. Lippman et al., supra note 103, at 42; Lewis, supra note 83, at 188. According to a Tradition related by Malik, Muhammad once said, "If someone changes his religion, — then strike off his head!" Ibn Malik Ibn Anas, Al-Muwatta 303 (Aisha Andurrahman Bewley trans., 1989).
\end{thebibliography}
apostate who was born a Muslim. The Hedaya recommends three days of imprisonment before execution, although neither the delay nor the requirement to try to dissuade the apostate before killing him is mandatory. The Maliki school, normally stricter on this issue than the Hanafi, will in this case allow up to ten days for recantation. Although the Hanafi school does not condemn the female apostate to death, jurists in the Maliki and Shafi‘i schools do.

Under most schools of Islamic law, the apostate is an outlaw.

(S)ince by the very act of apostasy a man loses the protection of the law, if even before the chance of re-embracing the Faith has been given to him, a Muslim kills an apostate, it will be considered as an improper act, but he would incur no penalty of the law.

The Hedaya is explicit. Any person killing an apostate is himself immune to prosecution or retaliation. In addition, the apostate loses all civil entitlements. His marriage becomes a nullity and he has no right to inherit.

Blasphemy, on the other hand, is a ta‘zir offense and the degree of punishment is discretionary with the judge. When uttered by a Muslim, blasphemy can be evidence of apostasy and hence subject to the hadd penalty, but when spoken by a non-Muslim, blasphemy is obviously separate from the hadd crime of apostasy.

In the commentaries on the Shari‘a, far less effort is spent on glossing ta‘zir offenses since their definition and enforcement was left up to

129. Slaughter, supra note 5, at 181.
130. 2 THE HEDAYA, supra note 115, at 226.
132. See 9 AL-BUKHARI, supra note 107, at 42; 2 THE HEDAYA, supra note 115, at 227; KHALIL, supra note 120, at 326 n.3.
133. ABDUR RAHIM, THE PRINCIPLES OF MUHAMMADAN JURISPRUDENCE ACCORDING TO THE HANAFI, MALIKI, SHAFI‘I AND HANBALI SCHOOLS 153 (1911).
134. 2 THE HEDAYA, supra note 115, at 227; ABDUR RAHIM, MUHAMMADAN JURISPRUDENCE 253 (1981). The Islamic abhorrence of apostasy is so strong that even during the period of Turkish reform in the 19th century (the Tanzimat), the Ottomans translated and adopted the French penal code as their own, repealing all hadd offenses, but retaining apostasy as a capital offense. COULSON, supra note 102, at 151.
135. KHALIL, supra note 120, at 395; MAYER, supra note 116, at 163; D.F. MULLA, PRINCIPLES OF MOHAMEDAN LAW 340 (M. Hidayatullah & Arshad Hidayatullah eds., 18th ed. 1977); PEARL, supra note 64, at 209; SCHACHT, supra note 117, at 138, 165.
136. KHALIL, supra note 120, at 328.
137. LAOUST, supra note 114, at 269.
the individual Islamic judge and the state. When discussing blasphemy, however, most Islamic jurists outside of the Hanafi school generally recommend execution for blasphemers.\(^{138}\) For them, the discretionary punishment (\(ta'zir\)) for blasphemers turns out to be no different from the legally obligatory (\(hadd\)) penalty for apostates. Both are regarded as public dangers to Islam. Ibn Taymiyya, one of the greatest jurists of Islam and the Hanbali school, insisted, upon sufficient proof, on immediate execution for a Christian who insulted the Prophet as necessary to the good order of the state.\(^{139}\)

In the Maliki school, the law in regard to blasphemy became more severe than even for apostasy, for "recantation will not save the blasphemer from death" and the execution must proceed immediately.\(^{140}\) The Shi'ites and Ibn Taymiyya agree.\(^{141}\) An act of blasphemy objectively harmed the good order of society. Apostasy, on the other hand, was based upon personal belief, and recantation wiped away the basis for the \(hadd\) punishment. The Shafi'i school's penalties are also stringent. For example, when the Sudan (an area traditionally under the Shafi'i school) was conquered by the Mahdi in 1885, he imposed Islamic laws and punished blasphemy with death or amputation. Those penalties, though severe, "were understood and accepted as the correct application of the Shari'a law by his own people."\(^{142}\)

As noted above, the Hanafi school has a more flexible scale of punishment for blasphemy, a concept in keeping with the notion of \(ta'zir\) as discretionary punishment. Depending on the severity of the offense, a blasphemer can be flogged or imprisoned or executed.\(^{143}\) Despite that tradition, however, both the Shariat court and many ordinary Muslims in Pakistan regard blasphemy as a capital crime.

Overt heresy, for many jurists, is another \(ta'zir\) offense, and it is not surprising that it is also punishable by death.\(^{144}\) Heresy is related to the political wars of early Islam and associated with the offense of rebellion.

\[^{138}\] Heffening, supra note 105, at 636.

\[^{139}\] Khadduri, supra note 112, at 180-81. Ibn Taymiyya (1263-1328) was a famous expositor of the Hanbali school of law. Id.

\[^{140}\] Khalil, supra note 120, at 328.

\[^{141}\] Slaughter, supra note 5, at 199.


\[^{143}\] Lewis, supra note 83, at 188.

\[^{144}\] Taymiyya, supra note 123, at 143-44.
APOSTASY AND BLASPHEMY IN PAKISTAN

a *hadd* offense in some schools. Islamic law has never clearly glossed the differences between a dissenter, a heretic, and an apostate. Since heresy can be difficult to distinguish from a difference of opinion, blasphemy can provide a suitable cover. Thus, the very ambiguity of the definition of blasphemy serves as a useful device for the state to punish apostates, heretics, non-Muslims who criticize Islam, and political dissenters. Indeed, with the law of blasphemy in the hands of an Islamic state, the need to enact the *hadd* punishment for apostasy would be superfluous.

