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MODERN BLASPHEMY LAWS IN PAKISTAN AND THE RIMSHA MASIH CASE: WHAT EFFECT—IF ANY—THE CASE WILL HAVE ON THEIR FUTURE REFORM

INTRODUCTION

This Note will examine the current blasphemy laws in Pakistan, with a particular focus on the case of Rimsha Masih, who was charged with blasphemy in 2012 and ultimately acquitted in 2013. Although Rimsha's case is unprecedented, it is far from a turning point for blasphemy laws in Pakistan for two reasons. First, Rimsha's case was an outlier, as evidenced by the unique circumstances of her case, as well as subsequent events that reinforce that proposition. Second, the nature of the political-religious-legal system in Pakistan makes the blasphemy laws and their enforcement a far more complicated issue than what occurs in a courtroom can explain. The very nature of Pakistan's governmental, constitutional, and legal structure has created an extra-legal system of blasphemy law enforcement grounded in traditional notions of Islam and enforced in large part through vigilantism. If reform is to be achieved, it is in that arena where it must take place.

Part I provides a brief overview of the case of Rimsha Masih: her arrest in September of 2012, acquittal in November, and the subsequent confirmation of the acquittal by the Pakistan Supreme Court in January of 2013. Parts II and III examine the political, legal, and constitutional developments within Pakistan that have led to the modern blasphemy laws. Part II contains an overview of Pakistani constitutional development prior to the Zia ul-Haq regime, with a particular focus on the 1973 Constitution. Part III focuses on the Zia ul-Haq military regime, which began in 1977 and caused Pakistan's Constitution to undergo major changes. Zia, aided by popular support, aggressively and successfully Islamicized the laws and constitution of Pakistan, including the addition of three amendments now referred to as the blasphemy laws.

Part V explores how the blasphemy laws have been used since their inception and the role they play in Pakistan today. For context, this discussion is prefaced by Part IV, which examines how blasphemy laws are currently treated around the world. Part V then provides an in-depth overview of the current state of Pakistan's blasphemy laws, identifying and explaining several serious problems that result from the current application of the blasphemy laws in Pakistan.

Part VI argues that vigilantism by Pakistani citizens in response to allegations of blasphemy has constrained political reform of the laws and usurped the judicial process and rule of law. This includes an argument that the inherent tension between Pakistan's democratic government and its Islamicized laws has created an uncertain void of blasphemy law enforcement that has been filled by vigilantism and mob violence.

Part VII explores whether Rimsha's case marks a turning point toward reform for the blasphemy laws or is simply an outlier. Pointing to several circumstances that make Rimsha's case unique, as well as subsequent events that have indicated that vigilantism still reigns in the blasphemy realm, Part VII will argue that the case is, in fact, an outlier.

I. THE RIMSHA MASIH CASE

On August 16, 2012, a fourteen year-old Christian Pakistani girl with learning disabilities named Rimsha Masih was arrested and jailed in her hometown of Mehrabad on allegations that she had violated Pakistan's strict laws against blasphemy.¹ She was accused of tearing pages from a copy of the Koran and burning them.² That allegation led to angry demonstrations by Pakistani Muslims in her predominantly Christian neighborhood, with an estimated 600 to 1,000 people turning out in protest.³ In order to appease the crowd, police took Rimsha into custody. Her parents and the rest of the community were forced to flee.⁴

The case against Rimsha subsequently unfolded in unusual fashion. In two unprecedented developments, Rimsha's accuser, an imam of a nearby mosque named Hafiz Mohammed Khalid Chishti, was also charged under

1. Jon Boone, *Pakistani Girl Accused of Qur'an Burning Could Face Death Penalty*, GUARDIAN (Aug. 19, 2012, 3:25 PM), <http://www.guardian.co.uk/world/2012/aug/19/pakistan-christian-tensions-quran-burning-allegations>. In the wake of Rimsha's arrest, there was considerable debate about her true age and mental capacity, with those who believed her to be guilty insisting that she was older and not cognitively delayed, while her parents insisted that she was "just 11 and has Down's syndrome." *The Blasphemy Law in Pakistan Contemptuous: For Once, the Government Pushes Back on Intolerance*, ECONOMIST (Sept. 8, 2012), <http://www.economist.com/node/21562262>. An ordered medical report submitted to the court found her to be around age fourteen with a mental age "below her chronological age." *Id.* Regardless, there is little dispute that Rimsha is legally a juvenile and has at least some type of cognitive or developmental delay.

2. Boone, *supra* note 1.

3. *Id.*

4. *Id.* "The police, initially unwilling to take action, eventually charged the girl with blasphemy and took her into custody. The rest of the community, including her parents, fled." *Id.* In the days following Rimsha's arrest, those Christians in the neighborhood who had not yet fled were ordered to leave: "One of the senior members of the dominant Muslim community told the Christians to remove all their belongings from their houses by 1 September." *Id.* The few Christians who remained following that warning were refused service and water by shopkeepers in the neighborhood. *Id.*

the blasphemy laws for allegedly planting the incriminating evidence,⁵ and Rimsha was ultimately acquitted of the charges in November of 2012 by the High Court in Islamabad,⁶ a ruling subsequently confirmed by the Pakistan Supreme Court.⁷

II. PAKISTANI CONSTITUTIONAL DEVELOPMENT PRIOR TO THE ZIA UL-HAQ REGIME

The nation of Pakistan was created in 1947 through the partitioning of British India. It was the result of a push by Muslim separatists to establish their own independent country.⁸ Muslims account for ninety-seven percent of the country's population.⁹ Pakistan, as a country formed for the purpose of creating a 'Muslim state' homeland for the Muslims of British India, has necessarily grappled with the role that Islam should play in the country.¹⁰ "The ongoing debate revolves around the question of whether 'a Muslim state' was merely a country for Muslims or an Islamic state governed by the precepts of Shari'a."¹¹ On one side of the debate stand those who believe that a Muslim state can and should be strictly governed

5. *Pakistan 'Koran Plot' Imam Remanded in Blasphemy Case*, BBC NEWS, (Sept. 2, 2012, 8:34 AM), <http://www.bbc.co.uk/news/world-asia-19454739>. The imam, Khalid Chishti, was taken into custody and charged with blasphemy for allegedly placing the burned Koran pages in Rimsha's bag as a "way of getting rid of Christians." *Id.* Witnesses claimed to see Chishti add pages from the actual Koran to the bag of ashes. *Id.* The witnesses who came forward were worshippers at Chishti's mosque. Rob Crilly, *Muslim Cleric Arrested in Pakistan Koran-Burning Case*, TELEGRAPH (Sept. 2, 2012, 3:06 PM), <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/9515586/Muslim-cleric-arrested-in-Pakistan-Koran-burning-case.html>. Many were quick to question the veracity of the witnesses; for example, "hardliners" warned of a potential conspiracy and "question[ed] why it ha[d] taken so long for the new witness to come forward." *Id.* Additionally, the lawyer for the man who made the original accusation accused the authorities of interfering in the case and pressuring the witnesses. *Id.*

6. *Rimsha Masih v. Station House Officer, Police Station Ramna*, Writ Petition No. 3172-Q/2012, Judgment Sheet (Nov. 14, 2012), available at <http://www.ihc.gov.pk/Announcements/Judgements/Court1/W.P.%203172-Q-2012.pdf>. See also *Pakistan: Blasphemy Case Against Rimsha Masih Dismissed*, HUFFINGTON POST (Nov. 20, 2012, 5:24 AM), http://www.huffingtonpost.com/2012/11/20/pakistan-blasphemy-case_n_2162850.html. According to Rimsha's attorney, "the Islamabad High Court's decision to throw out the case was based on the fact that no one had seen her burning pages of the Koran." *Id.*

7. *Pakistan Supreme Court Confirms Decision to Drop Blasphemy Case*, WORLD WATCH MONITOR (Jan. 16, 2013), http://www.worldwatchmonitor.org/2013/01-January/article_2016163.html. The Supreme Court's decision ended the case definitively; Rimsha's lead attorney, Tahir Naveed Chaudry, stated that "[t]he Supreme Court's decision has put an end to future contentions on the case." *Id.*

8. MOHAMED ELTAYEB, A HUMAN RIGHTS APPROACH TO COMBATING RELIGIOUS PERSECUTION: CASES FROM PAKISTAN, SAUDI ARABIA, AND SUDAN 55 (2001).