III. BLASPHEMY IN PAKISTAN

With the dominance of Great Britain over the Indian subcontinent in the eighteenth century and the subsequent development of Anglo-Muhammadan law, Islamic law was replaced for the most part by British forms. The law of apostasy was not enforced. Conversions to Christianity were numerous, especially among the poorer Muslims and Hindus. As early as 1790, the British East India Company had already dispensed with the application of many parts of Islamic penal law in areas under its jurisdiction, and in 1860, the Indian Penal Code did away with Islamic criminal law altogether. The British did retain Muslim family law. Even there, however, many of the civil penalties for apostasy under personal Muslim law were voided. In 1850, loss of inheritance through apostasy was done away with, and, under the dissolution of Muslim Marriages Act of 1939, the renunciation of Islam by a married woman no longer automatically dissolved her marriage.

Today, however, the legal situation has been transformed. Pakistan still has no formal law prohibiting apostasy, but blasphemy serves as a surrogate in suppressing those who dissent from Islam by word or deed. As one observer has noted, "Not to accept Islam is to deny that

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145. RAHIM, supra note 133, at 153.
147. SYRJÄNEN, supra note 122, at 167.
148. Collins, supra note 9, at 537-38, 544.
149. The capital penalty for apostasy had apparently fallen into desuetude when the British arrived, and, in any event, would not have been allowed by the British Courts as being contrary to "justice, equity and good conscience." See generally PEARL, supra note 64, at 33.
150. MULLA, supra note 135, at 338-39; PEARL, supra note 64, at 169, 210. Apostasy by the husband, however, voided the marriage, ipso facto. FYZEE, supra note 109, at 170-71. Pakistan reinstated the prohibition against inheritance by an apostate in 1963. PEARL, supra, at 211.
Mohammed is God's final prophet. And to deny that prophethood is blasphemy.\textsuperscript{152} A recent decision by the Lahore High Court declared that if one insults any one of the prophets of God, he ceases to be a Muslim, i.e., he is an apostate.\textsuperscript{153} Ever since its founding, the ulama have insisted that the death penalty for apostasy be reintroduced.\textsuperscript{154} The law against blasphemy seems to have satisfied their demands.

As early as 1968, a respected Pakistani jurist, S.A. Rahman, saw the emerging program of the ulama and penned his thorough study declaring that the death penalty for apostasy was contrary to the tenets of Islam.\textsuperscript{155} In response, M.S.H. Masumi, director of the Islamic Research Institute, raised the fear of mass conversions of the "poor masses" from Islam to Christianity if the ancient law were not used as a deterrent. Evincing the nationalist/fundamentalist embarrassment that Pakistan had seen more converts to Christianity than in most of the Islamic world, Masumi wrote, "If the unanimous decision of the Ummah [the Muslim community] on the punishment of apostasy were followed in Pakistan, the easy conversion of Muslims in the Punjab and Sind to Christianity for small worldly gains, would have been stopped long ago."\textsuperscript{156}

Pakistan, of course, has not been alone in reimposing parts of the Shari'a including the crimes of apostasy or blasphemy. In 1992, the United Arab Emirates sentenced 12 Indians for blasphemy for producing a play critical of Islam and Christianity.\textsuperscript{157} In Saudi Arabia and in Qatar, criticism of Islam is forbidden, apostasy a capital crime, and all other religions but Islam are forbidden.\textsuperscript{158} In Saudi Arabia, a Shi'ite youth was reportedly beheaded for apostasy and blasphemy in 1991, while Christians are persecuted and tortured for their religious beliefs and practices, according to Amnesty International.\textsuperscript{159} In 1992, a Coptic man was charged with blasphemy, tried and sentenced to seven years' imprisonment and


\textsuperscript{154} ANDERSON, supra note 14, at 181.

\textsuperscript{155} See RAHMAN, supra note 11, at 1-8.

\textsuperscript{156} SYRJÄNEN, supra note 122, at 166 n.333.

\textsuperscript{157} On appeal, six of the defendants were acquitted, but two had their sentences increased from six to ten years. \textit{COUNTRY REPORTS FOR 1993}, supra note 8, at 1303.

\textsuperscript{158} \textit{Id.} at 1279, 1271. In Qatar, private non-Islamic religious practices seem to be more tolerated. \textit{Id.}

\textsuperscript{159} AMNESTY INTERNATIONAL, SAUDI ARABIA — RELIGIOUS INTOLERANCE: THE ARREST, DETENTION AND TORTURE OF CHRISTIAN WORSHIPPERS AND SHI'A MUSLIMS 8-21 (1993).
1000 lashes. In fact, government sponsored religious intolerance in Saudi Arabia has increased dramatically since the Gulf War, although recently Saudi Arabia has made overtures of rapprochement towards its Shi'ite minority.

In Sudan, which has an abysmal human rights record, apostasy is a capital offense. In 1985, an influential Islamic reformer, Mahmoud Muhammad Taha, was executed for apostasy. Four convicted co-defendants were given three days to recant. They did and had their sentences commuted. Yemen has imprisoned a writer for apostasy, while a province in Malaysia has sought federal permission to outlaw apostasy. In Iran, a Christian pastor was executed for apostasy in 1990, and more recently, a fifty-nine-year-old man was sentenced to death for having converted to Christianity when he was nineteen. After a number of international protests, the sentence was commuted to ten years, but a few months after his release, he was found murdered. The Protestant bishop in Iran who raised international awareness of the case was also murdered. Male prisoners who fail to perform their prayers are re-

160. He served four months of his sentence and received 500 lashes. *Id.* at 12.
162. *COUNTRY REPORTS FOR 1993*, supra note 8, at 281. According to the State Department, no convert from Islam has been executed but two Christians have been threatened with death if they do not reconvert. *Id.* Other reports indicate that at least one person was crucified for apostasy. Christopher Walker & Ruth Gledhill, *Militant Zeal Compels States to Apply Strict Islamic Law*, THE TIMES (London), Sept. 7, 1993. There are persistent reports of mass crucifixions of Christian males in the south of the country. Con Coughlin, *Sudan Trains Terrorism's New Generation*, SUNDAY TELEGRAPH (International), May 15, 1994, at 24, available in LEXIS, News Library, CURNWS File; Elwood McQuaid, *Blueprint for Brutality*, JERUSALEM POST, Mar. 31, 1994, at 6 (Opinion), available in LEXIS, News Library, CURNWS File.
164. *COUNTRY REPORTS FOR 1993*, supra note 8, at 1310.
portedly executed in Iran, while female prisoners are beaten at the time of prayer.\textsuperscript{169} Salman Rushdie, of course, remains under a "sentence" of death for blasphemy.

In 1991, Indonesia punished a magazine editor with five years' imprisonment for blasphemy.\textsuperscript{170} In Bangladesh, two editors of the country's second largest newspaper have been arrested on charges of blasphemy, while thousands have demonstrated calling for the hanging of feminist writer Taslima Nasreen. Mullahs have issued fatwas (legal opinions based on the application of Islamic law) declaring her an apostate and "sentencing" her to death for her novels and opinions critical of Islam and the Qur'an. The fact that throughout the Islamic world, mullahs without secular warrant believe themselves possessed of the authority to "sentence" malefactors demonstrates their view that the Shari'a is the only true source of law. A hundred prominent lawyers have petitioned the government of Bangladesh to enact a law against blasphemy. The government finally bowed to pressure and issued a warrant for Nasreen's arrest for outraging the religious feelings of her fellow citizens. Nasreen was able to find sanctuary in Sweden.\textsuperscript{171}

In Egypt, the murder in 1992 of Farag Foda, an anti-fundamentalist writer, was justified by Islamic scholars on the basis of the Shari'a. Sheikh Mohamed el-Ghazali testified at the trial of Farag Foda's accused assassins that the writer "deserved to die" and that there was no punishment for the killers of apostates in Islamic law.\textsuperscript{172} In October 1994, No-

\textsuperscript{169} Hearings, supra note 166.

\textsuperscript{170} Indonesian Moslems Join Criticism of Bangladesh Writer, AGENCE FRANCE PRESSE (International), June 8, 1994, available in LEXIS, News Library, CURNWS File.


Nasreen was formally charged by a Dhaka Court in November 1994. Trial of exiled writer Taslima Nasreen is set for December. DEUTSCHE PRESS-AGENTUR, Nov. 5, 1994.

\textsuperscript{172} Nabil Megalli, Egyptian Leader Backs 'Death Edict' for Opponents of Islamic Law, OTTAWA CITIZEN, July 31, 1993, at C5. El-Ghazali, pre-eminent member of the faculty of Al Azhar University, had been known as a moderate. Caryle Murphy, Killing Apostates Condoned, WASH. POST, July 22, 1993, at A27. A university teacher, supporter of Foda, recently stated, "[A]ccording to the customs of this nation, secularism means atheism and apostasy." Samia Nakhoul, Egyptian Activists Fight Battle of Backwardness, REUTERS, Sept. 11, 1994, available in LEXIS, News Library, CURNWS File. The
bel prize winner Naguib Mahfouz was stabbed with a knife on the same grounds of blasphemy.\textsuperscript{173} Recently, fundamentalists brought suit to declare the marriage of Abu Zeid, a renowned Qur'anic scholar, null because he was a heretic and apostate. The petitioners were non-suited for lack of standing.\textsuperscript{174} Had they succeeded, and Zeid's wife continued to live with him, she would have been guilty of adultery. In Jordan, as well, fundamentalists asked a court to annul the marriage of an outspoken woman recently elected to parliament. The militants also petitioned the court to charge her with apostasy and to declare that any person who killed her would be immune from prosecution. The suit was dismissed.\textsuperscript{175}

The mechanism for suppression is self-enforcing in the law of apostasy or blasphemy. He who opposes imposition of the Shari'a has himself confessed apostasy. The Grand Mufti of Egypt, thought to be a moderate, supported issuing a fatwa that would condemn to death Egyptian "apostates who oppose the application of Islamic law."\textsuperscript{176} In Pakistan, when Benazir Bhutto was in the opposition and criticized the Shariat Court for stiffening the punishment for blasphemy, the religious affairs minister of the sitting government declared her a "\textit{kafir} (infidel) who is liable for the death penalty."\textsuperscript{177} Not surprisingly, Bhutto feared for her life following approval of private capital punishment for apostasy exacerbates the reported problem of thousands of Coptic girls, kidnapped and forced to convert to Islam many of whom seek to escape back to Christianity when given a chance. Shyam Bhatia, \textit{Raped Behind a Veil of Tears}, \textsc{The Observer}, June 5, 1994, at 19. Even in Egypt, blasphemy is enforced. Reportedly a member of the Coptic Orthodox Church received 1,000 lashes and seven years imprisonment for blasphemy. Joan Mealpine, \textit{Fundamentally Wrong to Tolerate the Intolerable}, \textsc{The Scotsman}, Feb. 21, 1995, at 13, available in \textsc{LEXIS}, News Library, CURNWS File.


\textsuperscript{176} Nabil Megalli, \textit{Egyptian Leader Backs 'Death Edict' for Opponents of Islamic Law}, \textsc{Ottawa Citizen}, July 31, 1993, at C5.

\textsuperscript{177} \textit{Nearer, my God, to Theocracy}, \textsc{The Economist}, Sept. 5-11, 1992, at 38.
that accusation. More recently, a personal charge of blasphemy has even been lodged against her as Prime Minister on basis that she has publicly criticized the blasphemy law.

Governmental suppression of minorities through the law of apostasy or blasphemy, however, does not equal the wave of private violence that such laws engender. One of the great legal reforms of Muhammad was to remove the adjudication of murder and serious bodily harm from tribal determination. Blood money and retaliation were retained as the appropriate remedy for such serious crimes, but after Muhammad, no man, no tribe or clan could unilaterally undertake such vengeance without first obtaining a conviction against the accused before a neutral judge under the procedural protections of the law. Although adjudication of apostasy should also precede a declaration of outlawry, many Islamic scholars hold that the failure of the state to act permits ordinary Muslims to enforce the penalty for apostasy on their own without legal liability.