9. *Id.*

10. *Id.* "Created as a homeland for the Muslims of British India, the role of religion (Islam) has been at the centre of Pakistani politics." *Id.*

11. *Id.*

by the rules of Shari'a law.¹² While Pakistan's constitutional history has been turbulent,¹³ the country initially took a more centrist approach in regard to this debate, including in the original formulation of its 1973 Constitution.¹⁴ However, as a result of the constitutional amendments enacted under the military rule of Zia ul-Haq, there has since been a deliberate shift toward an increased role for Islam and Shari'a in the law and governance of Pakistan.

The 1973 Pakistan Constitution can be characterized as "Islamic, federal and democratic."¹⁵ It established a parliamentary government with a federal structure and an independent judiciary¹⁶ and expressly provided for many fundamental rights for its people, including the right to freedom

12. What would such a state look like? Rudolph Peters offers an excellent summary of both the mindset behind establishing a Shari'a-dominated state, as well as the practical implications that would result in such a scenario:

It is not sufficient that such a state gives Muslims the choice to follow or not to follow the Shari'a; it must actually impose the Shari'a on them, by implementing Islamic criminal law. Preaching and admonition do not suffice, and a big stick is needed to change behavior in an Islamic direction. Islamic criminal law is a tool to impose an Islamic moral order on society, by enforcing rigorous rules, especially in the fields of sexual morality, blasphemy and the consumption of alcohol and drugs.

RUDOLPH PETERS, *CRIME AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY* 144 (2005).

13. Kamal Azfar, *Constitutional Dilemmas in Pakistan*, in CRAIG BAXTER & SHAHID BURKI, *PAKISTAN UNDER THE MILITARY: ELEVEN YEARS OF ZIA-UL-HAQ* 49 (1991).

Since Pakistan's independence in 1947, the nation has persisted through five different republics. The Government of India Act of 1935, together with the Indian Independence Act of 1947, served as the first republic's constitution. The second republic began . . . with the Constitution of Pakistan of 1956. The second republic came to an end with the proclamation of martial law on October 7, 1958, which abrogated the 1956 constitution. The third republic . . . [fell] when martial law was imposed on March 25, 1969, by the Commander-in-Chief General Yahya Khan. Zulfikar Ali Bhutto, Yahya's successor as chief martial law administrator and president, was the leader of the fourth republic and the author of the 1973 constitution. Martial law was declared once again by General Muhammad Zia ul-Haq, the chief of army staff, on July 5, 1977, and was not lifted until 1985. The Revival of the Constitution Order of 1985 revived the 1973 constitution with some major amendments and marked the beginning of Pakistan's fifth republic.

Id.

14. While the original 1973 Constitution was indeed a much less Islamicized set of laws than the post-Zia Constitution that exists today, Pakistan's first two (short-lived) constitutions, enacted in 1956 and 1962 respectively, placed less emphasis on the role of Islam. For example, they did not provide for Islam as the state religion, whereas the 1973 Constitution did. "The Constitutions of 1956 and 1962 did not make any formal declaration to the effect that 'Islam is the state religion of Pakistan' . . . Article 2 of the Constitution of 1973 has, however, declared Islam to be the State religion of Pakistan in categorical terms, which is a clear departure from the previous Constitutions." HAMID KHAN, *CONSTITUTIONAL AND POLITICAL HISTORY OF PAKISTAN* 895 (2001).

15. ELTAYEB, *supra* note 8, at 59.

16. *Id.*

of speech, expression, and press.¹⁷ This included freedom to establish and practice any religion.¹⁸ In these ways, then, the 1973 Pakistan Constitution contained many of the same rights as can be found in the constitutions of Western democracies.¹⁹

The 1973 Constitution also contained many provisions that signaled the important role of Islam in the structure and governance of the state. This role would be greatly expanded under Zia, but even before, the Constitution contained an inherent tension whereby the democratic state was used as an instrument to inject many important aspects of Islam into the legal structure of the country.²⁰ Among the Islamic provisions contained in the Constitution were the following: First, Islam was established as the state religion.²¹ Second, no laws were to exist that were “repugnant” to Islam.²² Third, the President was charged with establishing

17. KHAN, *supra* note 14, at 489. These guarantees can be found in article 19 of the Constitution of Pakistan, which reads:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.

PAKISTAN CONST. art. 19.

18. KHAN, *supra* note 14, at 489. “Freedom of conscience and the right to profess, practice, and propagate any religion, subject to public order and morality, were guaranteed. Every religious association and every sect thereof was guaranteed the right to establish, manage, and maintain its religious institutions.” *Id.*

19. The Constitution of the United States, for example, expressly protects these same fundamental rights for its citizens, specifically under the 1st Amendment. U.S. CONST. amend. I.

20. IHSAN YILMAZ, *MUSLIM LAWS, POLITICS AND SOCIETY IN MODERN NATION STATES: DYNAMIC LEGAL PLURALISMS IN ENGLAND, TURKEY AND PAKISTAN* 125 (2005).

Islam is the foundation of state legitimacy in Pakistan and the state law is used as an instrument by the state to serve the purposes of Islamic modern nation-state ideology. Modern Pakistani law, despite its constitutional commitment to observe the injunctions of Islam, operates on the basis that the state law is the only legal authority. In other words, it follows the Western model of political ideology which is characterized by the paradigm of legal modernity in the normative realm but tries to match this model with Islamic concepts.

Id. Another way of conceptualizing the connection between Islam and the 1973 Constitution is that the Constitution “has the necessary ingredients for the establishment of religion by the state.” KHAN, *supra* note 14, at 897. The rationale, Khan explains, is simple: “Pakistan was created in the name of Islam and, therefore, the establishment of Islam as the state religion under the Constitution is only a logical end and objective of its creation.” *Id.*

21. KHAN, *supra* note 14, at 502. In addition, “[t]he Islamic way of life was to be promoted The Head of State, the President, was to be a Muslim. The Prime Minister was also required to be a Muslim member of the National Assembly.” *Id.*

22. *Id.* Specifically, one provision mandated that “no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the sunnah,” while another required that any existing laws also “be brought into conformity with injunctions of Islam as laid down in the Holy Quran and sunnah.” *Id.*

a “Council of Islamic Ideology.”²³ While these provisions demonstrated the important role of Islam in the governance of Pakistan, they fell short of establishing a nation governed expressly by Shari’a law, and were balanced by the distinctly democratic guarantees also found in the Constitution.

III. THE ZIA UL-HAQ REGIME AND THE ISLAMIZATION OF PAKISTANI LAW

The balance of the 1973 Constitution was abandoned in favor of increased ‘Islamization’ of Pakistani law during the Zia ul-Haq military regime. In July of 1977, Zia, the Army Chief General, used his forces to take over administration of the country.²⁴ “Martial law was imposed”²⁵ and “the Constitution was held in abeyance.”²⁶ The overthrow of the government was the culmination of prolonged violent demonstrations by various political groups whose common goal was the Islamization of Pakistan.²⁷ From the outset, Zia’s words and actions also reflected a desire to achieve this goal. He espoused strong views regarding the need for

23. *Id.* The job of this Council was to make recommendations to Parliament and the Provincial Assemblies on how best to alter existing laws to bring them into conformity with Islam, and how to bring such changes into effect. *Id.*

24. *Id.* at 579. The President and other leaders were placed under “protective custody.” *Id.* Zia ul-Haq was supported in his overthrow efforts by the Islamist organization Jama’at-I Islami. PETERS, *supra* note 12, at 155.

25. KHAN, *supra* note 14, at 579.

26. *Id.* at 580. The legality of the Zia regime was challenged in the case of *Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan*, (1977) 29 PLD (SC) 657 (Pak.). In that case, the Supreme Court of Pakistan declared military intervention to have been necessary and “validated all actions pursuant to the military take-over, including constitutional suspension, new oaths for the judiciary, the promulgation of martial law orders, regulations and constitutional amendments, all acts to advance or promote the good of the people, and all acts required for the running of the State.” ELTAYEB, *supra* note 8, at 79. This decision had a profound effect on Zia’s ability to form a Pakistani state in line with his stated goals, as it gave his regime “a perfect legal vacuum in which to restructure the state by creating a complex and enduring state structure.” *Id.*

27. IFTIKHAR MALIK, *THE HISTORY OF PAKISTAN* 168 (2008). Following the 1977 election, which several dissident political parties accused of being rigged by then-Prime Minister Bhutto, an aggressive and violent anti-Bhutto campaign began, led by “religiopolitical parties such as the Jamaat-i-Islami (JI), Jamiat Ulama-i-Islam (JUI), and Jamiat-i-Ulama-i-Pakistan (JUP). These parties had mutual doctrinal differences yet demanded Islamization of the country, which soon became the common cry of their demonstrations.” *Id.* The situation escalated to the point where “200 demonstrators were killed in Lahore, Karachi, and several other towns by the security forces.” *Id.* Bhutto responded by imposing martial law, but the demonstrations went on unabated, ending only when Zia took over control of the country through a military coup on July 5. *Id.* For a more in-depth discussion of the 1977 election and the violent movement that followed, see KHAN, *supra* note 14, at 556–62. The onset of the controversy can be described in short, however, as follows: “The PNA alleged that the election had been rigged on a massive scale, rejected the results, boycotted the Provincial Assembly elections scheduled for 10 March, and launched a mass movement to secure Bhutto’s resignation and new elections under impartial auspices.” *Id.* at 556.

Islam to play a greater role in Pakistan, stating that he considered “the introduction of the Islamic system . . . an essential pre-requisite” for Pakistan.²⁸ Additionally, Zia viewed his regime as the “guardian of the faith and made Islamization of the law a primary objective.”²⁹

Against this backdrop, Zia announced a program of legal Islamization for Pakistan in February of 1979.³⁰ An initial step involved amending the Constitution by adding article 203-D, which established a Federal Shariat Court.³¹

The most important aspect in Zia’s Islamization program involved the enactment of Islamic criminal legislation.³² Three ordinances and one presidential order³³ were issued prescribing *hadd* punishments³⁴ for criminal offenses,³⁵ with possible permitted punishments including the

28. KHAN, *supra* note 14, at 579. This proclamation came among other remarks that included Zia accepting the challenge of leading Pakistan “as a true ‘soldier of Islam’” and opining that “Pakistan, which was created in the name of Islam, will continue to survive only if it sticks to Islam.” *Id.* He also promised a commitment to democracy and holding elections moving forward, saying via radio and television broadcast shortly after taking power that “he had faith in democracy and that elections would be held in ninety days and power would be transferred to the elected representatives of the people.” *Id.* Ultimately, however, Zia made good only on his pledge to make Pakistan and its laws more overtly Islamic.

29. ELTAYEB, *supra* note 8, at 79. In addition, Zia used his commitment to pursuing Islamization both to give himself political legitimacy and to justify “his retention of dictatorial powers and the suspension of constitutional rights.” *Id.* Zia’s rise coincided with the increased prominence and authority of the Islamic fundamentalist groups whose activism had led to Bhutto’s downfall, as he “relied upon the Islamic fundamentalist groups in the execution of his Islamization policy.” *Id.* For this reason, therefore, “the religious groups were given enormous opportunities to serve as judges, to control government television, to set requirements for university courses, and to attain government-owned property to build mosques.” *Id.*

30. PETERS, *supra* note 12, at 155.

31. *Id.* “This constitutional amendment was the first step taken by Zia towards his programme of Islamization.” KHAN, *supra* note 14, at 640. The specific role of the Shariat Court was to determine “‘whether or not any law or provision of a law [was] repugnant to the injunctions of Islam, as laid down in the Holy Quran and the Sunna’ and [to] rescind laws found to be in conflict with Islam.” PETERS, *supra* note 12, at 155. The initial steps of Zia’s program also included the introduction of a ban on interest and the collection of the *zakat* tax. *Id.*

32. PETERS, *supra* note 12, at 155. This part of the plan was realized quickly through presidential decree on February 9, 1979. *Id.*

33. The following decrees were enacted: “Offenses Against Property (Enforcement of Hudood) Ordinance, 1979; Offences of Zina (Enforcement of Hudood) Ordinance, 1979; Offences of Qazf (Enforcement of *hadd*) Ordinance, 1979; Prohibition (Enforcement of *hadd*) Ordinance, 1979.” *Id.* at 156 n.25. The text of these decrees is reprinted in THE GOVT. OF PAKISTAN, NEW ISLAMIC LAWS: ENFORCEMENT OF HUDOOD ORDINANCE 87 (1979).

34. “Hadd means punishment ordained by the Holy Quran or Sunnah.” KHAN, *supra* note 14, at 631 n.80.

35. PETERS, *supra* note 12, at 156.

amputation of body parts,³⁶ whippings,³⁷ and death by stoning.³⁸ “These laws, according to Zia, formed a package introducing Islamic laws in Pakistan”³⁹ in line with his stated goals for the increased Islamization of the country.⁴⁰ In addition, three amendments (popularly referred to as the “blasphemy laws”) were added to the Pakistan Penal Code in 1980, 1982, and 1986, which criminalized “the defiling, by words or acts, of the Prophet Mohammed and his wives and relatives and the desecration of the Koran. The amendment of 1986 made such defiling of the Prophet a capital offence.”⁴¹

The end result of the Zia-era reforms is a Pakistan which features a democratic, Western-style system of government that acts as the vehicle for implementing, and is tasked with enforcing, criminal laws based on substantive Islamic law.⁴² This shift has raised serious questions⁴³ about

36. KHAN, *supra* note 14, at 628. “In case of theft or robbery, *hadd* punishment for amputation of the right hand from the joint of the wrist, for the first theft, and amputation of the left foot up to the ankle for the second theft, was provided.” *Id.*

37. *Id.* at 627–28. The punishment of whipping was prescribed for those found guilty of manufacturing, selling, or drinking liquor, as well as for those found guilty of fornication (intercourse between two unmarried individuals) and those found guilty of falsely accusing others of fornication or adultery. *Id.*

38. *Id.* at 628. Death by stoning was prescribed for those found guilty of adultery. *Id.*

39. *Id.* at 627.

40. *Id.*

41. PETERS, *supra* note 12, at 156. These provisions comprise sections 295-A, 295-B, and 295-C of the Pakistan Penal Code, and read as follows:

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

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

295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Act XLV of 1860, PAK. PENAL CODE, *amended by* Criminal Law (Amendment) Act, No. 3 of 1986, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Oct. 12, 1986.

42. PETERS, *supra* note 12, at 147–48. Pakistan is not alone in affecting its movement toward Islamization in such fashion:

[I]ntroducing Islamic criminal law by statute law has been the rule. This shows that the Western idea that it is the state that lays down the law has been accepted, even by those countries that are re-Islamising their legal systems The result of the reintroduction of Islamic criminal law, in most countries, is that something new is created, a form of criminal

whether the resultant criminal laws in Pakistan, particularly the blasphemy laws,⁴⁴ violate the human rights of Pakistanis.⁴⁵ While blasphemy laws by themselves do not always violate human rights, when they are “consistently applied against certain religious groups, their enforcement can be regarded as a violation of [the] principle [of freedom of religion].”⁴⁶ Such is the case in Pakistan, where blasphemy laws have routinely been used to persecute unpopular religious minorities, namely Christians and Ahmedis.⁴⁷

In addition to these practical concerns, the Zia-era Islamicized laws, particularly the blasphemy laws, have only served to further the tension and confusion Pakistan has grappled with in determining where, exactly, boundaries between religion and politics should be drawn in a governmental system where the form of government—western-style democracy—conflicts with many of the classical principles of Islam in whose name the country was created.⁴⁸

law consisting of Islamic substantive rules in a Western garb and embedded in a Western-type adjective law, with Western-type courts and Western institutions such as the state prosecutor.

Id. Peters also describes a relevant ideological motive for countries such as Pakistan to adopt Islamic criminal law: “in doing so, it makes a clearly anti-Western statement. Islamic criminal law is one of those parts of the Shari’ah that are most at variance with Western law and Western legal notions.” *Id.* at 145. As a result, Islamic criminal law “has a highly symbolic value and its introduction is regarded as the litmus test for a real Islamisation of the legal system.” *Id.*

43. There is an important caveat to keep in mind, however, when considering this question. As Peters explains:

The implementation of Islamic criminal law in recent decades has raised the question of its compatibility with universal human rights standards. Judging classical Islamic law—or other pre-modern systems, for that matter—by the standards of the modern doctrine of human rights is, obviously, anachronistic and futile. It is perfectly legitimate, however, to scrutinize the recently enacted Islamic penal codes for their compatibility with universal human rights standards.

Id. at 174.