Whether or not there has to be a preliminary finding of apostasy by the qadi before the accused can be treated as an outlaw, the fact is that the notion of the apostate as outside the protection of the law percolates into public attitudes. One Islamic scholar notes the influence of "the tradition of direct violent action and self-help, which goes back to the earliest times of Islam. Examples can be cited of the Prophet instructing Muslims to kill someone on sight or to correct an injustice by direct action."

The man who kills an apostate commits no offense and is not liable by blood or money to the tribe of the one slain. Thus, the enforcement of the law of apostasy in Islam winds up relying upon self-help as a remedy and undoes one of the most salutary legal benefits Muhammad gave the Arab tribes.

During the 1920s, a Protestant missionary chronicled many of the acts of retaliation in numerous Islamic societies inflicted upon those Mus-

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178. Bhutto Accused of Blasphemy; She Says Her Life's in Danger, CHI. TRIB., Aug. 12, 1992, at 4.
179. HUMAN RIGHTS IN PAKISTAN 1993, supra note 8, at 27; Persecuted, NEWSLINE (Karachi), Nov./Dec. 1993, at 26.
180. SCHACHT, supra note 117, at 187.
181. Lewis, supra note 83, at 195; Sipress, supra note 174, at A22.
182. In May 1994, Paul Williams Roberts, a British novelist living in Canada, was stabbed by an assailant at his home following death threats claiming that his novel, The Palace of Fears, was blasphemous. Ben Macintyre, 'Blasphemy Novelist' Stabbed, THE TIMES (London), May 27, 1994.
183. AN-NA'IM, supra note 64, at 184; see also Lewis, supra note 83, at 195 (giving examples attributed to Muhammad).
lims who converted to Christianity. Of the dozens of incidents reported, virtually all acts of violence were private, many from the convert’s own family.\textsuperscript{184} One contemporary English observer noted, “It is a well-known fact that converts to Christianity from Islam are liable to be killed, not by judicial condemnation and execution, but by secret assassination or by mob violence.”\textsuperscript{185} Or as the Egyptian scholar Abu Zeid recently commented on the suit by fundamentalists to have his marriage declared null, “If you can call a person an apostate . . . you are legalizing his murder.”\textsuperscript{186} The mechanism of the law of blasphemy works in precisely the same fashion in Pakistan today. In 1993, in the case upholding the vindictive Qadiani ordinance against the Ahmadis, the Pakistani Supreme Court stated that if an Ahmadi were allowed to worship in public as a Muslim, “it is like creating a Rushdi out of him. Can the administration in that case guarantee his life, liberty and property, and if so at what cost?”\textsuperscript{187}

Even in the earlier days in British India when there were numerous converts from Islam to Christianity (particularly among the poorer classes in Punjab and Sind), fear of private retaliation restrained others from converting.\textsuperscript{188} One elderly convert explained in 1974 (a decade before the law against blasphemy was enacted):

\begin{quote}
[Although Pakistan is an Islamic state, putting to death or stoning of converts is not legal. But in the mind of a Muslim this thing certainly has its influence. When a Muslim sees some other Muslim leaving Islam, he wants to cause that Muslim harm as much as he can, and if possible, even kill him. On the level of thought this law of Islam works, although not in matters of the constitution of the country.\textsuperscript{189}]
\end{quote}

\textsuperscript{184} Zwemer, supra note 111, at 54-74.
\textsuperscript{185} C.F. Gates, President of Robert College, in Zwemer, supra note 111, at 62-63. There has been a report that recently in England, a Muslim killed his daughter when she continued to attend Jehovah’s Witnesses’ meetings against his will. Paul Stenhouse, Blasphemy/Freedom of Speech in Islamic Law, 22 Austl. J. Forensic Sci. 4, 5 (Sept.-Dec. 1989).
\textsuperscript{186} Caryle Murphy, Egypt’s ‘Intellectual Civil War’: Divorce Becomes Weapon for Islamic Militants, Wash. Post, July 22, 1993, at A1. Even in the West, self-help by fundamentalists has effect. The city of Geneva, Switzerland recently cancelled support for a restaging of Voltaire’s play, “Mahomet, ou le Fantisme,” because Muslims in the city protested that it was blasphemous and threats were made to directors and actors. A Play by Voltaire; Ecrasez l’infame, The Economist, July 2, 1994, at 82.
\textsuperscript{187} Dard v. Pakistan, No. 149/89, slip op. 29 (Sup. Ct. of Pak., July 3, 1993).
\textsuperscript{188} Syriânen, supra note 122, at 8, 165-70.
\textsuperscript{189} Id. at 167.
Whenever any Islamic state has sought to enforce the law of apostasy, it has inevitably set loose private acts of terror and execution against the one who forsook Islam. It re-establishes tribal and clan vengeance within Islam. If an Islamic state, such as Pakistan, is created over tribal cultures, the result is predictable. For example, the tribal culture of the Pathan people in the northwest area of the country makes it unlikely that attacks against apostates will go unpunished, for the Pathan code, Pukhtunwai, “demands [that] every insult be avenged.” The Times of London reported in 1993 that “Pathans have a ruthless code of honour which requires revenge to be exacted even if it takes several generations.” The Pathans are a cross border tribe and militant Muslims who fought resolutely against the Soviet invasion in Afghanistan. Even the reformist Benazir Bhutto has had to bend to their demands. Facing secessionist pressures, her government capitulated to the leaders of a fundamentalist Islamic revolt in the Pathan tribal Malakand area and actually ordered the implementation of the Shari‘a, replacing the Pakistan constitution.

In addition to the tribal ethic and the self-help provisions of the Shari‘a, retaliation against apostates is also legitimized by the caste-like culture that centuries of Hinduism has left on Pakistan’s Muslim society. The honor of one’s community group (biradari) is of primary concern to many ordinary Pakistanis. The palpable dishonor brought upon one’s biradari by conversion to another faith can only be rectified by reconversion to Islam, by ostracization, or by vengeance inflicted on the convert by a member of his own biradari.