44. While many of the *hadd* crimes have been used sparingly by Pakistani courts, the blasphemy laws have been frequently utilized since their inception.

45. In particular, freedom of religion and freedom of expression. *Id.* at 175.

46. *Id.* at 180.

47. *Id.* The scope of this Note is primarily limited to recent uses of the blasphemy laws to persecute Christian minorities. For an in-depth examination of the use of law to discriminate against the freedom of religion of the Ahmadiyya, an Islamic movement considered heretical by many orthodox Muslims, see KHAN, *supra* note 14, and ELTAYEB, *supra* note 8. The plight of the Ahmadi can be summarized thusly: The Second Amendment to the Constitution (1974) classified the group as “non-Muslims.” This, in conjunction with Ordinance XX in 1984, whereby “the Ahmedis were prohibited from using any of the epithets, descriptions, or titles reserved for holy personages or places in Islam,” prevented them from “practising, preaching, and propagating their faith and . . . made [them] liable to harassment and prosecution for any of their religious practices.” KHAN, *supra* note 14, at 664.

48. MALIK, *supra* note 27, at 206. “Pakistan’s simplified rationale as a polity created in the name of Islam—a premise often applied hastily—has only complicated the ambiguous intersection between politics and religion.” *Id.* The problem can also be described in terms of a tension between tradition

IV. A COMPARATIVE LOOK AT WESTERN COUNTRIES: MOVEMENT AWAY FROM BLASPHEMY LAWS

As blasphemy laws in Pakistan were being codified, Great Britain was witnessing the final criminal conviction that would ever occur under its own blasphemy laws⁴⁹ in the *Gay News* case, where the *Gay News* newspaper and its editor were punished for publishing a controversial, homoerotic poem about the crucifixion of Jesus.⁵⁰ By 2008, the law would be repealed.⁵¹ The repeal followed popular organized support against the laws,⁵² as well as years of growing indifference to their use.⁵³

The death of blasphemy laws in England is illustrative of a larger movement among Western and democratic nations. The Council of Europe's Parliamentary Assembly has taken the position "that blasphemy,

and modernity: "By emphasizing its Islamic credentials while being mostly ruled by westernized elite whose own mindset and interests are inextricably linked with the West, Pakistan has often found it difficult to locate a synthesis between some highly contentious realms of tradition and modernity." *Id.* at 207. Thus there is arguably a very real and problematic disconnect between both the form of government and Islam, and between the underlying ideals which attach to each; it is no surprise, then, that many citizens who take matters into their own hands when it comes to blasphemy allegations do so because they have so little faith in, and so little interest in operating within, the western-democratic legal system of Pakistan, as it represents a clear departure from traditional, Islamic ideals. Khan offers a succinct summary of the system of governance that has resulted in Pakistan due to these tensions: "Democracy, the system ostensibly given by the various constitutions in Pakistan, has never been allowed to function effectively." Kahn, *supra* note 14, at 851.

49. Ruth Geller, *Goodbye to Blasphemy in Britain*, AM. HUMANIST ASS'N (May 14, 2008), <http://americanhumanist.org/hnn/archives/?id=348&article=0>. The centuries-old laws prohibited "insult to the tenets and beliefs of the Church of England," but failed to include any protections for Judaism, Islam, or any other religions. *Id.*

50. *R. v. Lemon*, [1979] A.C. 617 (H.L.). In this case, a conservative Christian named Mary Whitehouse brought suit against the *Gay News* newspaper in objection to its publication of a poem entitled "The Love that Dares to Speak its Name," which features a male Roman centurion removing Jesus' body from the cross and performing sex acts on it. The paper's editor, Denis Lemon, and the paper were fined. *Id.* at 620. Prior to the *Gay News* case, the last conviction under the blasphemy law in Great Britain had occurred in 1921. *R. v. Gott*, (1922) 16 Cr. App. R. 87. In that case, a man was sentenced to nine months in prison for publishing a pamphlet describing "Jesus Christ entering Jerusalem 'like a circus clown on the back of two donkeys.'" suggested that Christ looked like a clown as he entered Jerusalem." *Id.* at 88. See also 1977: *Gay Paper Guilty of Blasphemy*, BBC NEWS (July 11, 1977), available at news.bbc.co.uk/onthisday/low/dates/stories/july/11/newsid_2499000/2499721.stm.

51. Geller, *supra* note 49. The blasphemy laws were "officially abolished on May 8, 2008." *Id.*

52. For example, a 2002 organized protest that involved "The Love that Dares to Speak its Name" being read aloud on the steps of a church in central London produced no arrests or governmental action. *Erotic Poem Challenges Blasphemy Law*, TELEGRAPH (July 11, 2002, 12:36 PM), <http://www.telegraph.co.uk/news/1401051/Erotic-poem-challenges-blasphemy-law.html>.

53. LEONARD LEVY, *BLASPHEMY: VERBAL OFFENSE AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE* 535 (1993). Some would argue, in fact, that "[b]y the 1960s, England had become indifferent to blasphemy." *Id.*

as an insult to a religion, should not be deemed a criminal offence.”⁵⁴ The United States has opposed blasphemy laws on the grounds, among others, that they violate free speech.⁵⁵ The countries that sit on the United Nations Human Rights Council have also voiced opposition to pro-blasphemy law resolutions introduced therein.⁵⁶

This trend, however, is in sharp contrast to the position taken by many of the world’s Islamic states, evidenced by the actions of the fifty-seven-nation Organization of Islamic States (OIC).⁵⁷ The group has consistently sponsored resolutions protecting against the “defamation” of religions before both the United Nations Human Rights Council and the General Assembly,⁵⁸ and has vigorously campaigned for “an international blasphemy law.”⁵⁹

54. Eur. Parl. Ass., *Recommendation 1805: Blasphemy, religious insults and hate speech against persons on grounds of their religion* ¶ 4, 2007 Sess., Doc. No. 11296 as amended (2007), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>. The

Recommendation reasoned, in support of its position, that “[a] distinction should be made between matters relating to moral conscience and those relating to what is lawful, matters which belong to the public domain, and those which belong to the private sphere.” *Id.*

55. Additionally, the United States Commission on International Religious Freedom’s 2009 Annual Report was harshly critical in its assessment of the blasphemy laws in Pakistan, finding that “[b]lasphemy allegations, which are often false, result in the lengthy detentions of, and sometimes violence against, Ahmadis, Christians, Hindus, and members of other religious minorities.” U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2009 ANNUAL REPORT 68, available at <http://www.uscirf.gov/sites/default/files/resources/final%20ar2009%20with%20cover.pdf>. Beyond the freedom of speech and religious minority persecution concerns, the report also lists as a major issue with the blasphemy laws the “lack of due process involved” in the proceedings, citing the minimal evidentiary requirements and the tendency for Islamic militants to “pack the courtroom and make public threats of violence” during blasphemy trials. *Id.*

56. AUSTIN DACEY, *THE FUTURE OF BLASPHEMY: SPEAKING OF THE SACRED IN AN AGE OF HUMAN RIGHTS* 4 (2012). “Their objection was fundamental: persons have rights; religions do not. As the European Union put it, ‘human rights law protects primarily individuals in the exercise of their freedom of religion or belief, rather than the religions as such.’” *Id.*

57. *Id.* at 1. The group represents itself as “the collective voice of the Islamic world.” *Id.* Pakistan is one of the members of the OIC. *Id.* Dacey raises an important point about the global debate over defamation, in which the OIC has played a central role: “The debate over the defamation of religions cannot be separated from a global political movement to ‘Islamize’ human rights standards.” *Id.* at 7. The OIC, Dacey explains, has long pushed such a position, as demonstrated by the several iterations of its Universal Islamic Declaration of Human Rights, which takes the approach of “constrain[ing] the universal standards by subordinating them to religious law.” *Id.* The 1990 Declaration, for example, states that “[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah.” *Id.* Thus, the OIC’s position is that when it comes to freedom of expression, “it is Islam, and not the individual believer or disbeliever, that deserves protection.” *Id.* This is, in short, the underlying logic that influences how the OIC approaches the issue of blasphemy laws and religious defamation.

58. *Id.*

59. *Don’t Link Minister’s Murder to Blasphemy: Pakistani UN Delegate*, TRIBUNE (Pak.) (Mar. 4, 2011), <http://tribune.com.pk/story/127504/dont-link-ministers-murder-to-blasphemy/>. The OIC has had support in this campaign not just from its own member states, but also from African states and others countries including Cuba and Russia. *Id.*

V. THE CURRENT STATE OF PAKISTAN'S BLASPHEMY LAWS

The position taken by the OIC is demonstrative of the current state of Pakistan's blasphemy laws. The Pakistani blasphemy laws have been heavily used since their inception. According to Human Rights Watch, "[t]here have been 1,400 blasphemy cases since the laws were first enacted in 1986. There are more than 15 cases of people on death row for blasphemy in Pakistan, and 52 people have been killed while facing trial for the charge."⁶⁰ Hundreds of Christians, who make up three percent of Pakistan's population, have been among the accused, and at least twelve Christians have been given death sentences.⁶¹

In addition to disproportionate targeting of minority groups, there are many other problems with the blasphemy laws in Pakistan, both in terms of their structure and application. On a procedural level, the laws are problematic because no hard evidence beyond the word of anyone claiming to be a witness is required,⁶² and the accused is arrested and imprisoned immediately, left to await trial in jail.⁶³ In addition, the laws are flawed in their application because false accusations generally go unpunished,⁶⁴ which encourages blasphemy allegations based on personal grudges or in hopes of financial gain.⁶⁵

60. Reza Sayah & Nasir Habib, *Setback for Pakistani Teen Facing Blasphemy Charges*, CNN (Oct. 1, 2012, 3:10 PM), <http://www.cnn.com/2012/10/01/world/asia/pakistan-blasphemy-girl/>. While arrests are frequent on blasphemy charges, and vigilante justice is rampant, the courts themselves have been relatively sympathetic to blasphemy defendants. While lower courts have "handed down hundreds of convictions," nearly all of them have been reversed by higher courts "due to lack of evidence, faults in due process or obvious wrongful motives on the part of the complainants." *Q&A: Pakistan's Controversial Blasphemy Laws*, BBC NEWS (Sept. 2, 2012, 9:02 AM), <http://www.bbc.co.uk/news/world-south-asia-12621225>. This phenomenon only serves to strengthen the assertion that the real source of blasphemy law enforcement and punishment is vigilantism and, further, that that vigilantism exists outside of—and often in direct opposition to the wishes of—the court system.

61. *Q&A: Pakistan's Controversial Blasphemy Laws*, *supra* note 60. In addition, the Ahmadi, another religious minority group, are also frequently the targets of blasphemy charges. All told, "[a]pproximately 2,432 Ahmadis have been charged in 654 blasphemy cases." ELTAYEB, *supra* note 8, at 92.

62. DAVID PINAULT, NOTES FROM THE FORTUNE-TELLING PARROT: ISLAM AND THE STRUGGLE FOR RELIGIOUS PLURALISM IN PAKISTAN 47 (2008). "No evidence is required in filing a blasphemy complaint. The word of anyone claiming to be a witness is enough." *Id.*

63. *Id.* "The alleged blasphemers are arrested and imprisoned as soon as the complaint is lodged." *Id.*

64. *Id.* "[P]laintiffs can make false accusations with little worry of punishment or any other legal repercussion." *Id.*

65. *Id.* This has in fact been shown to be prevalent: The National Commission for Justice and Peace found that "in over one hundred cases where defendants in recent blasphemy trials were found innocent, the accusers were shown by the court to have been motivated by personal grudges or hopes of financial gain." *Id.* This possibility has been raised in the Rimsha Masih case, with witnesses

VI. VIGILANTISM IN RESPONSE TO BLASPHEMY ALLEGATIONS

The high level of support within Pakistan for the blasphemy laws is rooted in two key areas: political support and popular support, with the latter strongly influencing the former. Many politicians either support the laws, or refuse to propose changing them out of fear of losing political power, or worse, their lives. Meanwhile, popular support for the laws comes from a vocal and active portion of the population that has shown a consistent willingness to use violence to exact “justice” on alleged blasphemers and politicians who speak against the laws.

The courts and authorities are frequently overruled by Pakistani citizens engaging in vigilantism to bring justice upon alleged blasphemers.⁶⁶ Often, arrests are made on blasphemy charges primarily in order to appease violent mobs who storm the neighborhoods and homes of accused blasphemers.⁶⁷ Vigilantes have also frequently beaten and killed accused blasphemers—including those who have been acquitted and those awaiting trial—both in and out of police custody.⁶⁸ Since the blasphemy

coming forward and stating that the imam who accused Rimsha did so out of a motivation to drive Christians from the area.

66. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, *supra* note 55. The report summarizes the dangers faced by those accused of blasphemy in Pakistan at the hands of vigilantes:

[D]uring blasphemy trials, Islamic militants often pack the courtroom and make public threats of violence as a consequence of an acquittal. Such threats have proven credible since they have sometimes been followed by violence Several of those accused under the blasphemy laws have been attacked, even killed, by violent extremists, including while in police custody. Those who escape official punishment or attacks by extremists are sometimes forced to flee the country.

Id. at 68.

67. Take, for example, the case of four teenage Ahmadi boys who were arrested after being accused of writing Muhammad’s name on a bathroom wall. Although no evidence was presented, the boys were arrested after “[l]ocal religious extremists had made it clear that they would avenge the insult if the authorities would not.” Dacey, *supra* note 56, at 6. A similar process was followed in the Rimsha Masih case, with authorities only arresting her after an angry mob had surrounded her home. The same also went for sixteen-year-old Ryan Stanten (discussed *infra* Part VII), against whom authorities promised to pursue charges for blasphemy after an angry mob ransacked his home: “[T]he police arrived at the scene and tried to appease the protesters by assuring them that a case would be registered.” *Christian Teenager Ryan Stanten Held for Blasphemy in Pakistan*, CONT’L NEWS (Oct. 21, 2012), available at http://www.usbibleprophecy.com/wp/?p=3594#Uoy_6aVgq44.

68. *The Blasphemy Law in Pakistan Contemptuous*, *supra* note 1.

Dozens of accused have been murdered, in or out of jail. In July a mentally disturbed Muslim man, arrested for blasphemy in the Punjab city of Bahawalpur, was dragged out of the police station by a crowd of 2,000 and set on fire. In 2009 accusations of blasphemy led a mob to attack Christians in Gojra in [the] Punjab province. At least eight were burned to death.

Id. Numerous additional examples exist, including the 2009 case of nineteen-year-old Christian Fanish Masih, who was accused of flushing a chapter of the Koran down a drain, arrested, and held in solitary confinement. “He was found dead in his cell. The warden said Masih hung himself. Others called it ‘extra-judicial murder.’” Dacey, *supra* note 56, at 6. Another example is the four teenage Ahmadi

laws took effect in 1986, fifty-two people have been killed while awaiting trial.⁶⁹ In Rimsha's case, the opposing attorney, Rao Abdur Raheem, called for such a response in the event she escaped conviction.⁷⁰

Acts of vigilantism are not limited to targeting the accused. Politicians and judges have also been victims of violence for speaking out against the laws.⁷¹ Two prominent examples are the assassinations of politicians Salman Taseer and Shahbaz Bhatti in early 2011. Taseer, the governor of the Punjab province, had publicly voiced his opposition to the blasphemy laws and led a charge to reform them.⁷² He was assassinated by his bodyguard, Mumtaz Qadri, who admitted to the killing and cited Taseer's opposition to the blasphemy laws as his motivation.⁷³ While Christians in Pakistan and the international community condemned the killing, it was "welcomed by some in Pakistan, including by judges and lawyers and media commentators."⁷⁴ Many hailed Qadri as a hero, with some 40,000

boys—Muhammad Irfan, Tahir Imran, Tahir Mehmood, and Naseer Ahmad—who were arrested after being accused of "desecrating the Prophet by writing his name on the bathroom wall of a mosque in Punjab province." *Id.* Even though no evidence was presented to prove the allegation, "the head of the local police felt that 'the gravity of the case against Islam justified arresting the children first.'" *Id.*

69. Sayah & Habib, *supra* note 60.

70. Saeed Shah, *Pakistan Blasphemy Case: 'Muslims Could Take Law into Their Own Hands,'* GUARDIAN (Aug. 30, 2012, 10:40 AM), <http://www.guardian.co.uk/world/2012/aug/30/pakistan-blasphemy-case-muslims-law>. Raheem, sitting in his office beneath a large poster of Mumtaz Qadri, cited the assassin as an example, warning that "[t]here are many Mumtaz Qadris in this country." *Id.* Raheem went on to declare that "[i]f the court is not allowed to do its work, because the state is helping the accused, then the public has no other option but to take the law into their own hands." *Id.* He concluded that "[t]his girl is guilty. If the state overrides the court, then God will get a person to do the job." *Id.*