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191. Christopher Thomas, *CIA Tracks Suspect in Desert*, THE TIMES (London), Feb. 15, 1993. In addition, because of the tradition of Sufism and folk religions among the Pakistanis, many of them venerate the name of the Prophet to a more emotional level than do other Muslims. Slaughter, supra note 5, at 199.
192. Ahmad Rasid, *In God’s Name*, FAR E. ECON. REV. (Pakistan), May 26, 1994, at 20; Rahul Bedi, *Pakistan: Religious Right Puts Bhutto in a Spot*, Inter Press Service, May 27, 1994, available in LEXIS, News Library, CURNWS File. The agitating group — Tahrir-e-Nifaz Sharia (Movement for the Enforcement of the Shari‘a) decreed that Islamic law required driving on the right side of the road, resulting in a series of head-on collisions in Malakand with those who continued to follow the secular rule of driving on the left. Id. The same group also called for all acts of blasphemy to be punished by immediate execution. Rahul Bedi, *Bhutto Gives in to Militants: Approval of Islamic Law in Tribal Area Criticized*, SAN FRAN. CHRON. (Islamabad), June 9, 1994, at A14.
193. SYRJÁNEN, supra note 122, at 21.
194. Id. at 19-20, 177.
In Pakistan, most of the persecution under the law of blasphemy has been directed at the Ahamdis and at Pakistan’s largest minority, the Christians, but all groups including Hindus, Zikris and Sunni Muslims have been affected. For example, a fired employee accused Dr. Akhtar Hameed Khan, a Muslim and renowned director of a welfare project, of writing a blasphemous poem that he published in a nursery rhyme. In response, his publisher, Oxford University Press, removed the offending passages. Thousands of posters in Karachi declaring him fit for execution were taken down only after a court order. When one suit against Khan was dropped, another was instituted. Because Khan is an active reformist Muslim, the militant Muslims are utilizing the blasphemy law to delegitimize him and enforce their own notion of orthodoxy. The case against Khan is still pending.

Hundreds of others, including Muslims, are incarcerated on charges of blasphemy, while private acts of terrorism continue to be let loose by the law. In late spring of 1994, a Muslim who had accidentally dropped a copy of the Qur’an into a fire was stoned and then doused with kerosene and burned to death by a mob after mullahs had shouted over loudspeakers from the minarets of mosques that “a ‘Christian’ had burned the Koran.” Another woman found herself charged with blasphemy when her personal copy of the Qur’an fell out of her shopping bag to the ground.

The mere public expression of Ahmadi or Christian religious belief is seen by many militants as blasphemous. By 1992, 106 Ahmadiis had
been accused of blasphemy simply by their assertion that they were Muslim. Unknowingly, the Christians have made the situation worse. In a suit brought by a bishop to declare that blasphemy against Jesus was just as punishable as blasphemy against Muhammad, the Lahore High Court agreed. It declared that blasphemy against any of the prophets (including Jesus) incurs the death penalty. Claiming that Jesus is the Son of God would be, to a Muslim, a blasphemy. Thus, the law against blasphemy also undermines the traditional, albeit limited, guarantees that Islamic law is supposed to provide to dhimmis, that is, to Jews, Christians, and other religions living in protected status under a Muslim state.

Enforcement is left mainly to private complaint which leads to a suppression that the government could never do on its own. Under Pakistani criminal procedure, a mere complaint (a FIR, or first investigation report) results in an arrest without a warrant and indeterminate detention, for bail is often hard to obtain or not granted at all. Technically, blasphemy is a non-bailable offense. Trial is presided over by a Muslim judge. As the Pakistan Human Rights Commission has stated, the blasphemy law gives “a killing edge to Muslim fanaticism and to orthodox Muslims’ contempt for local minorities, especially the Christians.”

A number of recent cases against Christians have gained notoriety. They illustrate the terror and abuse that the blasphemy law has begotten.

In December 1990, Tahir Iqbal, a convert from Islam to Christianity, was arrested because of his apostasy and held in prison in Lahore on the charge of blasphemy. After a year and a half awaiting trial, Iqbal, a

201. Id.
202. See Forte, supra note 33, at 211.
203. Hearings, supra note 166. For example, in October 1991, Chand Barkat, a Christian, was charged under § 198 of the penal code of wounding the religious feelings of another. By the time he was tried and acquitted, he had spent 15 months in prison, three months more than the maximum sentence he would have received if he had been convicted. I.A. Rehman, The Fires of Bigotry, NEWSLINE (Karachi), Nov./Dec. 1993, at 30.
206. Although blasphemy charges against Ahmadis are more numerous, they have engendered less press attention. The Ahmadis themselves suffer and protest far more from other laws directed against them specifically. See MUJEEB-UR-REHMAN, PERSECUTION OF AHMADIS IN PAKISTAN: AN OBJECTIVE STUDY (1993).
paraplegic, died under mysterious circumstances. Two weeks before his death, Iqbal had written to members of the Pakistani government, including the prime minister, expressing fear for his life.\textsuperscript{208} He believed there was a conspiracy to poison him. No police action was taken to investigate his death, despite petitions to conduct a postmortem.\textsuperscript{209} One of his Muslim neighbors said, "Tahir was an intelligent and good person. His only offence was his conversion to Christianity."\textsuperscript{210}

In late 1991, a Christian, Gul Masih (Masih is a generically common name to Christians in Pakistan), argued with a neighbor over how many wives Muhammad had.\textsuperscript{211} The neighbor reported him to a local Muslim activist, who, with the urging of the Deputy Superintendent of Police, registered the charge of blasphemy.\textsuperscript{212} Gul Masih's brother, Bashir Masih who was not involved in the altercation, was also arrested and held for over a month before being released. When Bashir Masih was freed, the local mullahs organized a march "demanding that he be retaken and both the brothers hanged."\textsuperscript{213}

In November 1992, Gul Masih was tried and sentenced to death, solely on the testimony of the neighbor. The two witnesses called on behalf of the prosecution denied that the defendant had said anything blasphemous.\textsuperscript{214} It is reported that the trial judge revealed to another judge that he awarded the death penalty "only out of fear of the mullahs."\textsuperscript{215} Gul Masih spent a year in jail before his trial and remained in prison until November 1994, when his death sentence was overturned by the Lahore High Court.\textsuperscript{216}