71. In addition to politicians, "judges who have ordered acquittals have been assassinated." Ben Doherty, *Girl Accused of Burning Koran Goes into Hiding*, BRISBANE TIMES (Sept. 10, 2012), <http://www.brisbanetimes.com.au/world/girl-accused-of-burning-koran-goes-into-hiding-20120909-25mh6.html>. Of course politicians, in addition to risking their lives, also risk losing political support by publicly opposing the blasphemy laws, which is yet another reason they so rarely do so—it is a poor strategy for winning elections. Thus even though "[a]mending the blasphemy laws has been on the agenda of nearly all the popular secular parties," none of them have made very much progress, primarily because "no major party wants to antagonize the religious parties which have on numerous occasions proved capable of bringing large numbers of protesters on to the streets." *Q&A: Pakistan's Controversial Blasphemy Laws*, *supra* note 60. The most recent example of a failed attempt at reform came in 2010, when Sherry Rehman, a member of the ruling Pakistan People's Party introduced a bill to make modest changes to the blasphemy laws. *Id.* The bill was ultimately withdrawn in February of 2011 "under pressure from religious forces as well as some opposition political groups." *Id.* Pakistani correspondents explained that "[g]iven the growing religious conservatism in Pakistan, the government is wary about losing public support over the issue." *Id.*

72. *Demonstrators Prevent Court Appearance of Alleged Pakistani Assassin*, VOICE OF AM. (Jan. 5, 2011, 7:00 PM), <http://www.voanews.com/content/disruptions-mark-remand-of-alleged-pakistani-assassin-113016474/133207.html>.

73. *Don't Link Minister's Murder to Blasphemy*, *supra* note 59.

74. *Id.* Hundreds of lawyers declared that they would be willing to defend Qadri. *Demonstrators Prevent Court Appearance of Alleged Pakistani Assassin*, *supra* note 72. In addition, 500 conservative

supporters filling the streets and showering him with rose petals as he was brought to court following his arrest.⁷⁵

In March of 2011, Shahbaz Bhatti, Pakistan's Minorities Minister, was assassinated as a result of his support of religious minorities and his work to reform the blasphemy laws. Bhatti had frequently spoken against the blasphemy laws, including publicly supporting Asia Bibi,⁷⁶ a Christian sentenced to death in a high-profile blasphemy case.⁷⁷ A Pakistani branch of the Taliban, Tehrik-i-Taliban, took credit for Bhatti's assassination and declared that he had been killed because he was a "known blasphemer."⁷⁸ Much like the response to Taseer's assassination, Pakistani Christians and the international community condemned the killing, while the responses

religious scholars issued a proclamation "praising the assassination and warning that anyone who expresses grief over the killing could suffer the same fate." *Id.*

75. Declan Walsh, *Pakistani Christians Protest After Assassination of Shahbaz Bhatti*, *GUARDIAN* (Mar. 3, 2011, 11:29 AM), <http://www.guardian.co.uk/world/2011/mar/03/pakistan-christians-shahbaz-bhatti-assassination>. Qadri also received "scores" of Valentine's Day cards from supporters and admirers while in jail after his arrest. *Id.*

76. *Bhatti Knew About Threat to His Life from Taliban, Qaeda*, *DECCAN HERALD* (Mar. 2, 2011), <http://www.deccanherald.com/content/142473/bhatti-kthreat-his-life-taliban.html>. Bhatti had received increasingly frequent death threats from extremists groups prior to his death as a result of his outspoken support of minorities and his criticism of the blasphemy laws. *Id.* He first began receiving threats after "he spoke in support of Christians who were attacked by an extremist group at Gojra in Punjab in 2009." *Id.* Fresh threats were aimed at him after speaking out in support of Asia Bibi following her arrest and sentencing. *Id.*

77. Rob Crilly, *Christian Woman Sentenced to Death in Pakistan for Blasphemy*, *TELEGRAPH* (Nov. 9, 2010, 5:36 PM), <http://www.telegraph.co.uk/news/religion/8120142/Christian-woman-sentenced-to-death-in-Pakistan-for-blasphemy.html>. The Asia Bibi case is a classic example of how blasphemy law accusations and subsequent arrests often unfold in Pakistan. Bibi had apparently been working as a farmhand with other women and was asked to retrieve drinking water. *Id.* "Some of the other women—all Muslims—refused to drink the water as it had been brought by a Christian and was therefore 'unclean', according to Mrs. Bibi's evidence, sparking a row." *Id.* A few days later, Bibi was "set upon by a mob." *Id.* The police were called and they "took her to a police station for her own safety." *Id.* True to form, however, public pressure persisted, including from some Muslim clerics, calling for Bibi's death as a blasphemer. In the face of this pressure, the police responded by registering a blasphemy case against Bibi. She was held in solitary confinement for more than a year before eventually being sentenced to death in November of 2010. *Id.* As of August, 2013, Bibi remained in prison, where she is given raw materials to cook meals for herself, rather than prepared food, out of administrators' fears that she may be poisoned. Anthony Bond, *Sentenced to Death for Being Thirsty: Christian Woman Tells of Moment She Was Beaten and Locked Up in Pakistan After Using Muslim Women's Cup to Drink Water*, *DAILY MAIL* (Aug. 28, 2013, 6:03 AM), <http://www.dailymail.co.uk/news/article-2403773/Christian-woman-Asia-Bibi-jailed-Pakistan-using-Muslim-womens-cup-drink-water.html>.

78. *Pakistan Minorities Minister Shahbaz Bhatti Shot Dead*, *BBC NEWS* (Mar. 2, 2011, 1:16 PM), <http://www.bbc.co.uk/news/world-south-asia-12617562>. Bhatti, forty-two years old, "had just left his mother's home in a suburb of the capital when several gunmen surrounded his vehicle and riddled it with bullets." *Id.* The spokesman for Tehrik-i-Taliban added that they would "continue to target all those who speak against the law which punishes those who insult the prophet . . . their fate will be the same." *Id.*

from political and religious leaders ranged from muted to outright support.⁷⁹

The emergence of this informal system whereby vigilantism wins out in the arena of blasphemy law enforcement—where arrests are made based on popular pressure and protests, punishment is handed down in the street more often than in the courtroom, and politicians, on fear of assassination, feel constrained to maintain the status quo—has created a system of governance in Pakistan that exists and operates outside of the realm of the government’s control, and outside of the rule of law. This phenomenon is inextricably linked to the inherent tension between the democratic structure of Pakistan and the Islamicized laws that dominate the criminal law. The resulting “system” is one of instability where the state prevails in some realms and instances, and vigilantism rules in others, most strikingly and frequently in regard to the blasphemy laws.⁸⁰

VII. THE RIMSHA MASIH CASE: TURNING POINT OR OUTLIER?

As Rimsha Masih’s case unfolded, many observers argued that it may signal a turning point for the blasphemy laws in Pakistan. These observers have argued that “for the first time, the state has pushed back.”⁸¹ For example, “[i]t is the first time in a blasphemy case that someone has ever been arrested for fabricating evidence.”⁸² In addition, politicians and Muslim religious leaders have spoken out in defense of Rimsha in greater

79. Walsh, *supra* note 75. In a public display rare for Christians in Pakistan, hundreds took to the street in protest after Bhatti’s death, with “demonstrations held across Punjab, where the Christian community is concentrated, with protesters burnings [i]res and demanding justice.” *Id.* Meanwhile, “many opposition leaders offered a muted response to Bhatti’s death, condemning the violence but offering little of the fiery rhetoric that normally characterizes discourse in Pakistan.” *Id.* Some opposition leaders went even further, taking actions that appeared outright supportive of the assassination: “When the prime minister, Yousaf Raza Gilani, led a two-minute silence in parliament, three members of the Jamiat Ulema-i-Islam party remained seated,” while Rafi Usmani, grand mufti of Pakistan, declared “I am afraid that this could be an American conspiracy to defame the government of Pakistan, Muslims, and Islam.” *Id.*

80. Yilmaz has stated this proposition succinctly: “[T]he socio-legal sphere in Pakistan is fragmented resulting from clashes between the official law and civil disobedience . . . one can say that Islamization of law in Pakistan has neither destroyed Anglo-Muhammadan law nor local folk laws. It has only increased the inconsistency and instability of the system.” YILMAZ, *supra* note 20, at 129–30.

81. *The Blasphemy Law in Pakistan Contemptuous*, *supra* note 1. The article went on to report that “[e]ven if repeal seems impossible, some see a chance to reform the blasphemy law—demanding a higher burden of evidence for accusations, for instance.” *Id.*

82. Jon Boone, *Christian Girl Hailed as ‘Daughter of Nation’ by Senior Pakistani Cleric*, GUARDIAN (Sept. 3, 2012), <http://www.theguardian.com/world/2012/sep/03/christian-girl-senior-pakistani-cleric-blasphemy>. This sentiment has been echoed by Ali Dayan Hasan, the Pakistan director of Human Rights Watch, who says that the pursuit of accusations against the cleric is significant because “never before has a false accuser been held accountable.” Sayah & Habib, *supra* note 60.

numbers and with greater fervor than for past accusers. Many, including the President of Pakistan, called for an investigation.⁸³ Even some prominent conservative Muslim clerics spoke out, including one of Pakistan's most senior Islamic clerics, Allama Tahir Ashrafi, who called for a full investigation, "lambasted" the Imam Chishti, and hailed Rimsha as a "daughter of the nation."⁸⁴

Most importantly, Rimsha's acquittal itself has been hailed as a sign of progress. So too has the decision by the Supreme Court to dismiss the appeal of her acquittal⁸⁵ including, in particular, a portion of the Court's opinion that warned Muslims to be "careful" when making blasphemy allegations, and cautioned against the courts being "used as a tool for ulterior motive."⁸⁶ The fact that Rimsha escaped conviction, that her accuser was held accountable, and that the case progressed quickly are indeed all plausible signs of progress.

However, there are several factors indicating that these unprecedented developments occurred primarily as a result of the very unique circumstances of the case, rather than as a result of some larger movement toward reform. First, Rimsha, a juvenile with diminished mental capacity, is not a typical defendant. Second, the case itself was not a typical blasphemy case. To be certain, charges are often made based on a single accusation with no supporting evidence, but this case was unique in that "there was clear evidence that [Rimsha] was framed."⁸⁷ Finally the case,

83. Boone, *supra* note 1.

84. Boone, *supra* note 82. Ashrafi, chairman of the All Pakistan Ulema Council, made his remarks at a "fiery press conference . . . flanked by other senior clerics." *Id.* He demanded that all branches of the Pakistani state work together to investigate the circumstances surrounding Rimsha's arrest, and declared that "[o]ur heads are bowed with shame for what Chishti did." *Id.* Ashrafi also opined that Chishti was serving as the "front man" for other individuals who "wanted to stoke local antagonism against the Christian minority in the area in order to force them to flee." *Id.* Ashrafi's supportive words and tone notwithstanding, it is notable that he "said he had been moved to speak out after reading reports that Rimsha had Down's syndrome, a condition that also affects [his] 15-year-old son." *Id.* In addition, he was careful to maintain that there was no need to change or repeal the blasphemy laws in the wake of this case, only their implementation: "[t]here is no problem with the law—only the implementation of the law is the problem." *Id.*

85. Asher John, *SC Throws Out Plea Challenging Rimsha Masih's Acquittal*, PAKISTAN TODAY (Jan. 17, 2013, 2:34 AM), <http://www.pakistantoday.com.pk/2013/01/17/news/national/sc-throws-out-plea-challenging-rimsha-masih-acquittal-2/>. "A three-member bench of Pakistan's Supreme Court on January 15 dismissed a petition challenging the quashing of charges against a teenage Christian girl accused of desecrating the Holy Quran in September last year." *Id.*

86. *Pakistan Supreme Court Confirms Decision to Drop Blasphemy Case*, *supra* note 7.

87. Rob Crilly, *Rimsha Masih May Have Been Spared, But Pakistan's Blood-Curdling Blasphemy Laws Still Need To Be Reformed*, TELEGRAPH (Nov. 20, 2012), <http://blogs.telegraph.co.uk/news/robcrilly/100190638/rimshas-justice-is-the-exception-not-the-rule-in-pakistan/>.

partly due to the preceding two factors, received an inordinate amount⁸⁸ of local and international media attention.⁸⁹ Most blasphemy cases are not afforded such intense media coverage, if they receive any at all.⁹⁰ The high level of media attention may well have emboldened witnesses and pressured Pakistani officials.

In addition, several factors and events since Rimsha's arrest provide strong evidence that, in reality, very little has changed in the arena of blasphemy laws.

First, Chishti was ultimately acquitted of all charges against him by the Islamabad High Court on August 17, 2013.⁹¹ Six of the eight witnesses against him changed or recanted their statements in court, prompting the acquittal.⁹² Thus, for all of the attention and praise his arrest received as evidence of the state finally "holding an accuser accountable," the end result was that Chishti avoided any punishment or lasting repercussions for his actions.

Moreover, there have been several aspects of Rimsha's case which have constituted a decidedly normal response to a blasphemy allegation. While politicians and religious leaders spoke out, they made certain to stop short of calling for a change in the laws.⁹³ Further, vigilantism still played its usual role. Rimsha's initial arrest occurred in order to appease a large crowd of protestors,⁹⁴ and, like many other accused, she faced the constant threat of harm or death at the hands of vigilantes taking matters into their own hands, particularly following her acquittal.⁹⁵ In fact, the

88. *Id.* As a result, "every twist and turn, every court appearance and piece of evidence, was [scrutinized] around the world." *Id.*

89. *Id.* In his opinion piece, Rob Crilly makes a compelling argument that this was in part due to location. Rimsha's home is located in Mehrabad, just outside of Islamabad. Many of the hearings and court proceedings in the case occurred there, offering a conveniently short trip for the scores of international journalists who are based in Islamabad: "Reporters could vox pop Rimsha's neighbours and still be home in time for lunch. Likewise each court hearing." *Id.*

90. *Id.* "In contrast, hundreds of other cases in remote corners [of] Punjab or upper Sidh go unreported month after month. Even when they are reported, they are soon forgotten." *Id.*

91. *Rimsha Case: Cleric Khalid Chisti Acquitted*, TRIBUNE (Pak.) (Aug. 17, 2013), <http://tribune.com.pk/story/591445/rimsha-case-cleric-khalid-chisti-acquitted/>.

92. *Id.*

93. See *supra* note 84 and accompanying text.

94. Boone, *supra* note 1.

95. After initially being granted bail, "Rimsha had to be airlifted by police helicopter to avoid an angry mob," and then had to go into hiding with her family while awaiting her upcoming court proceedings. *Pakistan Supreme Court Confirms Decision to Drop Blasphemy Case*, *supra* note 7. A report in the *Tribune* published in late December, 2012, summarized succinctly Rimsha's and her family's plight: "Rimsha and her family will spend Christmas as they have spent the last four months—in hiding, fearing for their lives." *Cold Christmas Awaits Christians in Rimsha's Neighbourhood*, TRIBUNE (Pak.) (Dec. 21, 2012), <http://tribune.com.pk/story/482446/cold-christmas-awaits-christians-in-rimshas-neighbourhood/>.

danger she and her family faced prompted many to speculate that “she and her family [would] have no future in Pakistan, where their lives will always remain at risk.”⁹⁶ That prediction proved prescient, as Rimsha and her family, after months of hiding, have taken refuge in Canada after moving there around April of 2013.⁹⁷ In addition to the repercussions for Rimsha and her family, fallout from the case has negatively affected other Christians living in Rimsha’s neighborhood of Mehrabad.⁹⁸

Finally, and most importantly, there has been no change in the way blasphemy allegations have been handled or enforced since Rimsha’s case arose. Instead, there has only been more of the same: accusations based on flimsy evidence, mob violence and vigilantism, and charges brought in the interest of appeasing the masses. Two cases in particular that occurred shortly after Rimsha’s September, 2012, arrest offer compelling evidence that her case was, in fact, an outlier. These cases show that even the unprecedented support for Rimsha, coupled with her legal victory, has not been enough to effect real change. The blasphemy laws continue to be used aggressively, even against juveniles, and vigilantism continues to rule.