In January 1993, a complaint lodged against Anwar Masih resulted in his arrest for blasphemy. Masih was a Christian who had converted to

\textsuperscript{208} Beena Sarwar, Pakistan: Islamic Laws are Manipulated to Settle Political Scores, Inter Press Service, Sept. 29, 1992, available in LEXIS, News Library, CURNWS File.
\textsuperscript{209} COUNTRY REPORTS FOR 1992, supra note 8, at 1161; HUMAN RIGHTS IN PAKISTAN 1992, supra note 8, at 40-41; Amnesty International, Pakistan, 1993 AMNESTY INT'L REP. 229 (1993).
\textsuperscript{210} Islamisation: The Death of Tahir Iqbal, HUM. RTS. COMM. PAK. NEWSL., Oct. 1992, at 9.
\textsuperscript{211} Masih claimed Muhammad had eleven wives including one teenager. Harvey, supra note 205, at 9.
\textsuperscript{212} BLASPHEMY EPISODES, supra note 2, at 6-7.
\textsuperscript{213} Id. at 6.
\textsuperscript{215} HUMAN RIGHTS IN PAKISTAN 1993, supra note 8, at 41.
Islam and then reconverted to Christianity. He lives in an area populated by 180,000 Christians. The allegations are vague. Anwar Masih argued with a shopkeeper and allegedly uttered a blasphemy. He was arrested a week later on a complaint not by the shopkeeper, but by a local political leader who proclaimed Anwar Masih's guilt in the streets. The accused took refuge in a church to avoid being lynched by a fundamentalist mob. Later, the police entered the church and arrested him. Masih is a former heroin addict and is mentally unstable. Subjected to police brutality while in custody, he is, at this writing, still awaiting trial.

As can be seen, not only are charges of blasphemy often lodged for personal and political motives, but once brought, the accused is subjected to acts of private violence. Although Pakistani law does not formally recognize self-help in these matters, the influence of the Shari'a allowing individuals to execute apostates with impunity may influence the behavior of individuals and the police. Gul Masih, for example, was beaten in jail by a Pathan prisoner incensed at what he had allegedly done. There is evidence of official tolerance for private attacks on Christians. According to the State Department's Human Rights Report, "Christian groups rarely press charges against the perpetrators of such incidents and believe the authorities are unlikely to pursue such cases."

Naemat Ahmar, a Christian and teacher in the state school in the village of Dasauba, was shocked one day in December 1991 to find anonymous posters around the village accusing him of blaspheming the Prophet of God. A later investigation by the Human Rights Commission of Pakistan found no witnesses among his students, colleagues, or even Muslims in the village who had ever heard him make any such insult. Ahmar believed that a rival candidate for his teaching position, a Muslim, had put up the posters. Many local Muslims were, nonetheless, convinced Ahmar had blasphemed, even though he denied it and "offered uncondi-

217. *HUMAN RIGHTS IN PAKISTAN 1993*, supra note 8, at 41.
218. *HUM. RTS. COMM. PAK. NEWSL.*, Apr. 1993, at 14; Khan Mohammed, *The Blasphemy Trap*, THE HERALD (Karachi), Mar. 1993, at 72-73. In a different cause of action under the blasphemy law, another unbalanced man, who is Muslim, claimed to be Jesus and praised Salman Rushdie. He was condemned to death despite testimony that he was insane. His case is on appeal. COUNTRY REPORTS FOR 1993, supra note 8, at 1378; *HUMAN RIGHTS IN PAKISTAN 1993*, supra note 8, at 26.
220. *BLASPHEMY EPISODES*, supra note 2, at 8.
221. COUNTRY REPORTS FOR 1992, supra note 8, at 1171.
tional apology for any offence any presumed remarks attributed to him might have caused."

Fearful, Ahmar consulted with the Bishop of nearby Faisalabad, took leave from his post and took a job in Faisalabad. On January 6, 1992, Farooq Ahmad, who had seen the posters in Dasuha, travelled to Faisalabad, found Ahmar at his place of work, and stabbed him to death, inflicting seventeen wounds. After the first strike, Ahmad asked Ahmar why he had blasphemed. Ahmar denied having blasphemed, but Ahmad continued the attack.

At the police station, Ahmad "was kissed by some of the policemen for his remarkable courage and commitment to Islam." Villagers came to give him cookies and flowers. Many clerics from the area visited him to offer their congratulations, while some engaged lawyers to defend him. In addition, the president of the local bar association offered his services to Ahmad, while no prominent lawyer would accept representing the family of the murdered Ahmar. Beyond taking the names of witnesses, the police took no steps to develop the investigation. The Bishop of Faisalabad gauged that among the Christians, a "sense of helplessness, insecurity, and anguish had crept in."

Such cases have impelled a senior Christian school teacher to decline a promotion to headmaster "because I knew any disgruntled teacher or student could send me to prison by accusing me of blasphemy." Another non-Muslim history teacher was asked in class which of the two periods of Muhammad's life was the better: the years in Mecca or Medina. Upon his answer, the teacher was charged with blasphemy.

An even worse incident was soon to follow. In May 1993, the Imam of a village mosque in the village of Ratta Dhotran lodged a complaint that sometime during the previous year, some persons had insulted the Prophet of God by graffiti on the bathroom wall and on pieces of paper.

222. **BLASPHEMY EPISODES**, supra note 2, at 12.
223. *Id.*; see also McGirk, supra note 214; Sarwar, supra note 208.
224. **BLASPHEMY EPISODES**, supra note 2, at 11.
225. *Id.* In another case, a man who accused a Christian came to the jail and stabbed him a number of times. The Christian survived but was prevailed upon by the police to seek a reconciliation with his attacker. I.A. Rehman, *Persecuted by Law*, NEWSLINE (Karachi), Nov./Dec. 1993, at 29 [hereinafter Rehman, *Persecuted*].
227. *Id.* In another case, a teacher with 37 years experience, in answer to a question about the form of government under the Prophet, stated that Muhammad had "dictated" the policies to be followed. That verb was enough to charge him with blasphemy and place him in jail. HUM. RTS. COMM. PAK. NEWSL., Oct. 1992, at 8.
cast into the mosque. The accused were two men, Rehmat Masih and Manzoor Masih, and an illiterate eleven year old boy, Salamat Masih. Allegations were that the group was retaliating for a sermon the Imam had given some time ago stating that it was a sin to believe that Christ had died on the cross. The testimony against Salamat Masih was from an eight year old boy, with whom Salamat had been quarreling over ownership of some pigeons and who said he witnessed Salamat writing on the Mosque walls. The day after the quarrel between the two boys, a group of men arrived at Salamat’s home, forcibly took him to the village mosque and beat him until he confessed to acts of blasphemy.