In December of 2012, 200 people stormed a police station in Karachi, overpowered the officers stationed there, and seized a man who was in custody after being accused of desecrating the Koran.⁹⁹ The man was beaten to death and set on fire.¹⁰⁰

Two months prior, on Wednesday, October 10, 2012, a sixteen-year-old Christian boy named Ryan Stanten from Karachi was charged with

96. *Pakistan Supreme Court Confirms Decision to Drop Blasphemy Case*, *supra* note 7.

97. *Rimsha Masih, Pakistani Girl Accused of Blasphemy, Finds Refuge in Canada*, *GUARDIAN* (June 30, 2013), <http://www.theguardian.com/world/2013/jul/01/pakistan-girl-accused-blasphemy-canada>. Canadian Immigration Minister Jason Kenney revealed the family’s presence in Canada in June, 2013. *Id.* He explained that a Pakistani contact reached out to him in January of 2013 asking whether the family could flee to Canada, and that subsequently “a number of people did some very dangerous, delicate work to extricate her and her family from Pakistan, and we provided the necessary visas.” *Id.*

98. *Cold Christmas Awaits Christians in Rimsha’s Neighbourhood*, *supra* note 95. In Mehrabad, “things have become much more difficult since the Rimsha case.” *Id.* Many of Mehrabad’s roughly 400 Christian families fled when Rimsha was arrested out of fear for their own safety, and those that have returned found themselves even more marginalized than before. *Id.* For example, a local landlord shut down a makeshift church the Christian community had built, and they were too fearful of retaliation to observe their usual Christmas traditions, such as installing a Christmas tree. *Id.* Ashraf Masih, a Christian resident of the area, summarized the situation: “We are scared. We are frightened. We cannot sit together, we cannot speak loudly, we cannot celebrate openly. We have threats.” *Id.*

99. Mariya Karimjee, *Pakistan: Mob Beats to Death Muslim Man Accused of Blasphemy*, *GLOBAL POST* (Dec. 22, 2012), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/pakistan/121222/pakistan-mob-beats-death-muslim-man-accused-blasp>. The man, who was a Muslim, was also reported to be mentally unstable.

100. *Id.*

blasphemy after allegedly forwarding anti-Islamic text messages to several members of the middle-class staff colony of the Sui Southern Gas Company where he and his mother, who worked for the company,¹⁰¹ resided.¹⁰² Stanten claimed to have forwarded the message without reading it, but word spread quickly, and he and his mother were quickly forced into hiding.¹⁰³ An angry mob ransacked the Stanten home shortly thereafter, “dragg[ing] furniture out of [the] house and set[ting] fire to it in the street.”¹⁰⁴ Ultimately, police calmed the protesters by assuring them that they would file charges against Stanten.¹⁰⁵

In addition to those two incidents, the year following Rimsha’s arrest has seen several more examples of the pervasiveness of the blasphemy laws and their enforcement through vigilantism. On July 20, 2013, a Christian couple in Gojra in the Punjab Province was arrested and charged with blasphemy.¹⁰⁶ Shafgat Masih, who is handicapped, and his wife Shagufta Kosar, a maid at a school, were accused of sending text messages containing blasphemous content.¹⁰⁷ Following a court hearing two days after their arrest, they were held in jail.¹⁰⁸

On September 2, 2013, a forty-year-old Christian mother of four and schoolteacher was arrested and jailed on blasphemy charges in Lahore.¹⁰⁹ The woman, Salma alias Fatima, was accused by a local cleric of distributing a pamphlet carrying “contemptuous” remarks.¹¹⁰

101. *Christian Boy in Pakistan Arrested for Blasphemy*, BBC NEWS (Oct. 11, 2012), <http://www.bbc.co.uk/news/world-asia-19906528>. Stanten’s mother was subsequently dismissed from her job at the company. *Id.*

102. Salman Masood, *Pakistani Teenager in Hiding After Blasphemy Accusation, Police Say*, N.Y. TIMES (Oct. 12, 2012), http://www.nytimes.com/2012/10/13/world/asia/teenager-in-hiding-after-blasphemy-accusation-pakistani-police-say.html?_r=0.

103. *Id.*

104. *Id.* The crowd, which was led to the residence by Islamic clerics, reportedly shouted insults against the family in addition to ransacking the home and setting several household items on fire. *Christian Teenager Ryan Stanten Held for Blasphemy in Pakistan*, *supra* note 67.

105. *Id.* “The police said they had opened the case against him to calm the mob, which human rights campaigners say is a common tactic in such situations.” *Id.* Stanten was indeed charged with a blasphemy offense under Section 295-C of the Pakistan Penal Code, violation of which carries with it a possible sentence of death. S. Raza Hassan, *Teenage Christian Boy Booked for Blasphemy*, DAWN PAKISTAN (Oct. 11, 2012), <http://dawn.com/2012/10/11/house-ransacked-furniture-torched-teenage-christian-boy-booked-for-blasphemy/>.

106. *Christian Couple Charged with Blasphemy in Pakistan*, ALETEIA (July 25, 2013), <http://www.aleteia.org/en/world/news/christian-couple-charged-with-blasphemy-2758007>.

107. *Id.*

108. *Id.*

109. *Pakistani Police Arrest Mother on Blasphemy Charges*, GLOBAL POST (Sept. 3, 2013, 11:53 PM), <http://www.globalpost.com/dispatch/news/afp/130903/pakistani-police-arrest-mother-blasphemy-charges>.

110. *Id.* Specifically, Salma was accused of calling herself a prophet of Islam. *Id.* Highlighting the procedural deficiencies of the blasphemy laws, a local police official admitted that although there was

Just two weeks later, dozens of Christian families were forced to flee from their homes in a village near Lahore after a local pastor, Sattar Masih, was accused of blasphemy.¹¹¹ Masih denied the accusations, and was called before local Islamic clerics to plead his case.¹¹² His accuser, 18-year-old Ali Hassan, explained the process: “[t]he clerics will decide if he blasphemed against our Prophet and in case he refused to appear before the clerics then we will kill him.”¹¹³ Rather than appear before the clerics, Masih fled the village, with several Christian families following suit thereafter.¹¹⁴

CONCLUSION

The Rimsha Masih case was a true outlier on the Pakistani blasphemy law landscape, a perfect storm of oddity—an underage, mentally deficient girl whose guilt was in serious doubt from the outset and whose plight attracted intense and continuous international media attention and outrage. To be certain, some hope can be taken from the way her case unfolded. Politicians and religious leaders speaking out in Rimsha’s defense at all is a positive step, as is the court’s willingness to acquit her.

However, the blasphemy law system of administering justice is a machine that would go of itself, something that does not require political or judicial enforcement because it exists outside of the realm of democratic law. The uncomfortable combination of democratic rule of law and government and Islamicized blasphemy laws in Pakistan has created a sizable disconnect between the law enforced by politicians and judges (who rely on the rule of law and the democratic process), and the law enforced by the masses (who rely on traditional notions of justice derived from strict adherence to Islam). The blasphemy laws fall squarely within the void between the two; their underlying logic flows from Islamic ideals, yet they have been placed within a Western, modern system of law. One of

no such claim of prophethood in the pamphlet, the complainant’s accusation was sufficient to prompt her arrest. *Id.*

111. *Christians Flee Pakistani Village After Pastor Accused of Blasphemy*, ALBANY TRIBUNE (Sept. 13, 2013), <http://www.albanytribune.com/13092013-christians-flee-pakistani-village-after-pastor-accused-of-blasphemy/>.

112. *Id.*

113. *Id.*

114. *Id.* The Christian families were prompted to flee when, following the alleged incident, “teachers from the village school asked Christian students about the religious teachings Masih had been giving them” and then sent 100 of the students home. *Id.* Although the families have been told by local police that there is no risk of an attack on them, they remain reluctant to return. *Id.*

the two systems must necessarily gain the upper hand in determining on what terms the blasphemy laws are enforced.

To date, the law enforced by the masses has decidedly been the victor. This has been evidenced by the numerous instances of vigilantism, violence, and mob action which have consistently either usurped (by delivering “justice” outside of the reach of the courtroom) or dominated (by forcing officials to act on accusations) the rule of law in Pakistan.

This is precisely why, moving forward, landmark acquittals or legislative amendments will likely not be enough to achieve true reform in regard to the blasphemy laws; the issue is far more deeply rooted. Pakistan’s ability to confront its blasphemy law issues will depend upon remedying the tensions that exist between its system of governance and its foundational religious underpinnings.

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