Muslim demonstrations and boycotts against the Christians in Salamat Masih’s village brought a further charge of blasphemy (later dropped) against eight other Christians. Ubiquitous signs proclaimed, “Any one who blasphemes against the prophet should be hanged in public.” Soon thereafter, all the Christian families who had been in the village for generations decided to leave.

On the day of the hearing, a mob outside the courtroom demanded death for all three accused, while handbills and sermons to the same effect were spread throughout the area. The bar was intimidated. A lawyer who agreed to take the case failed to appear and no other local lawyer could be engaged. Five months later, in November 1993, the boy, Salamat Masih, was released (one of the very few Christians ever granted bail), but bail was set too high for the other two accused.

Because of the threats to the defendants, the case was transferred to Lahore, and prospects for their release seemed good. On April 5, 1994, the counsel for the prosecution proposed a settlement which was approved by the court. As the three defendants were being escorted out of the courthouse’s back entrance, three gunmen on motorcycles appeared and opened fire. Manzoor Masih was killed with twelve bullets fired into

his body. 236 Rehmat Masih received multiple wounds in the stomach area but none struck a vital organ. 237 Salamat Masih was wounded in the wrist and hand. 238 A social worker assisting the trio was seriously wounded. 239 One of the assailants was identified as a local Imam who had originally brought the charge of blasphemy against the group. Charged with murder, the Imam is free on bail, assured by the prosecutor that he does not want to purge the charge. 240 A huge mourning procession by Christians and non-Christians called for the repeal of the blasphemy laws, but the government of Benazir Bhutto remains hesitant in the face of the increasingly militant fundamentalist opposition.

On February 9, 1995, despite the weak and contradictory evidence, Rehmat and Salamat Masih were sentenced to death by the trial court, the judge opining that no Muslim would ever forge a document insulting the Prophet. Protests from Muslim and non-Muslim groups around the world descended on Prime Minister Bhutto. In March, the Lahore High Court overturned the verdict, one judge stating his certainty that the allegedly blasphemous papers had been forged. Rehmat and Salamat Masih, certain they would be killed, were spirited out of the country to asylum in Germany. Their families remain in hiding in Pakistan. 241

In commenting on the recent spate of attacks against Christians, The Herald of Karachi stated:

The blasphemy law clearly singles out non-Muslims for persecution. While Mullahs daily blast their congregations with sermons, openly instigating people against other religions, they remain beyond reproach. But a non-Muslim trying to offer a

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236. Id.
237. Id.
238. Id.
239. Iqbal, supra note 100; see also HUM. RTS. COMM. PAK. NEWSL., Apr. 1994, at 15.
rebuttal to this abuse is instantly branded a criminal guilty of blasphemy.\textsuperscript{242}

Already five Christians charged with blasphemy have been murdered with little police investigation undertaken against their attackers. Threats against Christians are constant. Asma Jahangir, chairman of the Human Rights Commission of Pakistan, declared "The blasphemy law has unleashed religious terrorism, allowed the people to take the law into their own hands, is undermining the legal system and scaring off judges."\textsuperscript{243}

The law against blasphemy is in direct violation of the international laws of human rights protecting religious freedoms,\textsuperscript{244} but its utility in political and personal vendettas makes it popular. Even at the state level, it is easily relied upon. When a recent United Nations report criticized the Sudan for human rights violations, including calling the law against apostasy in "flagrant contradiction" of international law,\textsuperscript{245} the government of Sudan accused the rapporteur of "satanic morality" and blasphemy.\textsuperscript{246}

In Pakistan, Christians mobilized against the law. Following the ambush and killing of Manzoor Masih, thousands of Christians marched in Lahore and Karachi to demand the repeal of the act.\textsuperscript{247} Pakistan's six bishops also formally petitioned for its recission, and non-Muslim members of Pakistan's parliament have sought its amendment.\textsuperscript{248} In response, the provincial assemblies in Lahore and Punjab unanimously called upon the government to retain the death penalty.\textsuperscript{249} The government of Benazir Bhutto, holding a slim majority in Parliament, has not moved to

\textsuperscript{242} Mohammed, supra note 218, at 72-73.
\textsuperscript{244} Mayer, supra note 116, at 163-73, 189-95; \textit{see also} An-Na'im, supra note 64, at 167-81; Reza Ahshai, An Essay on Islamic Cultural Relativism in the Discourse on Human Rights, 16 Human RTS. Q. 235 (1994); Bassam Tibi, Islamic Law/Shari'a, Human Rights, International Morality and International Relations, 16 Human RTS. Q. 237 (1994).
\textsuperscript{247} Dahlburg, supra note 235, at 4; Teargas Used as Christians Protest Blasphemy Law, \textit{Agence France Presse}, Apr. 21, 1994, available in LEXIS, News Library, CURNWS File.
\textsuperscript{248} Pakistani Non-Muslims Demand Protection, UPI, Apr. 21, 1994, available in LEXIS, News Library, CURNWS File; Rashid, supra note 242.
do away with the law, or even denounce it. Rather, it has gingerly proposed to limit its excesses in three ways: (1) by making the law applicable only to deliberate provocation and not unintended insult; (2) by requiring preliminary court determination of sufficient evidence before the police could make an arrest; and (3) by imposing seven years imprisonment on anyone making a false accusation of blasphemy. Seeing the desultory manner in which the police prosecute those who kill alleged blasphemers, however, it seems doubtful that the police will do much to investigate those who merely make false accusations.

IV. CONCLUSION

There is no more unity in Islam than there is in Christianity. The identification of Islam with the totality of the positive provisions of the Shari‘a is but one tradition. There are many others. In nearly every Islamic state, for every fundamentalist group, there are many more which denounce ancient Islam in the manner in which its modern partisans claim. The Islamic state always escaped the restrictions of the jurists’ niceties by establishing its own courts and a responsive bureaucracy to enforce its own decrees. Even in its own terms, the Shari‘a was never universal. It was a juristic mode of reasoning utilized to solve certain legal problems, a mode of reasoning which varied by time, place, and person, and which may or may not have been followed by the political authorities. As one scholar has noted, the Shari‘a was no more a “code” to be applied than is the common law a “code.” It has been the particular answers that the jurists gave to particular problems of their time that has taken on

250. Rasid, supra note 192, at 20.
251. Pakistan: Prophet and Loss, supra note 200, at 38.

Even so, the government has awaited proposing the changes to parliament until there is a “consensus” among religious leaders, hardly a sanguine possibility. PAKISTAN LINK (Inglewood), May 20, 1994, at 3; see also One Woman Raped Every Three Hours in Pakistan, supra note 62.

In reaction to the government’s proposal, fundamentalists have offered a reward for the murder of the law minister. Extremists Put Contract on Law Minister, THE INDEPENDENT, July 11, 1994, at 11.

253. AL-AZMEH, supra note 11, at 1.
255. AL-AZMEH, supra note 11, at 11.
the modern conceptualization of a "code" of positive law. But it was the method of reasoning, the *ijtihad*, that more fully describes the Shari‘a, as it is the method of reasoning that more fully describes the common law, not its particular legal rules at any one time.

It is true that within the legal tradition of Islam, *ijtihad* came to be denigrated, and a more or less slavish following of the concrete results of the earlier jurists’ thought typified the study of law. The creativity of ancient Islamic jurisprudence turned into the rigidity of medieval Islamic legality. It is that historical turn from reasoning to rules that many of the modern Muslim intellectuals wish to undo, and regain the liberty of exercising *ijtihad* once again. In the meantime, they must contend with Islamic radicals who take the rules that came out of medieval Islam as the defining focus of a genuine Islamic society. However, considering Islamic legal tradition as a whole, "calls for the ‘application of Islamic law’ have no connection with the Muslim legal tradition based upon multivocality, technical competence and the existence of an executive political authority which controls the legal system. It is a political slogan, not a return to past reality."256

Even if we were to look solely at the jurists’ conclusions within the Shari‘a, we find that penal provisions are its most miniscule part. Most of the jurists’ elucidations of the law concerned the details of religious practice, a sophisticated system of property and contract law, and a complex exegesis of trusts and estates. Only secondary attention was paid to criminal law for so little of it was directly enforced in the Islamic empire. Criminal jurisdiction was simply moved from qadi courts to the imperial tribunals. Nor were the jurists themselves very concerned with worldly penalties. Contrary to the political picture portrayed by some Islamic militants, the Qur’an and religious Islam left God in charge of punishment in the afterlife, and the individual much opportunity for private repentance here on earth.

The partisans of the Shari‘a, therefore, are arguing for the dominance of a particular version of Islam, a version that never existed except in their idealized recollection. One critic describes their strategy: "[T]he politics of nostalgia imagines a past, or prior reality, conjures an affection for a past that never was, and turns this sentimentalist imperative into a programme to be imposed on the social and political realities of today."257

256. *Id.* at 14.
257. *Id.* at 9.
Yet the Shari'a itself turns out to be their most effective weapon. In a religion without an ecclesiastical structure, in a religion where differences in doctrine were less defining than in Christianity, in a religious culture without the bond of a unitary state, and in an intellectual tradition in which the development of political theory was stultified, the Shari'a stands as an iconographic symbol identifying a Muslim as a Muslim. It is a symbol claiming a divine and obligatory provenance.

The original authors and commentators of the Shari'a were among the finest minds of a highly developed civilization. The Shari'a’s arcane intricacies, differences, and reasonings are far beyond the comprehension of the average Muslim, including the ordinary mullah of today. Indeed, the modern partisans of the Shari'a disparage the same analytical creativity of modern Muslim thinkers that the ancients exercised. For the politically militant Muslims, there can never be a “new *ijtihad*,” and they themselves are incapable of exercising *ijtihad*. They take advantage of the fact that the ancient jurisconsults did define and gloss certain crimes, the *hadd* offenses particularly, including apostasy. Yet the contemporary Muslim radicals have no qualms about turning a *ta'zir* offense like blasphemy — an offense that should have a variable punishment or no penalty at all — into one with a mandatory death penalty that advances their politico-religious aims.

Despite the marginal position of criminal law within the Shari'a, its modern partisans press for the application of their own version of its penal provisions because it provides the coercive element they need for dominance. The law against blasphemy raises the xenophobic fear of a tribal society against outside religions, it saps the legitimacy of competing traditions within Islam, it stills political dissenters, and undermines the very basis for democratic government. Under the radical interpretation of what blasphemy means, none of the great intellectual leaders of Pakistan’s pre-history, from Muhammad Iqbal even to Muhammad Ali Jinnah would have been immune to attack. Despite the fact that Christians and Ahmadis are currently the most prominent victims of the blasphemy law, the true objective of the militant advocates of the Shari'a is to destroy the validity of any other tradition within Islam but their own.

The mullahs are weak at the polling place but influential on the streets. Unlike the other Hudood Ordinances which have been more or less unenforced because of the alternatives available under the Pakistani criminal code, the law against blasphemy has developed a life of its own. The ease of accusation and arrest, the usual lack of bail, and the tradition of legitimizing self-help has unleashed such a wave of religious terror that
even the government and the opposition shrink from calling for its repeal. Direct international diplomatic pressure at the state level may help to empower the Pakistani government to confront the mullahs. But success will come only if the government politically validates the variable strains of Islam as authentically Islamic, as the intellectual fathers of Pakistan so forcefully championed. The only alternative will be a shattering of Pakistan into tribal and religious warfare and the likely imposition of a more tyrannical military government than it has yet experienced.